

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 2020/0265 (COD)

# MiCA ~~DRAFT~~ Final COMPROMISES ON BEHALF OF MEP BERGER

Version of ~~7~~9 March 2022

for the vote on 14 March 2022

Formatted: Normal, Centered

~~Latest additions by the Rapporteur (3 March 2022) highlighted in yellow:~~

- ~~• new Article 2a (as part of compromise A, page 23)~~
- ~~• new point (bc) in Article 5(1) (compromise D, page 36)~~
- ~~• new point (4a) in Article 59 (compromise G, page 87)~~

## Compromise L: Citations and Recitals

Covering AMs 1, 16-138, 144-148, AMs fall if compromise is adopted

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

- 1) The Commission's communication on a Digital Finance Strategy<sup>3</sup> aims to ensure that the Union's financial services legislation is fit for the digital age, and contributes to a future-ready economy that works for the people, including by enabling the use of innovative technologies. The Union has a stated and confirmed policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including blockchain and distributed ledger technology (DLT).

**(1a) In practice, DLT refers to the protocols and supporting infrastructure that enable nodes in a network to propose, validate, and record state changes or updates consistently across a network's nodes – without the need to rely on a central trusted party to obtain reliable data. DLT is built upon public-key cryptography, a cryptographic system that uses pairs of keys: public keys, which are publicly known and essential for identification, and private keys, which are kept secret and are used for authentication and encryption.**

Commented [A1]: AM 17 Kovařík et al.

- (2) In finance, crypto-assets are one of the major DLT applications. Crypto-assets are digital representations of value or rights that have the potential to bring significant benefits to both market participants and consumers. By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a cheaper, less burdensome and more inclusive way of financing small and medium-sized enterprises (SMEs). When used as a means of payment, payment tokens can present opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries. **It is expected that numerous applications of blockchain technology that have not yet been fully studied will create new types of business activity and business models which, together with the crypto-asset sector itself, will lead to economic growth and new employment opportunities for Union citizens.**

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**(2a) A crypto-asset can be considered to be an asset that depends primarily on cryptography and DLT or similar technology as part of its perceived or inherent value, that is neither issued nor**

<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for EU COM(2020)591.

*guaranteed by a central bank or public authority, and that can be used as a means of exchange or for investment purposes.*

Commented [A3]: AM 22 Kovarik et al.

- (3) Some crypto-assets qualify as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council<sup>4</sup>. *Other crypto-assets potentially qualify as 'deposits' as defined in Article 2 (1), point (3) of Directive 2014/49/EU of the European Parliament and the Council. Because of the specific features linked to their innovative and technological aspects, however, it is necessary to clearly identify the requirements for classifying a crypto-asset as a financial instrument. For that purpose, the European Securities and Markets Authority (ESMA) should be tasked by the Commission with publishing guidelines in order to reduce legal uncertainty and guarantee a level playing field for market operators.*

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Commented [A5]: AM 23 Rinaldi et al.

Commented [A6]: AM 25 Greens/EFA

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

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

- (5) *A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services and respecting the sovereignty of the Member States.* Such a framework should support innovation and fair competition, while ensuring a high level of consumer protection and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. *The proportionate treatment of issuers of crypto-assets and service*

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

providers, guaranteeing an equal chance of market access and development in the Member States should be ensured. A Union framework should also ensure financial stability and address monetary policy risks, provide for proportionate treatment of the different types of crypto-assets and issuing set-ups, thus allowing equal opportunities for market entry and ongoing and future development. It should also ensure financial stability that could arise from crypto-assets that aim at stabilising their price by referencing a currency, an asset or a basket of such. While increasing consumer protection, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate ensure that the underlying technology and should allow for the use of both permissionless and permission based distributed ledgers are climate friendly and in line with the Union green deal objectives-. Union legislation does not impose unnecessary and disproportionate regulatory burdens in the use of technology since the Union and the Member States seek to maintain competitiveness on a global market. Proper regulation maintains the competitiveness of the Member States on international financial and technological markets and provides clients with significant benefits in terms of access to cheaper, faster and safer financial services and asset management.

Commented [A10]: AM 35 ECR

Commented [A11]: AM 33 Beck

Commented [A12]: AM 34 Eero Heinäluoma, Victor Negrescu, Paul Tang, Joachim Schuster, Pedro Marques

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(5a) The consensus mechanisms used for the validation of transactions can have a substantial environmental impact. That is particularly the case for the consensus mechanism known as proof-of-work, which requires participating miners to solve computational puzzles and compensates them in proportion to their computational effort. Rising prices of the associated crypto-asset, as well as the frequent replacement of mining hardware, create incentives for increases in computational power. As a result, today, proof-of-work is often associated with high energy consumption, a material carbon footprint and significant generation of electronic waste. Those characteristics may could undermine Union and global efforts to achieve climate and sustainability goals, until other more climate friendly and not energy intensive solutions emerge. The best-known application of the proof-of-work consensus mechanism is Bitcoin. According to most estimates, the energy consumption of the Bitcoin network equals that of entire countries. Moreover, during the period 1 January 2016 to 30 June 2018, the Bitcoin network was responsible for up to 13 million metric tons of CO2 emissions. It has been estimated that each Bitcoin transaction deploys 707 kWh of electricity power. The increasing energy consumption was accompanied by a growth in mining equipment and the generation of significant electronic waste. It is therefore urgent to highlight the need for consensus mechanisms to deploy more environmentally friendly solutions and call the the Commission to identify those consensus mechanisms that could pose a threat to the environment having regard to energy consumption, carbon emissions, depletion of real resources, electronic waste and the specific incentive structures. Unsustainable consensus mechanisms should only be applied on a small scale.

(5aa) Crypto-assets relying on the 'proof of work' method as consensus mechanism to validate transactions indirectly cause considerable carbon emissions and affect the climate and the environment negatively today. This is due to the proof of work method's currently intensive and inefficient use of electricity, often generated from fossil energy sources outside of the Union. The deployment of the proof of work method, as it stands today, is unsustainable and undermines the achievement of the climate objectives under the Paris Agreement. However, as other industries (such as the video games and entertainment industry, data centers, other tools deployed in the financial and banking industry and beyond) also consume energy resources which are not climate friendly, it is an important issue for the Union to tackle in its

environmental legislation, as well as in relationships and agreements with third countries on the global scale. In this context, the Commission should work towards a holistic legislative approach which would be better placed to address such issues in a horizontal manner. White papers of crypto assets relying on the proof of work method should include an independent assessment of the crypto asset's likely energy consumption.

**Commented [KK14]:** This recital was added following the meeting on 1 Feb 2022, to better reflect the proof-of-work concept in the text.

(5b) With regard to its harmonised framework, the Union should also consider the need for a global conference on the regulation of crypto-assets in order to find jointly agreed solutions and avoid legislative 'dumping' that would jeopardise the financial and banking stability of Member States, and to prevent the creation of legislative discrepancies that are detrimental to consumer protection.

**Commented [A15]:** AM 37 Antonio Maria Rinaldi, Francesca Donato, Valentino Grant, Marco Zanni

(5c) In line with the objectives of the Sustainable Finance Agenda, requirements regarding sustainability-related disclosures as defined in Regulation (EU) 2019/2088 of the European Parliament and of the Council<sup>5</sup> and the EU Taxonomy for sustainable activities should also apply to crypto assets as well as to crypto-asset service provider and issuers.

**Commented [A16]:** AM 38 Greens/EFA

(6) Union legislation on financial services should ~~not favour one particular technology~~ **be based on the principle 'same business, same risks, same rules' and follow a technologically neutral approach.** Crypto-assets that qualify as 'financial instruments' as defined in Article 4(1), point (15), of Directive 2014/65/EU **or as 'deposits' as defined in Article 2 (1), point (3) of Directive 2014/49/EU of the European Parliament and the Council** should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU **and Directive 2014/49/EU respectively**, regardless of the technology used for their issuance or their transfer. **Moreover, crypto-assets that have the same or highly similar features to financial instruments should be treated as equivalent to financial instruments, insofar they provide profit or governance rights or a claim on a future cash flow. Such crypto-assets should be subject to Union financial services legislation and not to this Regulation. In order to achieve legal clarity with regard to which crypto-assets fall under the scope of this Regulation and which crypto-assets are excluded, ESMA should specify the conditions under which a crypto-asset should be treated as a financial instrument based on its substance and regardless of its form.**

**Commented [A17]:** AM 40 Berger

**Commented [A18]:** AM 40 Berger

(7) Crypto-assets **and central bank money** issued **based on DLT or in digital form** issued by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets **and central bank money issued based on DLT or in digital form** that are provided by such central banks or other public authorities.

**Commented [A19]:** AM 39 Greens/EFA

**Commented [A20]:** AM 43 Eero Heinäluoma, Victor Negrescu, Pedro Marques, AM 44 Ferber

(8) Any legislation adopted in the field of crypto-assets should be specific, future-proof, ~~and~~ **able in keeping pace with innovation and technological developments and be founded on an incentive-based approach to secure continued legal adequacy of Member States alongside the rapid innovation of the industry.** 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets, **which have or may have a financial use, can be transferred between holders 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

**Commented [A21]:** AM 49 Ferber

<sup>5</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

the Financial Action Task Force (FATF)<sup>6</sup>. 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~~ **harm the monetary policies of Member States.**

**Commented [A22]:** A 47 Hoogeveen, also reflecting AM 48 ECR

**(8a) This Regulation should only apply to crypto-assets that are able to be transferred among holders without the issuer's permission. Crypto-assets that are unique and not fungible with other crypto-assets, which are not fractionable and are accepted only by the issuer, including merchant's loyalty schemes, represent IP rights, guarantees, certificate authenticity of a unique physical asset, or any other right not linked to the ones that financial instruments bear, and are not accepted to trading at a crypto-asset exchange, should be excluded from the scope of this Regulation. The fractional parts of a unique and non-fungible crypto-asset should not be considered unique and not fungible. The sole attribution of a unique identifier to a crypto-asset is not sufficient to classify it as unique or non-fungible. Similarly, this Regulation also does not apply to crypto-assets representing services, digital or physical assets that are unique, indivisible and non-fungible, such as product guarantees, personalised products or services, or real estate. However, this Regulation should apply if the non-fungible token grants to the holder or its issuer specific rights linked to those of financial instruments, such as profit rights or other entitlements. In those cases, the tokens may then be assessed and treated as security tokens, and be subject, together with the issuer, to various requirements under relevant pieces of financial market legislation, such as Directive (EU) 2015/849 of the European Parliament and of the Council<sup>7</sup>, Directive 2014/65/EU, Regulation (EU) 2017/1129 of the European Parliament and of the Council<sup>8</sup>, Regulation (EU) No 596/2014<sup>9</sup> and the Directive 2014/57/EU of the European Parliament and of the Council<sup>10</sup>.**

**Commented [A23]:** Changes based on AM 50 Kaili, also reflecting AM 51 Lalueq

**(8c) For crypto-assets that are unique and not fungible with other crypto-assets, that are not fractionable and that are accepted only by the issuer, that represent IP rights, guarantees, certificate authenticity of a unique physical asset such as a piece of art, or any other right not linked to the ones that financial instruments bear, and that are not accepted to trading at a crypto-asset exchange, it is proposed to consider whether a Union-wide bespoke regime should be proposed by the Commission.**

**Commented [A24]:** AM 52 Kaili

(9) A distinction should be made between three sub-categories of crypto-assets, which should be subject to more specific requirements. The first sub-category consists of a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and that is only accepted by the issuer of that token ('utility tokens'). Such 'utility tokens' have non-financial purposes related to the operation of a digital platform and digital services and should be

<sup>6</sup> FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France ([www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/recommendations.html)).

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73.)

<sup>8</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)

<sup>9</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

<sup>10</sup> Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).



considered as a specific type of crypto-assets *and their issuers should be exempt from the application of this Regulation unless offered for investment purposes. Specific types of utility tokens, such as those used to ensure access to services, reward schemes to customers, mining reward tokens, and others, should be exempt from regulation even if offered to the public as soon as such an offering is not made for investment or payment purposes.* A second sub-category of crypto-assets are ‘asset-referenced tokens’. Such asset-referenced tokens aim at maintaining a stable value by referencing several currencies that are legal tender, one or several commodities, one or several crypto-assets, or a basket of such assets. By stabilising their value, those asset-referenced tokens often aim at being used by their holders as a means of payment to buy goods and services and as a store of value. A third sub-category of crypto-assets are crypto-assets that are intended primarily as a means of payment aim at stabilising their value by referencing only one fiat currency. The function of such crypto-assets is very similar to the function of electronic money, as defined in in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council<sup>11</sup>. Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments. These crypto-assets are defined as ‘electronic money tokens’ or ‘e-money tokens’. *The definition of the different crypto-assets regulated by this Regulation should not allow for arbitrary decision as to the type of such crypto-assets. The crypto-assets that are the subject of this Regulation should be defined, first, based on objective technical criteria and second, on their intended use directly linked to such technical design and criteria. The in-practice use of the various concepts of crypto-assets would in most cases be difficult to predict in the emerging and rapidly innovating market. Furthermore, an objective approach should be adopted when determining whether a token is a non-financial instrument and subject to this Regulation or else a financial instrument and therefore subject to other applicable Union legislation on markets and financial instruments. Such legal certainty is crucial in order to attract investment and procure fast development while preserving consumer and investor protection.*

Commented [A25]: AM 55 Beck

- (10) Despite their similarities, electronic money and crypto-assets referencing a single fiat currency differ in some important aspects. Holders of electronic money as defined in Article 2, point 2, of Directive 2009/110/EC are always provided with a claim on the electronic money institution and have a contractual right to redeem their electronic money at any moment against fiat currency that is legal tender at par value with that currency. By contrast, some of the crypto-assets referencing one fiat currency which is legal tender do not provide their holders with such a claim on the issuers of such assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one fiat currency do not provide a claim at par with the currency they are referencing or limit the redemption period. The fact that holders of such crypto-assets do not have a claim on the issuers of such assets, or that such claim is not at par with the currency those crypto-assets are referencing, could undermine the confidence of users of those crypto-assets. To avoid circumvention of the rules laid down in Directive 2009/110/EC, any definition of ‘e-money tokens’ should be as wide as possible to capture all the types of crypto-assets referencing one single fiat currency that is legal tender. To avoid regulatory arbitrage, strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution as defined in Regulation (EU) No 575/2013 of

<sup>11</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

the European Parliament and of the Council<sup>12</sup>, or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a claim to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of consumer protection and market integrity specific to crypto-assets, they should also be subject to rules laid down in this Regulation to address these challenges to consumer protection and market integrity.

**(10a)** *With the aim of establishing a future-proof Regulation and in order to avoid circumvention, the definition of asset-referenced token (ART) should include reference to any other value or right.*

**Commented [HP26]:** This acronym is not used anywhere else in the text now that the Article on Payment ARTs has been deleted so should also be deleted from here.

**Commented [A27]:** AM 61 Kaili

**(11)** Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers of crypto-assets that should be any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets. *An issuer of crypto-assets should be a legal or natural person who issues any type of crypto-assets. Offeror of crypto-assets should be a legal entity who offers to the public any type of crypto-assets or asks for admission to trading of such crypto-assets on a trading platform for crypto-assets. Sometimes the issuance and exchange of crypto-assets may be decentralized, and that should be reflected and considered by the relevant legislation. Such decentralized issuers should not be required to organise in a single legal entity and should not be subject to regulation until the offering of the crypto-assets to the public is centralised.*

**Commented [A28]:** AM 63 Beck

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

**(13)** To ensure that all offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union, or all the admissions of such crypto-assets to trading on a trading platform for crypto-assets are properly monitored and supervised by competent authorities, all issuers of crypto-assets should be legal entities. *To promote rather than to hinder decentralised issuance of crypto-assets, this requirement should not apply to decentralised issuers of crypto-assets unless and until the issuance of their crypto-assets is centralised.*

**Commented [A29]:** AM 68 Beck

**(13a)** *Some types of crypto-assets are not issued by legal entities, but are managed by decentralised autonomous organisations (DAOs). Provided that such crypto assets are compatible with the requirements of this Regulation and do not pose a risk for investor protection, market integrity or financial stability, competent authorities should be permitted to admit such crypto-assets for trading on a Union trading platform for crypto-assets.*

**Commented [A30]:** AM 70 Ferber

<sup>12</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).



- (14) In order to ensure consumer protection, prospective purchasers of crypto-assets should be informed about the characteristics, functions and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets in the Union or when seeking admission of crypto-assets to trading on a trading platform for crypto-assets, issuers of crypto-assets should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information on the issuer **and offeror, when different**, on the project to be carried out with the capital raised, on the public offer of crypto-assets or on their admission to trading on a trading platform for crypto-assets, on the rights and obligations attached to the crypto-assets, on the underlying technology used for such assets and on the related risks. To ensure fair and non-discriminatory treatment of holders of crypto-assets, the information in the crypto-asset white paper, and where applicable in any marketing communications related to the public offer, shall be fair, clear and not misleading.
- (15) In order to ensure a proportionate approach, the requirements to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets, other than asset-referenced tokens or e-money tokens, that are offered for free, or offers of crypto-assets that are exclusively offered to qualified investors as defined in Article 2, point (e), of Regulation (EU) 2017/1129 of the European Parliament and of the Council<sup>13</sup> and can be exclusively held by such qualified investors, or that, per Member State, are made to a small number of persons, or that are unique and not fungible with other crypto-assets.
- (16) Small and medium-sized enterprises and start-ups should not be subject to excessive **and disproportionate** administrative burdens. Offers to the public of crypto-assets in the Union that do not exceed an adequate aggregate threshold over a period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. However, EU horizontal legislation ensuring consumer protection, such as Directive 2011/83/EU of the European Parliament and of the Council<sup>14</sup>, Directive 2005/29/EC of the European Parliament and of the Council<sup>15</sup> or the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>16</sup>, including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations.
- (17) Where an offer to the public concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed twelve months. This limitation on the duration of the public offer is unrelated to the moment when the

Commented [A31]: AM 71 Kovařík et al.

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<sup>13</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

<sup>14</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

<sup>15</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22)

<sup>16</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

product or service becomes factually operational and can be used by the holder of a utility token after the end of the public offer.

- (18) In order to enable supervision, issuers of crypto-assets should, before any public offer of crypto-assets in the Union or before those crypto-assets are admitted to trading on a trading platform for crypto-assets, notify their crypto-asset white paper and, where applicable, their marketing communications, to the competent authority of the Member State where they have their registered office or a branch. Issuers that are established in a third country should notify their crypto-asset white paper, and, where applicable, their marketing communication, to the competent authority of the Member State where the crypto-assets are intended to be offered or where the admission to trading on a trading platform for crypto-assets is sought in the first place.
- (19) Undue administrative burdens should be avoided. Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, after publication, have the power to request that additional information is included in the crypto-asset white paper, and, where applicable, in the marketing communications.
- (20) Competent authorities should be able to suspend or prohibit a public offer of crypto-assets or the admission of such crypto-assets to trading on a trading platform for crypto-assets where such an offer to the public or an admission to trading does not comply with the applicable requirements. Competent authorities should also have the power to publish a warning that an issuer has failed to meet those requirements, either on its website *and/or* through a press release.
- (21) Crypto-asset white papers and, where applicable, marketing communications that have been duly notified to a competent authority should be published, after which issuers of crypto-assets should be allowed to offer their crypto-assets throughout the Union and to seek admission for trading such crypto-assets on a trading platform for crypto-assets.
- (22) In order to further ensure consumer protection, the consumers who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the issuer or from a crypto-asset service provider placing the crypto-assets on behalf of the issuer should be provided with a right of withdrawal during a limited period of time after their acquisition. In order to ensure the smooth completion of an offer to the public of crypto-assets for which the issuer has set a time limit, this right of withdrawal should not be exercised by the consumer after the end of the subscription period. Furthermore, the right of withdrawal should not apply where the crypto-assets, other than asset-referenced tokens or e-money tokens, are admitted to trading on a trading platform for crypto-assets, as, in such a case, the price of such crypto-assets would depend on the fluctuations of crypto-asset markets.
- (23) Even where exempted from the obligation to publish a crypto-asset white paper, all issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, should act honestly, fairly and professionally, should communicate with holders of crypto-assets in a fair, clear and truthful manner, should identify, prevent, manage and disclose conflicts of interest, should have effective administrative arrangements to ensure that their systems and security protocols meet Union standards. In order to assist competent authorities in their supervisory tasks, the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority (EBA) should be mandated to publish guidelines on those systems and security protocols in order to further specify these Union standards.

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- (24) To further protect holders of crypto-assets, civil liability rules should apply to crypto-asset issuers and their management body for the information provided to the public through the crypto-asset white paper.
- (25) Asset-referenced tokens aim at stabilising their value by reference to several fiat currencies, to one or more commodities, to one or more other crypto-assets, or to a basket of such assets. They could therefore be widely adopted by users to transfer value or as a means of payments and thus pose increased risks in terms of consumer protection and market integrity compared to other crypto-assets. Issuers of asset-referenced tokens should therefore be subject to more stringent requirements than issuers of other crypto-assets.
- (26) So-called algorithmic ‘stablecoins’ that aim at maintaining a stable value, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand should not be considered as asset-referenced tokens, provided that they do not aim at stabilising their value by referencing one or several other assets.
- (27) To ensure the proper supervision and monitoring of offers to the public of asset-referenced tokens, issuers of asset-referenced tokens should have a registered office in the Union.
- (28) Offers to the public of asset-referenced tokens in the Union or seeking an admission of such crypto-assets to trading on a trading platform for crypto-assets should be possible only where the competent authority has authorised the issuer of such crypto-assets and approved the crypto-asset white paper regarding such crypto-assets. The authorisation requirement should however not apply where the asset-referenced tokens are only offered to qualified investors, or when the offer to the public of asset-referenced tokens is below a certain threshold. Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council<sup>17</sup> should not need another authorisation under this Regulation in order to issue asset-referenced tokens. **Such credit institutions should, however, notify their respective competent authority of their intention to issue an asset-referenced token at least three months prior to the intended date of issuance.** In those cases, the issuer of such asset-referenced tokens should be still required to produce a crypto-asset white paper to inform buyers about the characteristics and risks of such asset-referenced tokens and to notify it to the relevant competent authority, before publication.
- (29) A competent authority should **be obliged to** refuse authorisation where the prospective issuer of asset-referenced tokens’ business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. The competent authority should **be obliged to** consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. **Full supervisory competences and responsibilities should remain with the competent authorities** The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority ~~with a non-binding~~ **an** opinion on the prospective issuer’s application. **Opinions should be non-binding with the exception of those of the ECB and of the Member States’ central banks on monetary policy enforcement and ensuring the secure handling of payments.** Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The

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<sup>17</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements.

- (30) To ensure consumer protection, issuers of asset-referenced tokens should always provide holders of asset-referenced tokens with clear, fair and not misleading information. The crypto-asset white paper on asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets, and on the rights provided to holders. Where the issuers of asset-referenced tokens do not offer a direct claim or redemption right on the reserve assets to all the holders of such asset-referenced tokens, the crypto-asset white paper related to asset-referenced tokens should contain a clear and unambiguous warning in this respect. Marketing communications of an issuer of asset-referenced tokens should also include the same statement, where the issuers do not offer such direct rights to all the holders of asset-referenced tokens.
- (31) In addition to information included in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets, on at least a monthly basis, on their website. Issuers of asset-referenced tokens should also disclose any event that is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespective of whether such crypto-assets are admitted to trading on a trading platform for crypto-assets.
- (32) To ensure consumer protection, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best interest of the holders of asset-referenced tokens. Issuers of asset-referenced tokens should also put in place a clear procedure for handling the complaints received from the holders of crypto-assets.
- (33) Issuers of asset-referenced tokens should put in place a policy to identify, manage and potentially disclose conflicts of interest which can arise from their relations with their managers, shareholders, clients or third-party service providers.
- (34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The management body of such issuers and their shareholders should have good repute and sufficient expertise and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the performance of their core payment activities. Issuers of asset-referenced tokens should also have a strong internal control and risk assessment mechanism, as well as a system that guarantees the integrity and confidentiality of information received. *Fulfilment of that obligation aims to ensure the protection of basic rights and freedoms within the Union, not to create unnecessary barriers on the crypto-asset market.*

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- (35) Issuers of asset-referenced tokens are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. Issuers of asset-referenced tokens should therefore be required to establish and maintain appropriate contractual arrangements with those third-party entities ensuring the stabilisation mechanism and the investment of the reserve assets backing the value of the tokens, the custody of such reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public.
- (36) To address the risks to financial stability of the wider financial system, issuers of asset-referenced tokens should be subject to capital requirements. Those capital requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should however be able to increase or decrease the amount of own fund requirements required on the basis of, *inter alia*, the evaluation of the risk-assessment mechanism of the issuer, the quality and volatility of the assets in the reserve backing the asset-referenced tokens or the aggregate value and number of asset-referenced tokens.
- (37) In order to stabilise the value of their asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets backing those crypto-assets at all times. **Such reserve of assets constitutes a guarantee in respect of the issuer liability represented by the asset-referenced token.** 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~~ **asset-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 and destruction of the asset-referenced tokens, the procedure to purchase and redeem the asset-referenced tokens against the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuer.
- (38) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets issuers of asset-referenced tokens should have an adequate custody policy for reserve assets. That policy should ensure that the reserve assets are entirely segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013, **an authorised investment firm that specialises in the safe-keeping of assets** or by an authorised crypto-asset service provider. Credit institutions or crypto-asset service providers that keep in custody the reserve assets that back the asset-referenced tokens should be responsible for the loss of such reserve assets *vis-à-vis* the issuer or the holders of asset-referenced tokens, unless they prove that such loss has arisen from an external event beyond reasonable control.
- (39) To protect holders of asset-referenced tokens against a decrease in value of the assets backing the value of the tokens, issuers of asset-referenced tokens should invest the reserve assets in secure, low risks assets with minimal market, **concentration** and credit risk. As the asset-referenced tokens can be used as a means of payment, all profits or losses resulting from the investment of the reserve assets should be borne by the issuer of the asset-referenced tokens.

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(40) ~~Some asset-referenced tokens may offer all their holders rights, such as redemption rights or claims on the reserve assets or on the issuer, while other asset-referenced tokens may not grant such rights to all their holders and may limit the right of redemption to specific holders. Any rules regarding asset-referenced tokens should be flexible enough to capture all those situations. Issuers of asset-referenced tokens should therefore inform~~ **provide** ~~the holders of asset-referenced tokens on whether they are provided with a direct claim on the issuer or~~ **with** ~~redemption rights. Where issuers of asset-referenced tokens grant direct rights on the issuer or on the reserve assets to all the holders, the issuers should precisely set out the conditions under which such rights can be exercised. Where issuers of asset-referenced tokens restrict such direct rights on the issuer or on the reserve assets to a limited number of holders of asset-referenced tokens, the issuers should still offer minimum rights to all the holders of asset-referenced tokens. Issuers of asset-referenced tokens should ensure the liquidity of those tokens by concluding and maintaining adequate liquidity arrangements with crypto asset service providers that are in charge of posting firm quotes on a predictable basis to buy and sell the asset-referenced tokens against fiat currency. Where the value of the asset-referenced tokens varies significantly from the value of the reserve assets, the holders of asset-referenced tokens should have a right to request the redemption of their asset-referenced tokens against reserve assets directly from the issuer. Issuers of asset-referenced tokens that voluntarily stop their operations or that are orderly wound down should have contractual arrangements in place to ensure that the proceeds of the reserve assets are paid to~~ **Issuers should also make available to the holders of asset-referenced tokens sufficiently detailed and easily understandable information about the procedures governing the redemption.**

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(41) To ensure that asset-referenced tokens are mainly used as a means of exchange and not as a store of value, issuers of asset-referenced tokens, and any crypto-asset service providers, should not grant interests to users of asset-referenced tokens for time such users are holding those asset-referenced tokens. Some asset-referenced tokens and e-money tokens should be considered significant due to the potential large customer base of their promoters and shareholders, their potential high market capitalisation, the potential size of the reserve of assets backing the value of such asset-referenced tokens or e-money tokens, the potential high number of transactions, the potential interconnectedness with the financial system or the potential cross-border use of such crypto-assets. Significant asset-referenced tokens or significant e-money tokens, that could be used by a large number of holders and which could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty, should be subject to more stringent requirements than other asset-referenced tokens or e-money tokens.

**(41a) In order to clearly delineate between significant and non-significant asset-referenced tokens, appropriate thresholds should be set. The appropriateness of the thresholds should be reassessed by the Commission on a regular basis. In cases where the Commission determines that the thresholds need to be revised, the Commission should present a legislative proposal to adjust the thresholds accordingly.**

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



- (43) Issuers of asset-referenced tokens should have an orderly wind-down plan to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens stop their operations or when they are orderly winding down their activities according to national insolvency laws.
- (44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Where the issuance of e-money tokens is below a certain threshold or where e-money tokens can be exclusively held by qualified investors, issuers of such e-money tokens should not be subject to the authorisation requirements. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority.
- (45) Holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens concerned. Holders of e-money tokens should always be granted with a redemption right at par value with the fiat currency that the e-money token is referencing and at any moment. Issuers of e-money tokens should be allowed to apply a fee, where holders of e-money tokens are asking for the redemptions of their tokens for fiat currency. Such a fee should be proportionate to the actual costs incurred by the issuer of electronic money tokens.
- (46) Issuers of e-money tokens, and any crypto-asset service providers, should not grant interests to holders of e-money tokens for the time such holders are holding those e-money tokens.
- (47) The crypto-asset white paper produced by an issuer *or offeror* of e-money tokens should contain all the relevant information concerning that issuer, *when known, the offeror* and the offer of e-money tokens or their admission to trading on a trading platform for crypto-assets that is necessary to enable potential buyers to make an informed purchase decision and understand the risks relating to the offer of e-money tokens. The crypto-asset white paper should also explicitly indicate that holders of e-money tokens are provided with a claim in the form of a right to redeem their e-money tokens against fiat currency at par value and at any moment.
- (48) Where an issuer of e-money tokens invests the funds received in exchange for e-money tokens, such funds should be invested in assets denominated in the same currency as the one that the e-money token is referencing to avoid cross-currency risks.
- (49) Significant e-money tokens can pose greater risks to financial stability than non-significant e-money tokens and traditional electronic money. Issuers of such significant e-money tokens should therefore be subject to additional requirements. Issuers of e-money tokens should in particular be subject to higher capital requirements than other e-money token issuers, to interoperability requirements and they should establish a liquidity management policy. Issuers of e-money tokens should also comply with certain requirements applying to issuers of asset-referenced tokens, such as custody requirements for the reserve assets, investment rules for the reserve assets and the obligation to establish an orderly wind-down plan.
- (50) Crypto-asset services should only be provided by legal entities that have a registered office in a Member State and that have been authorised as a crypto-asset service provider by the competent authority of the Member State where its registered office is located.
- (51) ~~This Regulation should not affect the possibility for persons established in the Union to receive~~ *Due to the inherently digital nature of crypto-asset services, by a third-country firms are often*

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~~able to offer firm at their own initiative. Where a third-country firm provides crypto-asset services at the own initiative of a person established to customers in the Union without any physical or legal presence the crypto-asset services should not be deemed as provided in the Union. Where <sup>a</sup> This poses a significant risk of circumvention of this Regulation and of putting crypto-asset service providers authorised in the Union at a competitive disadvantage vis-a-vis third-country competitors. No legal or natural person should therefore be allowed to provide firm solicit clients or potential clients in the Union or promotes or advertises crypto-asset services to Union citizens on a non-occasional basis without having a legal representative or activities in the Union and without being authorised under this Regulation, even if such services are, it should not be deemed as a crypto-asset service provided solely at the own initiative of Union clients. ESMA should monitor and report annually on the scale and severity of circumvention of this Regulation by the client. In such a case, the third-country actors, as well as propose possible countermeasures. The Commission should, in its final report, analyse the scale and severity of circumvention of this Regulation by third-country actors and propose concrete and effective dissuasive sanctions on such entities to end or significantly reduce such circumvention. Firm should be authorised as a crypto-asset service provider. A practice whereby a third-country firm includes general clauses in its terms of business or through the use of online pop-up “I agree” boxes whereby clients agree that any transaction is executed on the exclusive initiative of the client, should not be deemed to be an attempt to circumvent this Regulation.~~

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- (52) Given the relatively small scale of crypto-asset service providers to date, the power to authorise and supervise such service providers should be conferred to national competent authorities. The authorisation should be granted, refused or withdrawn by the competent authority of the Member State where the entity has its registered office. Such an authorisation should indicate the crypto-asset services for which the crypto-asset service provider is authorised and should be valid for the entire Union.
- (53) To facilitate transparency for holders of crypto-assets as regards the provision of crypto-asset services, ESMA should establish a register of crypto-asset service providers, which should include information on the entities authorised to provide those services across the Union. That register should also include the crypto-asset white papers notified to competent authorities and published by issuers of crypto-assets.
- (54) Some firms, **including operators of financial market infrastructures** subject to Union legislation on financial services should be allowed to provide crypto-asset services without prior authorisation. Credit institutions authorised under Directive 2013/36/EU **should not need another authorisation to provide crypto-asset services. Central counterparties authorised under Regulation 648/2012/EU of the European Parliament and of the Council<sup>18</sup>, central securities depositories authorised under Regulation 909/2014/EU of the European Parliament and of the Council<sup>19</sup> and regulated markets authorised under Directive 2014/65/EU** should not need another authorisation to provide crypto-asset services. Investment firms authorised under Directive 2014/65/EU to provide one or several investment services as defined under that

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<sup>18</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

<sup>19</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

Directive similar to the crypto-asset services they intend to provide should also be allowed to provide crypto-asset services across the Union without another authorisation.

- (55) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally in the best interest of their clients. Crypto-asset services should be considered ‘financial services’ as defined in Directive 2002/65/EC of the European Parliament and of the Council<sup>20</sup>. Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive. Crypto-asset service providers should provide their clients with clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest.
- (56) To ensure consumer protection, crypto-asset service providers should comply with some prudential requirements. Those prudential requirements should be set as a fixed amount or in proportion to their fixed overheads of the preceding year, depending on the types of services they provide.
- (57) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should ~~fit and proper~~ **have the competence required** for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity plan. They should have sound internal control and risk assessment mechanisms as well as adequate systems and procedures to ensure integrity and confidentiality of information received. Crypto-asset service providers should have appropriate arrangements to keep records of all transactions, orders and services related to crypto-assets that they provide. They should also have systems in place to detect potential market abuse committed by clients.
- (58) In order to ensure consumer protection, crypto-asset service providers should have adequate arrangements to safeguard the ownership rights of clients’ holdings of crypto-assets. Where their business model requires them to hold funds as defined in Article 4, point (25), of Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>21</sup> in the form of banknotes, coins, scriptural money or electronic money belonging to their clients, crypto-asset service providers should place such funds with a credit institution or a central bank. Crypto-assets service providers should be authorised to make payment transactions in connection with the crypto-asset services they offer, only where they are authorised as payment institutions in accordance with Directive (EU) 2015/2366.
- (59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of

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<sup>20</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

<sup>21</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy. Those crypto-asset service providers should also be held liable for any damages resulting from an ICT-related incident, including an incident resulting from a cyber-attack, theft or any malfunctions.

- (60) To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient and should be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT swiftly. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions.
- (61) To ensure consumer protection, crypto-asset service providers that exchange crypto-assets against fiat currencies or other crypto-assets by using their own capital should establish a non-discriminatory commercial policy. They should publish either firm quotes or the method they are using for determining the price of crypto-assets they wish to buy or sell. They should also be subject to post-trade transparency requirements. Crypto-asset service providers that execute orders for crypto-assets on behalf of third parties should establish an execution policy and should always aim at obtaining the best result possible for their clients. They should take all necessary steps to avoid the misuse of information related to clients' orders by their employees. Crypto-assets service providers that receive orders and transmit those orders to other crypto-asset service providers should implement procedures for the prompt and proper sending of those orders. Crypto-assets service providers should not receive any monetary or non-monetary benefits for transmitting those orders to any particular trading platform for crypto-assets or any other crypto-asset service providers.
- (62) Crypto-asset service providers that place crypto-assets for potential users should communicate to those persons information on how they intend to perform their service before the conclusion of a contract. They should also put in place specific measures to prevent conflicts of interest arising from that activity.
- (63) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a third party or at their own initiative, should make a preliminary assessment of their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is clear that those clients do not have sufficient experience or knowledge to understand the risks involved, or the ability to bear losses, crypto-asset service providers should warn those clients that the crypto-asset or the crypto-asset services may not be suitable for them. When providing advice, crypto-asset service providers should establish a report, summarising the clients' needs and demands and the advice given.
- (64) It is necessary to ensure users' confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the

provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>22</sup> to them. It is therefore necessary to lay down specific rules prohibiting certain behaviours that are likely to undermine users' confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information and market manipulation related to crypto-assets. These bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a trading platform for crypto-assets.

- (65) ~~Competent authorities~~ **ESMA** should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced tokens or e-money tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. Given the cross-border nature of crypto-asset markets, ~~competent authorities~~ **there should be a single Union supervisor responsible for the supervision of those crypto-assets and crypto-asset service providers with a view to ensuring consistency and effectiveness in the supervision. ESMA** should cooperate with ~~each other~~ **the relevant authorities in Member States** to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets. Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens or e-money tokens and crypto-asset service providers.
- (66) Significant asset-referenced tokens can be used as a means of exchange and to make large volumes of payment transactions on a cross-border basis. To avoid supervisory arbitrage across Member States, it is appropriate to assign to the EBA, **in cooperation with Member States**, the task of supervising the issuers of significant asset-referenced tokens, once such asset-referenced tokens have been classified as significant.
- (67) The EBA should establish a college of supervisors for issuers of significant asset-referenced tokens. Those issuers are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of supervisors should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the custody of the reserve assets, the operation of trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant asset-referenced tokens on behalf of holders. The college of supervisors should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on supervisory measures or changes in authorisation concerning the issuers of significant asset-referenced tokens or on the relevant entities providing services or activities in relation to the significant asset-referenced tokens. **In cases where the issuer of a significant asset-referenced token is also the issuer of a significant e-money token, there should only be a single college of supervisors per entity, in order to ensure that decisions are made holistically with all relevant information available.**
- (68) Competent authorities in charge of supervision under Directive 2009/110/EC should supervise issuers of e-money tokens. However, given the potential widespread use of significant e-money tokens as a means of payment and the risks they can pose to financial stability, a dual supervision

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<sup>22</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

by both competent authorities and the EBA of issuers of significant e-money tokens is necessary. The EBA should supervise the compliance by issuers of significant e-money tokens with the specific additional requirements set out in this Regulation for significant e-money tokens.

- (69) The EBA should establish a college of supervisors for issuers of significant e-money tokens. Issuers of significant e-money tokens are usually at the centre of a network of entities which ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of supervisors for issuers of significant e-money tokens should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the operation of trading platforms for crypto-assets where the significant e-money tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant e-money tokens on behalf of holders. The college of supervisors for issuers of significant e-money tokens should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on changes in authorisation or supervisory measures concerning the issuers of significant e-money tokens or on the relevant entities providing services or activities in relation to those significant e-money tokens. *In cases where the issuer of a significant e-money token is also the issuer of a significant asset-referenced token, there should only be a single college of supervisors per entity, in order to ensure that decisions are made holistically with all relevant information available.*

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- (70) To supervise the issuers of significant asset-referenced tokens, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. The EBA should also have powers to supervise the compliance of issuers of significant e-money tokens with additional requirements set out in this Regulation.
- (71) The EBA should charge fees on issuers of significant asset-referenced tokens and issuers of significant e-money tokens to cover its costs, including overheads. For issuers of significant asset-referenced tokens, the fee should be proportionate to the size of their reserve assets. For issuers of significant e-money tokens, the fee should be proportionate to the amount of funds received in exchange for the significant e-money tokens.

- (72) ~~In order to ensure the uniform application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the modifications of the definitions set out in this Regulation in order to adapt them to market and technological developments, to specify the criteria and thresholds to determine whether an asset-referenced token or an e-money token should be classified as significant and to specify the type and amount of fees that can be levied by EBA for the supervision of issuers of significant asset-referenced tokens or significant e-money tokens. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making<sup>23</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

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<sup>23</sup> OJ L 123, 12.5.2016, p. 1.



- (73) In order to promote the consistent application of this Regulation, including adequate protection of investors and consumers across the Union, technical standards should be developed. It would be efficient and appropriate to entrust the EBA and ESMA, as bodies with highly specialised expertise, with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.
- (74) The Commission should be empowered to adopt regulatory technical standards developed by the EBA and ESMA with regard to the procedure for approving crypto-asset white papers produced by credit institutions when issuing asset-referenced tokens, the information to be provided in an application for authorisation as an issuer of asset-referenced tokens, the methodology for the calculation of capital requirements for issuers of asset-referenced tokens, governance arrangements for issuers of asset-referenced tokens, the information necessary for the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>24</sup> and Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>25</sup>.
- (75) The Commission should be empowered to adopt implementing technical standards developed by the EBA and ESMA, with regard to machine readable formats for crypto-asset white papers, the standard forms, templates and procedures for the application for authorisation as an issuer of asset-referenced tokens, the standard forms and template for the exchange of information between competent authorities and between competent authorities, the EBA and ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010.
- (76) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applying to issuers of crypto-assets and crypto-asset service providers and to ensure the proper functioning of crypto-asset markets while ensuring investor protection, market integrity and financial stability cannot be sufficiently achieved by the Member States but can rather, be better achieved at Union level by creating a framework on which a larger cross-border market for crypto-assets and crypto-asset service providers could develop, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on

<sup>24</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>25</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets that have been issued before the entry into force of this Regulation, issuers of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements. However, those transitional provisions should not apply to issuers of asset-referenced tokens, issuers of e-money tokens or to crypto-asset service providers that, in any case, should receive an authorisation as soon as this Regulation enters into application.
- (78) Whistleblowers can bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation. This should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>26</sup> in order to make it applicable to breaches of this Regulation.

**(78a) *The supervisory duties in relation to markets in crypto assets most resemble the supervisory tasks fulfilled by securities markets supervisors. Therefore, ESMA should be the lead authority in developing regulatory technical standards and for the carrying out of supervisory duties in relation to markets in crypto assets.***

- (79) The date of application of this Regulation should be deferred by 18 months in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to specify certain elements of this Regulation,

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**Commented [A58R57]:** LL : This AM is still content rather than procedure related and should therefore be somewhere before recital (79).

<sup>26</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

**Alternative Compromise A: Subject matter and scope (Articles 1, 2 and 2a)**

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Covering **COMP AM A** and AMs 149-188, AMs fall if compromise is adopted

Article 1  
Subject matter

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**Article 1**

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**Subject matter**

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This Regulation lays down uniform rules for the following:

- (a) transparency and disclosure requirements for the issuance, *offering* and admission to trading of crypto-assets *on a crypto-asset trading platform*;
- (b) the authorisation and supervision of crypto-asset service providers, issuers *and offerors of both* of asset-referenced tokens and issuers of electronic money tokens;
- (c) the operation, organisation and governance of issuers *and offerors* of asset-referenced tokens, issuers *and offerors* of electronic money tokens and crypto-asset service providers;
- (d) consumer protection rules for the issuance, trading, exchange and custody of crypto- assets;
- (e) measures to prevent market abuse to ensure the integrity of crypto-asset markets.
- (ea) *measures to prevent the misuse of crypto-assets for illicit purposes and to protect the internal market from the risks relating to money laundering, terrorist financing and other criminal activities.*

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**Commented [A60]:** AM 152 Kovarik et. al, also covering AM 153 Beck

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**Article 2**  
**Scope**

1. This Regulation applies to persons that are engaged in the issuance *or offering* of crypto-assets *for the purpose of trading or providing or provide* services related *to crypto-asset trading to crypto-assets* in the Union.

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- 1b. *If the offeror of crypto-assets or the crypto-asset service provider offers to the public crypto-assets other than asset-referenced tokens or e-money tokens, or requests that such crypto-assets be authorised for trading on a trading platform for crypto-assets, the offeror or crypto-asset service provider shall observe the requirements of this Regulation in relation to issuers of such crypto-assets.*

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2. However, this Regulation does not apply to crypto-assets that qualify as:
  - (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;
  - (b) electronic money as defined in Article 2, point (2), of Directive 2009/110/EC, except where they qualify as electronic money tokens under this Regulation;
  - (c) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU of the European Parliament and of the Council;
  - (d) structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU;
  - (e) securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402 of the European Parliament and of the Council.

- 2a. *For the purpose of paragraph 2, crypto-assets shall qualify as financial instruments where they meet the criteria and conditions to be deemed equivalent in substance ~~or highly similar~~ to any of the instruments included in Section C of Annex I of Directive 2014/65/EU [MiFID], irrespective of their form.*

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*ESMA shall develop draft regulatory technical standards outlining the criteria and conditions for establishing when a crypto-asset is to be considered as equivalent in substance ~~or highly similar~~ to a financial instrument irrespective of its form.*

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

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.<sup>1</sup>*

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3. This Regulation does not apply to the following entities and persons:
  - (a) the European Central Bank, national central banks of the Member States when acting in their capacity as monetary authority or other public authorities;
  - (b) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities as defined in Directive 2009/138/EC of the European  

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Parliament and of the Council when carrying out the activities referred to in that Directive;
  - (c) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purpose of Article 42;
  - (d) persons who provide crypto-asset services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent companies;
  - (e) the European investment bank;
  - (f) the European Financial Stability Facility and the European Stability Mechanism;
  - (g) public international organisations.
4. Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU *as well as entities exempted by Article 2 (5) points (4) to (23) of Directive 2013/36/EU* shall not be subject to:
  - (a) *the provisions of chapter I of Title III, except Articles 21 and 22 and the information specified in Article 16(2) points (c) to (o).;*
  - (b) Article 31.

**Commented [A68]:** exemption of public banks, in line with DORA

**Commented [A69]:** AM 179 Kovarik et. al.

4a. *Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU shall notify their respective supervisory authority of the intention to issue an asset-referenced token at the latest three months prior to the intended date of initial issuance.*

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5. Where providing one or more crypto-asset services, credit institutions authorised under Directive 2013/36/EU *as well as entities exempted by Article 2 (5) points (4) to (23) of that directive, central counterparties authorised under regulation 648/2012/EU, central securities depositories authorised under regulation 909/2014/EU and regulated markets authorised under directive 2014/65/EU* shall not be subject to the provisions of chapter I of Title V, except Articles 57 and 58.

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5a. *Where providing one or more crypto asset services, financial market infrastructures authorised under Directive (EU) 2015/2366, Regulation (EU) No 648/2012, Regulation (EU) No 909/2014 or Directive 2014/65/EU should not be subject to the provisions of chapter I of Title V of this Regulation, except the information specified in Article 54.2(d-r), Articles 57 and 58.*

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6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the provisions of chapter I of Title V, except *the information specified in Article 54(2) points (d) to (r)*, Articles 57, 58, 60 and 61, where they only provide one or several crypto-asset services equivalent to the investment services and activities for which they are authorised under Directive 2014/65/EU. For that purpose:

Commented [A74]: AM 187 Kovarik et. al.

- (a) the crypto-asset services defined in Article 3(1), point (11), of this Regulation are deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I to Directive 2014/65/EU;
- (b) the crypto-asset services defined in Article 3(1), points (12) and (13), of this Regulation are deemed to be equivalent to the investment services referred to in point (3) of Section A of Annex I to Directive 2014/65/EU;
- (c) the crypto-asset services defined in Article 3(1), point (14), of this Regulation are deemed to be equivalent to the investment services referred to in point (2) of Section A of Annex I to Directive 2014/65/EU;
- (d) the crypto-asset services defined in Article 3(1), point (15), of this Regulation are deemed to be equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I to Directive 2014/65/EU;



- (e) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the investment services referred to in point (1) of Section A of Annex I to Directive 2014/65/EU.
- (f) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the investment services referred to in points (5) of Section A of Annex I to Directive 2014/65/EU.

#### Article 2a

1. Crypto-assets shall be subject to minimum environmental sustainability standards with respect to their consensus mechanism used for validating transactions, before being issued, offered or admitted to trading in the Union.

Crypto-assets that are issued, offered or admitted to trading in the Union before [please insert the date of entry into force of this Regulation] shall set up and maintain a phased rollout plan to ensure compliance with such requirements, in accordance with the conditions and criteria referred to in paragraph 3.

2. By way of derogation from paragraph 1, crypto-assets issued, offered or admitted to trading in the Union shall not be required to comply with the minimum sustainability standards, where the consensus mechanism is operated on a small scale.

3. By ... [please insert 6 months after the entry into force of this Regulation], the Commission shall adopt delegated acts in accordance with Article 121 to supplement this Article by establishing the following:

- (a) minimum environmental sustainability standards for consensus mechanisms used for validating crypto-assets transactions;
- (b) the criteria for the phased rollout plan for crypto-assets to comply with the environmental sustainability standards;
- (c) the date or the dates from which the requirement to comply with the minimum environmental sustainability standards takes effect, including a phase-in period;
- (d) the conditions under which a consensus mechanism shall be deemed operated on a small scale;
- (e) the criteria and the date or the dates for the phasing out plan to be set up by crypto-assets service providers in accordance with Article 68 (1a).

Before adopting the delegated acts, the Commission shall consult the Platform on Sustainable Finance established under Article 20 of Regulation 2019/2088, ESMA and international partners.

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4. When drawing up the delegated acts, the Commission shall take into account in particular the following characteristics of the DLT network:

- a) the intensive consumption of energy;
- b) the use of real resources;
- c) carbon emissions;
- d) electronic waste;
- e) the specificities of the incentive design;
- f) the scale of operation of the crypto-asset.

5. By 1 January 2025, the Commission shall present to the European Parliament and to the Council, as appropriate, a legislative proposal to amend Regulation (EU) 2020/852, in accordance with Article 10 of that Regulation, with a view to including in the EU sustainable finance taxonomy any crypto-asset mining activities that contribute substantially to climate change mitigation and adaptation." By 1 January 2025, the Commission shall include crypto asset mining activities that contribute substantially to climate change mitigation and adaptation in the EU Sustainable Finance Taxonomy, in accordance with the EU Sustainable Finance Taxonomy (Regulation (EU) 2020/852)[1].

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<sup>(1)</sup> COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives

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## Compromise A: Subject matter and scope (Articles 1,2 and 2a)

Covering AMs 149-188, AMs fall if compromise is adopted

### Article 1

#### Subject matter

This Regulation lays down uniform rules for the following:

- (a) transparency and disclosure requirements for the issuance, *offering* and admission to trading of crypto-assets *on a crypto-asset trading platform*;
- (b) the authorisation and supervision of crypto-asset service providers, issuers *and offerors of both* ~~of~~ asset-referenced tokens and issuers of electronic money tokens;
- (c) the operation, organisation and governance of issuers *and offerors of* asset-referenced tokens, issuers *and offerors* of electronic money tokens and crypto-asset service providers;
- (d) consumer protection rules for the issuance, trading, exchange and custody of crypto- assets;
- (e) measures to prevent market abuse to ensure the integrity of crypto-asset markets.
- (ea) measures to prevent the misuse of crypto-assets for illicit purposes and to protect the internal market from the risks relating to money laundering, terrorist financing and other criminal activities.*

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### Article 2 Scope

1. This Regulation applies to persons that are engaged in the issuance *or offering* of crypto-assets *for the purpose of trading or providing or provide* services related *to crypto-asset trading* ~~to crypto-assets~~ in the Union.

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*1b. If the offeror of crypto-assets or the crypto-asset service provider offers to the public crypto-assets other than asset-referenced tokens or e-money tokens, or requests that such crypto-assets be authorised for trading on a trading platform for crypto-assets, the offeror or crypto-asset service provider shall observe the requirements of this Regulation in relation to issuers of such crypto-assets.*

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2. However, this Regulation does not apply to crypto-assets that qualify as:

- (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;
- (b) electronic money as defined in Article 2, point (2), of Directive 2009/110/EC, except where they qualify as electronic money tokens under this Regulation;
- (c) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU of the European Parliament and of the Council;
- (d) structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU;
- (e) securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402 of the European Parliament and of the Council.

**2a.** *For the purpose of paragraph 2, crypto-assets shall qualify as financial instruments where they meet the criteria and conditions to be deemed equivalent in substance ~~or highly similar~~ to any of the instruments included in Section C of Annex I of Directive 2014/65/EU [MiFID], irrespective of their form.*

*ESMA shall develop draft regulatory technical standards outlining the criteria and conditions for establishing when a crypto-asset is to be considered as equivalent in substance ~~or highly similar~~ to a financial instrument irrespective of its form.*

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

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.<sup>1</sup>*

**Commented [KK84]:** Technical comment: « or highly similar” was removed following advice from the Legal Service that this wording is not feasible.

**Commented [A85]:** AM 170 Greens

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

- (a) the European Central Bank, national central banks of the Member States when acting in their capacity as monetary authority or other public authorities;
- (b) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities as defined in Directive 2009/138/EC of the European

Parliament and of the Council when carrying out the activities referred to in that Directive;

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

- (d) persons who provide crypto-asset services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent companies;
- (e) the European investment bank;
- (f) the European Financial Stability Facility and the European Stability Mechanism;
- (g) public international organisations.

4. Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU as well as entities exempted by Article 2 (5) points (4) to (23) of Directive 2013/36/EU shall not be subject to:

- (a) the provisions of chapter I of Title III, except Articles 21 and 22 and the information specified in Article 16(2) points (c) to (o).;
- (b) Article 31.

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**Commented [A87]:** AM 179 Kovarik et. al.

**4a.** Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU shall notify their respective supervisory authority of the intention to issue an asset-referenced token at the latest three months prior to the intended date of initial issuance.

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5. Where providing one or more crypto-asset services, credit institutions authorised under Directive 2013/36/EU as well as entities exempted by Article 2 (5) points (4) to (23) of that directive, central counterparties authorised under regulation 648/2012/EU, central securities depositories authorised under regulation 909/2014/EU and regulated markets authorised under directive 2014/65/EU shall not be subject to the provisions of chapter I of Title V, except Articles 57 and 58.

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**5a.** Where providing one or more crypto asset services, financial market infrastructures authorised under Directive (EU) 2015/2366, Regulation (EU) No 648/2012, Regulation (EU) No 909/2014 or Directive 2014/65/EU should not be subject to the provisions of chapter I of Title V of this Regulation, except the information specified in Article 54.2(d-r), Articles 57 and 58.

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6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the provisions of chapter I of Title V, except the information specified in Article 54(2) points (d) to (r), Articles 57, 58, 60 and 61, where they only provide one or several crypto-asset services equivalent to the

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investment services and activities for which they are authorised under Directive 2014/65/EU. For that purpose:

- (a) the crypto-asset services defined in Article 3(1), point (11), of this Regulation are deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I to Directive 2014/65/EU;
- (b) the crypto-asset services defined in Article 3(1), points (12) and (13), of this Regulation are deemed to be equivalent to the investment services referred to in point (3) of Section A of Annex I to Directive 2014/65/EU;
- (c) the crypto-asset services defined in Article 3(1), point (14), of this Regulation are deemed to be equivalent to the investment services referred to in point (2) of Section A of Annex I to Directive 2014/65/EU;
- (d) the crypto-asset services defined in Article 3(1), point (15), of this Regulation are deemed to be equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I to Directive 2014/65/EU;
- (e) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the investment services referred to in point (1) of Section A of Annex I to Directive 2014/65/EU;
- (f) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the investment services referred to in points (5) of Section A of Annex I to Directive 2014/65/EU.

#### Article 2a

5. By 1 January 2025, the Commission shall present to the European Parliament and to the Council, as appropriate, a legislative proposal to amend Regulation (EU) 2020/852, in accordance with Article 10 of that Regulation, with a view to including in the EU sustainable finance taxonomy any crypto-asset mining activities that contribute substantially to climate change mitigation and adaptation."

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## Compromise B: Definitions (Article 3)

Covering AMs 2- 4, 189- 265, AMs fall if compromise is adopted

### Article 3 Definitions

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

(1) ‘distributed ledger technology’ or ‘DLT’ means ~~a type of technology that support relates to the distributed recording of encrypted protocols and supporting infrastructure enabling computers in different locations to propose and validate transactions and create unalterable data records in a synchronised way over a network~~ ‘distributed ledger technology’ as defined in [the DLT Pilot Regime Regulation].

(1a) ‘a decentralized autonomous organisation’ means a rule-based organisational system that is not controlled by any central authority and whose rules are entirely routed in its algorithm;

(2) ‘crypto-asset’ means a digital representation of a value or a right ~~for direct investment or finance purposes that uses cryptography for security and is in the form of a coin or a token or any other digital medium of distributed ledgers, and~~ which may be transferred and stored electronically, using distributed ledger technology or similar technology;

(2a) ‘transfer of crypto-assets’ means a transfer of crypto assets as defined in [the Funds Transfer Regulation]

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

(4) ‘electronic money token’ or ‘e-money token’ means a type of crypto-asset the main purpose of which is to be used as a means of ~~exchange payment~~ and that purports to maintain a stable value by ~~maintaining a portfolio which ensures that the token maintains the value of a fiat currency that is legal tender; e-money tokens which maintain the value of a fiat currency of the Union shall be deemed to be electronic money as defined in Article 2 (2) of Directive 2009/110/EC;~~

(5) ‘utility token’ means a type of ~~fungible~~ crypto-asset which ~~is accepted only by the issuer, is used for purposes other than as a means of payment or exchange for external goods or services and~~ is intended to provide digital access to a good or service, available on DLT, and ~~provided only~~ by the issuer of that token;

(6) ‘issuer of crypto-assets’ means an ~~identifiable natural person~~, legal person or other entity being subject of rights and obligations, 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;

(6a) ‘offeror of crypto-assets’ means a legal person who offers to the public any type of crypto-asset or seeks the admission of a crypto-asset to a trading platform for crypto-assets;

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Commented [KK94]: Please note: After the trilogues will have finished, there will be a technical review of this Article, and definitions no longer used in the text will be removed.

Commented [A95]: AM 2 rapporteur

Commented [A96]: AM 193 Ferber

Commented [A97]: AM 195 Kovařík et al.

Commented [KK98]: depending on the timing of the publications of MiCA and the FTR in the Official Journal, this text might be adjusted in the course of the trilogues. In particular, if the FTR is published in the OJ before MiCA, this text might be copied to the FTR. and might be replaced with a reference to the FTR.

Commented [KK99]:

Commented [KK100R99]: depending on the timing of the publications of MiCA and the FTR in the Official Journal, this text might be adjusted in the course of the trilogues.

Commented [A101]: AM 199 Kaili

Commented [A102]: AM 3 Rapporteur

Commented [A103]: AM 204 Kovařík et al.

Commented [A104]: AM 197 Lalucq

Commented [A105]: rapporteur- AM 211 Berger

Commented [A106]: AM 210 Kovařík et al.

Commented [A107]: AM 209 Kaili

Commented [A108]: change based on AM 216 (Kovařík et al.), also reflecting AMs 213(ECR), 214(Lalucq), 215 (Kaili)

Commented [A109]: AM 218 ECR+ AM 219 Rinaldi et al.+AM 220 Beck

~~(6b) 'decentralised crypto-assets' means crypto-assets issued and exchanged in a decentralised network, where no single entity has the effective control over the transactions in the network, including the issuance and offering of such crypto-assets;~~

Commented [A110]: AM 223 Beck

~~(6b) 'decentralised cryptocurrencies' means cryptocurrencies issued and exchanged in a decentralised system, where no single entity has the effective control over the transactions, including the issuance and offering of such cryptocurrencies;~~

Commented [A111]: deleted as requested by ECR

(7) 'offer to the public' means a communication to persons in any form and by any means on a professional basis, 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, including the placing of crypto-assets through crypto-assets services providers;

Commented [A112]: AM 224 Rinaldi et al.

Commented [A113]: deleted as requested by GUE and ECR

Commented [A114]: AM 229 Rinaldi

~~(7a) 'offeror' means any identifiable natural or legal person, including the issuer of crypto-assets, that offers crypto-assets to the public;~~

Commented [A115]: AM 231 Kaili

Commented [A116]: AM 230 Lalucq

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

Commented [KK117]: Not needed, see definition 6a

Commented [A118]: AM 232 Kovarik et al.

(8) 'crypto-asset service provider' means any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis;

Commented [A119]: AM 225 Kaili AM 226 Greens, also reflecting AM 227 ECR AM 228 Heinäluoma

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

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

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

(c) the exchange of crypto-assets for fiat currency that is legal tender;

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

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

(f) placing of crypto-assets;

(fa) the transfer of crypto-assets;

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

(h) providing advice on crypto-assets;

(ha) the exchange of crypto-assets for financial instruments

Commented [A120]: AM 239 Rinaldi et al.

(hb) providing portfolio management on crypto-assets;

Commented [A121]: AM 240 The Greens/EFA

(hc) the provision of a portfolio management service;

Commented [A122]: AM 241 Ferber, AM 242 Rinaldi et al.

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

(11) 'the operation of a trading platform for crypto-assets' means managing one or more trading platforms for crypto-assets, within which multiple third-party buying and selling

interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender;

- (12) 'the exchange of crypto-assets for fiat currency' means concluding purchase or sale contracts concerning crypto-assets with third parties against fiat currency that is legal tender by using proprietary capital;
- (13) 'the exchange of crypto-assets for other crypto-assets' means concluding purchase or sale contracts concerning crypto-assets with third parties against other crypto-assets by using proprietary capital;
- (14) 'the execution of orders for crypto-assets on behalf of third parties' means concluding agreements to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets on behalf of third parties;
- (15) 'placing of crypto-assets' means the marketing of newly-issued crypto-assets or of crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offer to the public or an offer to existing holders of the issuer's crypto-assets;
- (16) 'the reception and transmission of orders for crypto-assets on behalf of third parties' means the reception from a person of an order to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution;
- (17) 'providing advice on crypto-assets' means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party's request or on the initiative of the crypto-asset service provider providing the advice, concerning the acquisition or the sale of one or more crypto-assets, or the use of crypto-asset services;

**(17a) 'portfolio management' means portfolio management as defined in [MiFID]**

- (18) 'management body' means the body of an issuer of crypto-assets, or of a crypto-asset provider, which is appointed in accordance with national law, and which is empowered to set the entity's strategy, objectives, the overall direction and which oversees and monitors management decision-making and which includes persons who direct the business of the entity;
- (19) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013;
- (20) 'qualified investors' means 'qualified investors' as defined in Article 2, point (e), of Regulation (EU) 2017/1129;
- (21) 'reserve assets' means the basket of fiat currencies that are legal tender, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets;
- (22) 'home Member State' means:

- (a) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has its registered office or a branch in the Union, the Member State where the issuer of crypto-assets has its registered office or a branch;
  - (b) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has no registered office in the Union but has two or more branches in the Union, the Member State chosen by the issuer among those Member States where the issuer has branches;
  - (c) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country and has no branch in the Union, at the choice of that issuer, either the Member State where the crypto-assets are intended to be offered to the public for the first time or the Member State where the first application for admission to trading on a trading platform for crypto-assets is made;
  - (d) for issuer of asset-referenced tokens, the Member State where the issuer of asset-referenced tokens has its registered office;
  - (e) for issuers of electronic money tokens, the Member States where the issuer of electronic money tokens is authorised as a credit institution under Directive 2013/36/EU or as a e-money institution under Directive 2009/110/EC;
  - (f) for crypto-asset service providers, the Member State where the crypto-asset service provider has its registered office;
- (23) ‘host Member State’ means the Member State where an issuer of crypto-assets has made an offer of crypto-assets to the public or is seeking admission to trading on a trading platform for crypto-assets, or where crypto-asset service provider provides crypto-asset services, when different from the home Member State;
- (24) ‘competent authority’ means:
- (a) the authority, designated by each Member State in accordance with Article 81 for issuers of crypto-assets, issuers of asset-referenced tokens and crypto-asset service providers;
  - (b) the authority, designated by each Member State, for the application of Directive 2009/110/EC for issuers of e-money tokens;
- (25) ‘commodity’ means ‘commodity’ under Article 2(6) of Commission Delegated Regulation (EU) 2017/565<sup>27</sup>;
- (26) ‘qualifying holding’ means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council<sup>28</sup>, taking into account the conditions regarding aggregation

<sup>27</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

<sup>28</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists.

- (27) 'inside information' means any information of a precise nature that has not been made public, relating, directly or indirectly, to one or more issuers of crypto-assets or to one or more crypto-assets, and which, if it was made public, would be likely to have a significant effect on the prices of those crypto-assets;
- (28) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession.

~~(28a) 'Loyalty or reward programme' means a contracted mechanism that offers rewards to members for the participation in the programme. This means the use of redeemable points or credits that are primarily obtained through participation in a loyalty or reward programme, where each of the following conditions is met: i) the holder of the crypto-assets may not transfer them to other holders without the offeror's permission, and ii) the crypto-assets are non-fractionable; and iii) the crypto-assets don't have investment purposes, as the crypto-assets are primarily used for the purchase of goods or services or other benefits in connection with a loyalty or reward programme;~~

~~(28b) 'proof of stake' mechanisms request participants to demonstrate ownership of a pre-defined crypto-asset to allow mining or validating block transactions;~~

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

~~(28d) 'central counterparty' (CCP) means "CCP" as defined in point 1 of Article 2 of Regulation 648/2012/EU;~~

~~(28e) 'Proof of work' consensus mechanism means a consensus mechanism which requires all miners (participants to the DLT) to solve complex mathematical puzzles to validate a new transaction, adding a block to the chain and permanently and irreversibly recording a new transaction;~~

~~(28f) "central securities depository" (CSD) means "central securities depository" as defined in point 1 of Article 2 (1) of Regulation 909/2014/EU;~~

~~(28g) "regulated market" means "regulated market" as defined in point 21 of Article 4 (1) of Directive 2014/65/EU;~~

Commented [A123]: AM 257 Pereira

Commented [A124]: deleted for consistency

Commented [A125]: AM 258 Heinäluoma et al.

Commented [A126]: deleted as requested by ECR and RENEW

Commented [A127]: AM 259 The Greens/EFA

Commented [A128]: deleted for consistency

Commented [A129]: AM 260 Ferber

Commented [A130]: deleted for consistency

Commented [A131]: AM 261 Heinäluoma et al

Commented [A132]: deleted for consistency + comment ECR

Commented [KK133]: The exact wording may need to be double-checked during the trilogues.

Commented [A134]: AM 262 Ferber

Commented [A135]: deleted as requested by RENEW

Commented [A136]: AM 263 Ferber

Commented [A137]: deleted for consistency

~~2. The Commission is empowered to adopt delegated acts in accordance with Article 121 to specify technical elements of the definitions laid down in paragraph 1, and to adjust those definitions to market developments and technological developments.~~

### Compromise C: EBA -> ESMA (horizontal compromise)

Covering AMs as listed below, AMs fall if compromise is adopted

The role foreseen for the EBA in the Commission proposal regarding

- asset-referenced tokens (ARTs), as per Title III should be taken over by the ESMA.

In addition, respective changes to be made in

- Recitals
- Title VII: competent Authorities, the EBA and ESMA, and
- Title IX Transitional and final provisions

This compromise is covering the following amendments:

#### *Recitals*

Amendment no.	Recital no.	comment
139	67	
<del>140</del>	<del>68</del>	NO CHANGE
<del>141</del>	<del>69</del>	NO CHANGE
142	70	To be reworded: ESMA responsible for ARTs, EBA responsible for EMTs
143	71	To be reworded: ESMA responsible for ARTs, EBA responsible for EMTs

#### *Title III (ARTs)*

Amendment no.	Article	Paragraph	Subparagraph or Point	Explanations/as applicable, list of amendments also covered (these AMs also fall if this compromise is adopted)
396	15	7		
397	15	7		
409	16	4	1	
410	16	4	2	
412	16	5	1	
413	16	5	2	
Addition by this compromise	18	3	1st sentence	[...] to the <del>EBA</del> , ESMA and the ECB.

Addition by this compromise	18	4	1st sentence	The <del>EBA</del> , ESMA, the ECB and, [...]
Addition by this compromise	19	3	1st sentence	Competent authorities shall inform the <del>EBA</del> , ESMA [...]
Addition by this compromise	21	2	Last sentence	The competent authority may also consult the <del>EBA</del> , ESMA and the ECB
470	27	5	1	
471	27	5	2	
476	28	5	1	
477	28	5	2	
485	30	12	1	
489	30	12	2	
497	31	4	1	
501	31	4	2	
536	34	4	2	
591	35	5	1	
598	35	5	2	
604	38	4	1	
605	38	4	2	
607	39	1		608
617	39	2		618
620	39	3		621
622	39	4		623
624	39	5	1	625
626	39	3	2	627
639	39	6	c	638
640	39	6	d	641
642	40	1	1	643
644	40	2	1	645
646	40	2	2	647
648	40	3	1	649
650	40	3	2	651
652	40	4		653
654	40	5		655
663	41	6	1	662
664	41	6	2	665



***Title IV (electronic money tokens - NO CHANGE!)***

Amendment no	Article	Paragraph	Subparagraph	Comment
730	50	1		NO CHANGE
736	50	2		NO CHANGE
740	50	3		NO CHANGE
743	50	4		NO CHANGE
745	51	1	1	NO CHANGE
748	51	1		NO CHANGE
749	51	2	2	NO CHANGE
750	51	3	1	NO CHANGE
752	51	2		NO CHANGE
756	51	4		NO CHANGE

***Title VII: competent Authorities, the EBA and ESMA***

***note: if necessary, AMs to be reworded to reflect the principle that ESMA is responsible for ARTs, and EBA responsible for EMTs.***

Amendment no	Article	Paragraph	Subparagraph/Point
1006	83	6	1
1016	Title VII -Chapter 3- title		
1017	98	Title of the Article	
1018	98	1	1
1019	98	1	2
1020	98	3	
1022	98	4	
1024	99	1	
1026	99	2	a
1027	99	2	b
1029	99	2	k
1030	99	5	1, d
1031	99	5	2
1032	99	6	1
1033	99	6	2
1034	100	1	i
1035	100	2	

1036	100	3	
1040	100	5	
1042	101	2	a
1043	101	2	c
1045	101	2	j
1046	101	6	1
1047	101	6	2
1048	102	1	g
1049	102	2	
1050	102	3	
1054	102	5	
1055	Title VII – Chapter 4 – title		
1056	103		
1057	104	1	
1058	104	3	
1059	104	3	g
1060	104	5	
1061	105	1	1
1062	105	2	
1063	105	3	
1064	105	4	
1065	105	6	a
1066	105	7	
1067	106	1	1
1068	106	2	
1069	106	3	
1070	106	4	
1071	106	5	
1072	106	6	
1073	106	7	
1074	106	8	
1075	106	10	a
1076	106	11	
1077	107	intro	
1078	108	title	
1079	108	1	
1080	108	2	
1081	108	3	
1082	109		
1083	110		
1084	111		

1085	112	title	
1086	112	1	
1087	112	2	
1088	112	3	
1089	112	4	
1090	112	5	
1091	112	6	
1092	112	7	c
1094	114	1	
1095	114	4	
1096	115	1	
1097	115	3	
1098	116	1	
1099	116	2	
1100	116	4	
1101	116	5	
1102	116	7	
1103	116	8	
1104	116	9	
1105	116	11	
1107	117	1	
1108	117	2	
1109	117	3	
1110	119	1	
1111	119	2	1
1112	119	2	2
1113	119	3	
1114	120	title	
1115	120	1	
1116	120	2	
1117	120	2	
1118	120	3	

## Compromise D - TITLE II (Articles 4-14)

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

Covering AMs 5, 266-384, 1150. AMs fall is compromise is adopted.

#### Article 4

#### *Offers of crypto-assets, other than asset-referenced tokens or e-money tokens, to the public, and admission of such crypto-assets to trading on a trading platform for crypto-assets*

1. **No person shall offer** 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 **offeror**:
  - (a) is a legal entity *established in the Union, a natural person having its residence in the Union, or other entity established or having seat in the Union and subject to the rights and obligations of the Union, or a decentralised autonomous organisation*;
  - (ba) has received authorisation from a competent authority**;
  - (b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5;
  - (c) has notified that crypto-asset white paper in accordance with Article 7;
  - (d) has published the crypto-asset white paper in accordance with Article 8;
  - (e) complies with the requirements laid down in Article 13.
  - (ea) has measures in place to prevent the misuse of the offering of crypto-assets to the public or trading on a platform for crypto-assets for the purposes of money laundering or financing of terrorism in accordance with Directive (EU) 2015/849 of the European Parliament and of the Council**;
  - (eb) does not have a parent undertaking, or a subsidiary, that is established in:**
    - (i) a third country listed as a high-risk third country having strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849**;
    - (ii) a third country listed in Annex I \*or Annex II\* to the EU list of non-cooperative jurisdictions for tax purposes**;
    - (iii) a third country with a 0 % corporate tax rate or with no taxes on companies' profits**.
2. Paragraph 1, points (b) to (d) shall not apply where:
  - (a) the crypto-assets are offered for free;
  - (b) the crypto-assets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions;
  - (c) the crypto-assets are unique and not fungible with other crypto-assets; **are not fractionable and transferable directly to other holders without the issuer's permission, are accepted only by the issuer, including merchant's loyalty schemes, represent IP rights, guarantees, certificate authenticity of a unique physical asset, or any other right**

**Commented [A138]:**

**Commented [A139]:** AM 266 Greens

**Commented [A140]:** AM 267 ECR/268 Kovarik et al.

**Commented [A141]:** AM 269 Kovarik et al.,

**Commented [A142]:** AM 270 Feber

**Commented [A143]:** AM 271 The Left

**Commented [A144]:** deleted as requested by S&D

**Commented [KK145]:** Following the Shadows meeting of 1 February 2022, AM 271 this AM has been put back in.

**Commented [A146]:** AM 273 Heinaeluoma et al.

**Commented [A147]:** Reference to FTR as requested by RENEW

**Commented [A148]:** AM 274 Heinaeluoma et al.

*not linked to the ones that financial instruments bear, and are not accepted to trading at a crypto-asset exchange;*

- (d) the crypto-assets are offered to fewer than ~~150 500~~ natural or legal persons per Member State where such persons are acting on their own account;
  - (e) over a period of 12 months, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR ~~1 000 000~~ **5 000 000**, or the equivalent amount in another currency or in crypto-assets;
  - (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.
- (fa) the crypto-assets are specific-purpose crypto-assets that can only be used for purchases of a specific store or network of stores, cannot be transferred between holders and do not have a wider general-purpose use-case.**

Commented [A149]: AM 282 Kaili

Commented [A150]: AM 284 Kovarik et al.

Commented [A151]: AM 288 Hoogeveen, also partially covering AM 286 Rinaldi et al., AM 287 Kovarik et al., AM 289 Beck

Commented [A152]: AM 292 Ferber

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 **or offeror** in exchange for those crypto-assets, or where the issuer **or offeror** 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.

Commented [A153]: AM 293 ECR/294 Beck/295 Kovarik et al.

**Where utility tokens in operation are offered to third parties for the sole purpose of ensuring access to the relevant good or service, they may be offered directly by issuers or offerors to third parties.**

Commented [A154]: AM 296 Kovarik et al.

- 3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months.

**3b. No additional white paper shall be required in any subsequent offer of crypto-assets or when seeking admission to trading within a period of twelve months from the date of the initial offer as long as a white paper is available in accordance with Article 5, updated in accordance with Article 11, and the offeror responsible for drawing up such white paper consents to its use by means of a written agreement.**

Commented [KK155]: moved to Article 2

**3c. Where the issuer is a decentralised autonomous organisation, competent authorities shall ensure that steps comparable identical to those set out in paragraph 1, points (b) to (d) have been taken.**

Commented [A156]: AM 302 Kaili

Commented [A157]: AM 303 Ferber

#### Article 5

##### Content and form of the crypto-asset white paper

- 1. The crypto-asset white paper referred to in Article 4(1), point (b), shall contain all the following information:
  - (a) a detailed description of the issuer, **including a summary of key financial information regarding the issuer**, and a ~~presentation~~ **detailed description** of the main participants involved in the project's design and development;

Commented [A158]: AM 307 The Left

(aa) *a contact telephone number and an email address of the issuer and the offerer, and a period of days during which an investor contacting the issuer or the offeror via this telephone number or email address will receive an answer.*

**Commented [KK159]:** this was added following the discussions in the technical meeting.

(b) a detailed description of the issuer's project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public;

(ba) *if different from the issuer and the offeror, the identification of the person which prepared the white paper and the reason why that person prepared the white paper;*

**Commented [A160]:** AM 318 Lalucq, Kaili

(bb) *an independent assessment of the likely energy consumption of the crypto-asset where the "proof of work" model is used;*

**Commented [A161]:** AM 319 The Left

(bc) *information on sustainability indicators related to the issuance of the crypto-asset, including whether they have been mined in compliance with the EU sustainable finance taxonomy*

**Commented [OPC162]:** Rapporteur's suggestion for compromise 03/03/2021

(c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets and the subscription terms and conditions;

(d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions *for exercising by which the issuer, offeror and the consumer will be permitted to exercise* those rights;

**Commented [A163]:** AM 321 Kovarik et al.

(e) information on the underlying technology, *protocols*, and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets;

**Commented [A164]:** AM 324 Greens

(f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and the implementation of the project;

(g) the disclosure items specified in Annex I.

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

3. The crypto-asset white paper shall contain the following statement: "The issuer of the crypto-assets is solely responsible for the content of this crypto-asset white paper. This crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union".

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

**Commented [A165]:** AM 331 Heinaeluoma et al.

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

- (a) the crypto-assets may lose their value in part or in full;
- (b) the crypto-assets may not always be transferable;
- (c) the crypto-assets may not be liquid;

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

**(da) where applicable, the crypto-asset ~~key information sheet~~ white paper shall contain a clear risk warning that the crypto-assets are not covered by the investor compensation schemes established in accordance with Directive 97/9/EC of the European Parliament and of the Council nor by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.**

**Commented [A166]:** change as requested by ECR

**Commented [A167]:** AM 334 Greens, also reflecting AM 335 The Left

6. Every crypto-asset white paper shall contain a statement from the management body of the issuer of the crypto-assets. That statement shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is correct and that there is no significant omission.
7. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the essential elements of the crypto-assets concerned. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential purchasers of the crypto-assets to make an informed decision. The summary shall contain a warning that:
- (a) it should be read as an introduction to the crypto-asset white paper;
  - (b) the prospective purchaser should base any decision to purchase a crypto-asset on the content of the whole crypto-asset white paper;
  - (c) the offer to the public of crypto-assets does not constitute an offer or solicitation to sell financial instruments and that any such offer or solicitation to sell financial instruments can be made only by means of a prospectus or other offering documents pursuant to national laws;
  - (d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or another offering document pursuant to Union legislation or national laws.
8. Every crypto-asset white paper shall be dated.
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.**
10. The crypto-asset white paper shall be made available in machine readable formats.
11. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10.
- ESMA shall submit those draft implementing technical standards to the Commission by *[please insert date 12 months after entry into force]*.
- 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.

**Commented [A168]:** AM 5 Rapporteur/AM 338 Ferber, also partially reflecting AM 337 Jamet, 339 Kaili, 340 Heinaeluoma et al.

*Article 6*  
**Marketing communications**

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

- (a) the marketing communications shall be clearly identifiable as such;
- (b) the information in the marketing communications shall be fair, clear and not misleading;
- (c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper, where such a crypto-asset white paper is required in accordance with Article 4;
- (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets concerned *as well as a contact telephone number and an email address of the issuer.*

**Commented [A169]:** AM 342 Heinaeluoma et al.

*Article 7*  
**Notification of the crypto-asset white paper, and, where applicable, of the marketing communications**

1. Competent authorities shall not require an ex ante approval of a crypto-asset white paper, nor of any marketing communications relating to it before their publication. *It shall, however, be possible for issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, to ask the competent authority for ex ante approval of a crypto-asset white paper. That ex ante approval of a crypto-asset white paper shall be valid throughout the Union.*
2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to the competent authority of their home Member State at least 20 working days before publication of the crypto-asset white paper. That competent authority may exercise the powers laid down in Article 82(1).
3. The notification of the crypto-asset white paper shall explain why the crypto-asset described in the crypto-asset white paper is not to be considered:
  - (a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU;
  - (b) electronic money as defined in in Article 2, point 2, of Directive 2009/110/EC;
  - (c) a deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;
  - (d) a structured deposit as defined in Article 4(1), point (43), of Directive 2014/65/EU.
4. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, provide the competent authority of their home Member State with a list of host Member States, if any, where they intend to offer their crypto-assets to the public or intend to seek admission to trading on a trading platform for crypto-assets. They shall also inform their home Member State of the starting date of the intended offer to the public or intended admission to trading on such a trading platform for crypto-assets.

**Commented [A170]:** AM 348 Rinaldi et al.



The competent authority of the home Member State shall notify the competent authority of the host Member State of the intended offer to the public or the intended admission to trading on a trading platform for crypto-assets within 2 working days following the receipt of the list referred to in the first subparagraph.

5. Competent authorities shall communicate to ESMA the crypto-asset white papers that have been notified to them and the date of their notification. ESMA shall make the notified crypto-asset white papers available in the register referred to in Article 57.

#### *Article 8*

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

1. Issuers, **offerors or persons seeking admission to trading** of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website for as long as the crypto-assets are held by the public.
2. The published crypto-asset white paper, and, where applicable, the marketing communications, shall be identical to the version notified to the relevant competent authority in accordance with Article 7, or, where applicable, modified in accordance with Article 11.

Commented [A171]: AM 360 Greens

#### *Article 9*

##### ***Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, that are limited in time***

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit on their offer to the public of those crypto-assets shall publish on their website the result of the offer within 16 working days from the end of the subscription period.
2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such issuers shall ensure that the funds or other crypto-assets collected during the offer to the public are kept in custody by either of the following:
  - (a) a credit institution, where the funds raised during the offer to the public takes the form of fiat currency;
  - (b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties.

*Article 10*

***Permission to offer crypto-assets, other than asset-referenced tokens or e-money tokens, to the public or to seek admission for trading such crypto-assets on a trading platform for crypto-assets***

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

*Article 11*

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

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall modify their published crypto-asset white paper, and, where applicable, published marketing communications, to describe any change or new fact that is likely to have a significant influence on the purchase decision of any potential purchaser of such crypto-assets, or on the decision of holders of such crypto-assets to sell or exchange such crypto-assets.
2. The issuer shall immediately inform the public on its website of the notification of a modified crypto-asset white paper with the competent authority of its home Member State and shall provide a summary of the reasons for which it has notified a modified crypto-asset white paper.
3. The order of the information in a modified crypto-asset white paper, and, where applicable, in modified marketing communications, shall be consistent with that of the crypto-asset white paper or marketing communications published in accordance with Article 8.
4. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication. That competent authority may exercise the powers laid down in Article 82(1).
5. Within 2 working days of the receipt of a draft modified crypto-asset white paper, and, where applicable, the modified marketing communications, the competent authority of the home Member State shall notify the modified crypto-asset white paper and, where applicable, the modified marketing communications, to the competent authority of the host Member State referred to in Article 7(4).
6. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish the modified crypto-asset white paper, and, where applicable, the modified marketing communications, including the reasons for such modification, on their website in accordance with Article 8.

7. The modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be time-stamped. The latest modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be marked as the applicable version. All the modified crypto-asset white papers, and, where applicable, the modified marketing communication, shall remain available for as long as the crypto-assets are held by the public.
8. Where the offer to the public concerns utility tokens, the changes made in the modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall not extend the time limit of 12 months referred to in Article 4(3).

*Article 12*  
***Right of withdrawal***

1. Issuers of crypto-assets, other than asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer, ***and to any consumer that has purchased crypto-assets that are subsequently the subject of a modified crypto-asset white paper.***

**Commented [A172]:** AM 371 Yon-Courtin et al.

Consumers shall have a period of 14 calendar days to withdraw their agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the consumers' agreement to purchase those crypto-assets.

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

The reimbursement shall be carried out using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

3. Issuers of crypto-assets shall provide information on the right of withdrawal referred to in paragraph 1 in their crypto-asset white paper.
4. The right of withdrawal shall not apply where the crypto-assets are admitted to trading on a trading platform for crypto-assets.
5. Where issuers of crypto-assets have set a time limit on their offer to the public of such crypto-assets in accordance with Article 9, the right of withdrawal shall not be exercised after the end of the subscription period.

*Article 13*  
***Obligations of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens***

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall:
  - (a) act honestly, fairly and professionally;
  - (b) communicate with the holders of crypto-assets in a fair, clear and not misleading manner;

- (c) prevent, identify, manage and disclose any conflicts of interest that may arise;
- (d) maintain all of their systems and security access protocols to appropriate Union standards.

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

- 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall act in the best interests of the holders of such crypto-assets and shall treat them equally, unless any preferential treatment is disclosed in the crypto-asset white paper, and, where applicable, the marketing communications.
- 3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible **and not later than 20 working days after the date of cancellation of the offer to the public.**

**Commented [A173]:** AM 378 Heinaeluoma et al., also partially reflecting the intention of AM 379 Greens

#### Article 14

##### ***Liability of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens for the information given in a crypto-asset white paper***

- 1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body **or the operator of an exchange that has admitted crypto-assets to trading at its own initiative** has infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body **or the operator of an exchange that has admitted crypto-assets to trading at its own initiative** for damage caused to her or him due to that infringement.

**Commented [A174]:** AM 382 Greens

Any exclusion of civil liability shall be deprived of any legal effect.

- 2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, has infringed Article 5 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said crypto-assets.
- 3. A holder of crypto-assets shall not be able to claim damages for the information provided in a summary as referred to in Article 5(7), including the translation thereof, except where:
  - (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper;
  - (b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid consumers and investors when considering whether to purchase such crypto-assets.
- 4. This Article does not exclude further civil liability claims in accordance with national law.

**Compromise E: TITLE III Authorisation to offer asset-referenced tokens to the public and to seek their admission to trading on a trading platform for crypto-assets (Articles 15- 42)**

Covering AMs 6-9, 385-408, 411, 414-469, 472-475, 478-484, 486-488, 490-496, 498-500, 503-535, 537-590, 592-597, 599-603, 606, 609-616, 619, 628-637, 656-661, 666, 1151, 1152, 1154-1160, AMs fall if compromise is adopted

## Chapter 1

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

#### Article 15

##### Authorisation

1. ~~No person or legal entity shall offer~~ asset-referenced tokens ~~shall, within the Union, offer such tokens~~ to the public or seek an admission of such assets to trading on a trading platform for crypto-assets ~~in the Union~~, unless ~~such the~~ issuers of such asset-referenced token ~~has~~ have been authorised to do so in accordance with Article 19 by the competent authority of their home Member State.
2. Only legal entities that are established in the Union shall be granted an authorisation as referred to in paragraph 1.
3. Paragraph 1 shall not apply where:
  - (a) over a period of 12 months, calculated at the end of each calendar day, the average outstanding amount of asset-referenced tokens does not exceed EUR 5 000 000, or the equivalent amount in another currency;
  - (b) the offer to the public of the asset-referenced tokens is solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.Issuers of such asset-referenced tokens shall, however, produce a crypto-asset white paper as referred to in Article 17 and notify that crypto-asset white paper, and where applicable, their marketing communications, to the competent authority of their home Member State in accordance with Article 7.
4. Paragraph 1 shall not apply where the issuers of asset-referenced tokens are authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU.

Such issuers shall, however, produce a crypto-asset white paper as referred to in Article 17, and submit that crypto-asset white paper for approval by the competent authority of their home Member State in accordance with paragraph 7.
5. The authorisation granted by ~~ESMA the competent authority~~ **the competent authority** shall be valid for the entire Union and shall allow an issuer to offer the asset-referenced tokens for which it has been authorised throughout the Union, or to seek an admission of such asset-referenced tokens to trading on a trading platform for crypto-assets.
6. The approval granted by the competent authority of the issuers' crypto-asset white paper under Article 19 or on a modified crypto-asset white paper under Article 21 shall be valid for the entire Union.

Commented [A175]: AM 385 Ferber

Commented [A176]: AM 394 the Greens/ EFA Group

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7. The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards to specify the procedure for the approval of a crypto-asset white paper referred to in paragraph 4.

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

(8) **Concerning asset-referenced tokens issued as decentralised crypto-assets or where issuers are established in third countries, a crypto-asset service provider operating a trading platform may also be authorised as an offeror when it admits such asset-referenced tokens to trading on its own initiative. The authorisation of such offeror shall not be limited to trading on the trading platform that it operates and shall not prevent other entities from applying for authorisation to offer crypto-assets to the public.** 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

**Commented [A178]:** AM 398 Hoogeveen also reflecting AM 399 Beck

#### Article 16 Application for authorisation

(1) Issuers of asset-referenced tokens shall submit their application for an authorisation as referred to in Article 15 to ~~ESMA, the competent authority of their home Member State~~ **the competent authority of their Member State**.

**Commented [A179]:** AM 400 the Greens/EFA group

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

**Commented [A180]:** back to original text as requested by ECR and RENEW

- (a) the address of the applicant issuer;
- (b) the articles of association of the applicant issuer;
- (c) a programme of operations, setting out the business model that the applicant issuer intends to follow;
- (d) a legal opinion that the asset-referenced tokens do not qualify as financial instruments, electronic money, deposits or structured deposits;
- (e) a detailed description of the applicant issuer's governance arrangements;
- (ea) a description of the applicant's crypto-asset service provider's internal control mechanisms and procedures, referred to in [Article 30a], to ensure compliance with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849;**
- (f) the identity of the members of the management body of the applicant issuer;
- (g) proof that the persons referred to in point (f) are of good repute and possess appropriate knowledge and experience to manage the applicant issuer;
- (h) where applicable, proof that natural persons who either own, directly or indirectly, more than 20% of the applicant issuer's share capital or voting rights, or who exercise, by any other means, control over the said applicant issuer, have good repute and competence;
- (i) a crypto-asset white paper as referred to in Article 17;
- (j) the policies and procedures referred to in Article 30(5), points (a) to (k);
- (k) a description of the contractual arrangements with the third parties referred to in the last subparagraph of Article 30(5);
- (l) a description of the applicant issuer's business continuity policy referred to in Article 30(8);
- (m) a description of the internal control mechanisms and risk management procedures referred to in Article 30(9);

**Commented [A181]:** deleted for consistency

**Commented [A182]:** AM 402 the Greens/ EFA group also reflecting AM 405 Heinaluoma

- (n) a description of the procedures and systems to safeguard the security, including cyber security, integrity and confidentiality of information referred to in Article 30(10);
- (o) a description of the applicant issuer's complaint handling procedures as referred to in Article 27.

***(2a) Issuers that have previously been authorised to offer asset-referenced tokens to the public or seek an admission of such assets to trading on a trading platform for crypto-assets in accordance with Article 15 shall not be required to resubmit the information laid down in paragraph 2 of this Article if the issuer confirms that the information is still correct.***

Commented [A183]: AM 408 Ferber

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

- (1) (a) for all the persons involved in the management of the applicant issuer of asset-referenced tokens, the absence of a criminal record in respect of convictions or penalties under national rules in force in the fields of commercial law, insolvency law, financial services legislation, anti-money laundering legislation, counter-terrorism legislation, fraud, or professional liability;
- (2) (b) that the members of the management body of the applicant issuer of asset-referenced tokens collectively possess sufficient knowledge, skills and experience to manage the issuer of asset-referenced tokens and that those persons are required to commit sufficient time to perform their duties.

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

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

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

Commented [A184]: AM 411 Rinaldi et al.

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

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

#### Article 17

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

1. The crypto-asset white paper referred to in Article 16(2), point (i), shall comply with all the requirements laid down in Article ~~4~~5. In addition to the information referred to in Article ~~4~~5, however, the crypto-asset white paper shall contain all of the following information:

(a) a detailed description of the issuer's governance arrangements, including a description of the role, responsibilities and accountability of the third-party entities referred to in Article 30(5), point (h);

(aa) *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;*

**Commented [A185]:** AM 415 Heinäluoma et al.

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

(c) a detailed description of the custody arrangements for the reserve assets, including the segregation of the assets, as referred to in Article 33;

(d) in case of an investment of the reserve assets as referred to in Article 34, a detailed description of the investment policy for those reserve assets;

(e) detailed information on the nature and enforceability of rights, including:

*(i) information on the ~~any~~ direct redemption right or any claims granted in accordance with Article 32;*

*(ii) any other rights that holders of asset-referenced tokens and any legal or natural person as referred in Article 35(2), may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures.*

**Commented [A186]:** AM 417 the Greens / EFA Group also reflecting AM 416 Lalicq et Kaili

(f) where the issuer does not offer a direct right on the reserve assets, detailed information on the mechanisms referred to in Article 35(4) to ensure the liquidity of the asset-referenced tokens;

(g) a detailed description of the complaint handling procedure referred to in Article 27;

(h) the disclosure items specified in Annexes I and II.

(3) For the purposes of point (e), where no direct claim or redemption right has been granted to all the holders of asset-referenced tokens, the crypto-asset white paper shall contain a clear and unambiguous statement that all the holders of the crypto-assets do not have a claim on the reserve assets, or cannot redeem those reserve assets with the issuer at any time.

2. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the asset-referenced tokens or about the intended admission of asset-referenced tokens to trading on a trading platform for crypto-assets, and in particular about the essential elements of the asset-referenced tokens concerned. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the asset-referenced tokens concerned in order to help potential purchasers of the asset-referenced tokens to make an informed decision. The summary shall contain a warning that:

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

(j) the prospective purchaser should base any decision to purchase an asset-referenced token on the content of the whole crypto-asset white paper;

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

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

3. Every crypto-asset white paper shall be dated.

~~3.~~ The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in *English* a language customary in the sphere of international finance.

**Commented [A187]:** AM 425 Ferber



4. The crypto-asset white paper shall be made available in machine readable formats.  
ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10.  
ESMA shall submit those draft implementing technical standards to the Commission by *[please insert date 12 months after entry into force]*.
5. 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 18

##### *Assessment of the application for authorisation*

1. Competent authorities receiving an application for authorisation as referred to in Article 16 shall, within 20 working days of receipt of such application, assess whether that application, including the crypto-asset white paper referred to in Article 16(2), point (i), is complete. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset white paper, is complete. Where the application, including the crypto-asset white paper, is not complete, they shall set a deadline by which the applicant issuer is to provide any missing information.
2. The competent authorities shall, within 3 months from the receipt of a complete application, assess whether the applicant issuer complies with the requirements set out in this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those three months, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset white paper referred to in Article 16(2), point (i).
3. Competent authorities shall, after the three months referred to in paragraph 2, transmit their draft decision to the applicant issuer, and their draft decision and the application file to the EBA, ESMA and the ECB. Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall consult the central bank of that Member State. Applicant issuers shall have the right to provide their competent authority with observations and comments on their draft decisions.
4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months ~~after having received~~ **of receiving** the draft decision and the application file, issue ~~a non-binding~~ **an** opinion on the application and transmit their ~~non-binding~~ opinions to the competent authority concerned. **The opinions shall be non-binding with the exception of those of the ECB and those of Member States' central banks as referred to in paragraph 3 that relate to monetary policy enforcement, financial stability issues and ensuring the secure handling of payments. That** The competent authority shall duly consider those ~~non-binding~~ opinions and the observations and comments of the applicant issuer. **If the ECB delivers a negative opinion because of monetary policy considerations, the competent authority shall refuse the application for authorisation and inform the applicant issuer of the decision.**

**Commented [A188]:** AM 6 Rapporteur also reflecting AM 432 Kaili / AM 433 Heinäluoma et al./ AM 434 Rinaldi et al/ AM 436 the ECR Group

#### Article 19

##### *Grant or refusal of the authorisation*

1. Competent authorities shall, within ~~one month~~ **six weeks after having received** **of receiving** the ~~non-binding~~ **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

**Commented [A189]:** AM 7 Rapporteur also reflecting AM 437 Ferber / AM 439 Kaili / AM440 Heinäluoma

issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

**1a. If the competent authority fails to take a decision pursuant to paragraph 1, such failure shall be deemed to constitute approval of the application.**

Commented [A190]: AM 441 Ferber

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

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

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

Title;

(c) the applicant issuer's business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty **provided, however, that the competent authority acts in accordance with the opinion of the ECB or the national central bank as referred to in Article 18(4).**

Commented [A191]: AM 445 Heinäluoma et al.

**(cb) the ECB or the national central banks of the ESCB give a negative opinion within their exclusive competence for the conduct of the monetary policy, and the promotion of the smooth operation of payment systems as referred to in Article 18(4).**

Commented [A192]: AM 445 Heinäluoma et al.

Commented [A193]: AM 448 the Greens/ EFA Group

3. Competent authorities shall inform the EBA, ESMA and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted. ESMA shall include the following information in the register of crypto-assets and crypto-asset service providers referred to in Article 57:

(a) the name, legal form and the legal entity identifier of the issuer of asset-referenced tokens;

(b) the commercial name, physical address and website of the issuer of the asset-referenced tokens;

(c) the crypto-asset white papers or the modified crypto-asset white papers;

(d) any other services provided by the issuer of asset-referenced tokens not covered by this Regulation, with a reference to the relevant Union or national law.

## Article 20

### Withdrawal of the authorisation

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

(a) the issuer has not used its authorisation within 6 months after the authorisation has been granted;

(b) the issuer has not used its authorisation for 6 successive months;

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

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

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

(f) has been put under an orderly wind-down plan, in accordance with applicable national insolvency laws;

(g) has expressly renounced its authorisation or has decided to stop its operations.

**(ga) the issuer fails to have in place effective measures and procedures to prevent, detect and investigate illicit activities connected to its asset-referenced tokens;**

Commented [A194]: AM 452 the Greens/ EFA Group

*(gb) the issuer's activities pose a serious risk to investor and consumer protection, market integrity, financial stability or monetary policy transmission;*

*(gc) the ECB or the national central banks of the ESCB within their exclusive competences, issue a negative opinion that the asset-referenced tokens pose a serious threat to the monetary policy transmission or monetary sovereignty and the smooth operation of payment systems.*

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

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

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

(b) the fact that an issuer of asset-referenced tokens, or the members of its management body, have breached national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council<sup>29</sup> in respect of money laundering or terrorism financing.

3. Competent authorities shall withdraw the authorisation of an issuer of asset-referenced tokens where they are of the opinion that the facts referred to in paragraph 2, points (a) and (b), affect the good repute of the management body of that issuer, or indicate a failure of the governance arrangements or internal control mechanisms as referred to in Article 30. When the authorisation is withdrawn, the issuer of asset-referenced tokens shall implement the procedure under Article 42.

#### Article 21

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

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

- (a) the governance arrangements;
- (b) the reserve assets and the custody of the reserve assets;
- (c) the rights granted to the holders of asset-referenced tokens;
- (d) the mechanism through which asset-referenced tokens are issued, created and destroyed;
- (e) the protocols for validating the transactions in asset-referenced tokens;
- (f) the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such a DLT;
- (g) the mechanisms to ensure the redemption of the asset-referenced tokens or to ensure their liquidity;

**Commented [A195]:** AM 453 also reflecting AM 454 the Greens/EFA Group

**Commented [A196]:** AM 455 the Greens/EFA Group

<sup>29</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (h) the arrangements with third parties, including for managing the reserve assets and the investment of the reserve, the custody of reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;
  - (i) the liquidity management policy for issuers of significant asset-referenced tokens;
  - (j) the complaint handling procedure.
2. Where any intended change as referred to in paragraph 1 has been notified to the competent authority, the issuer of asset-referenced tokens shall produce a draft modified crypto-asset white paper and shall ensure that the order of the information appearing there is consistent with that of the original crypto-asset white paper.

The competent authority shall electronically acknowledge receipt of the draft modified crypto-asset white paper as soon as possible, and within 2 working days after receiving it.

The competent authority shall grant its approval or refuse to approve the draft modified crypto-asset white paper within 20 working days following acknowledgement of receipt of the application. During the examination of the draft amended crypto-asset white paper, the competent authority may also request any additional information, explanations or justifications on the draft amended crypto-asset white paper. When the competent authority requests such additional information, the time limit of 20 working days shall commence only when the competent authority has received the additional information requested.

The competent authority may also consult the EBA, ESMA and the ECB, and, where applicable, the central banks of Member States the currency of which is not euro.

3. Where approving the modified crypto-asset white paper, the competent authority may request the issuer of asset-referenced tokens:
- (a) to put in place mechanisms to ensure the protection of holders of asset-referenced tokens, when a potential modification of the issuer's operations can have a material effect on the value, stability, or risks of the asset-referenced tokens or the reserve assets;
  - (b) take any appropriate corrective measures to ensure financial stability **and the proper conduct of monetary policy and the promotion of the smooth operation of payment systems, after having requested and obtained a binding opinion from the ECB or the relevant central banks of Member States the currency of which is not the euro, provided, however, that the competent authorities act in accordance with such opinions as regards the conduct of monetary policy and the promotion of the smooth operation of payment systems.**

Commented [A197]: AM 457 Heinäluoma et al.

#### Article 22

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

1. Where an issuer of asset-referenced tokens or its management body has infringed Article 17, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of such asset-referenced tokens may claim damages from that issuer of asset-referenced tokens or its management body for damage caused to her or him due to that infringement.
- Any exclusion of civil liability shall be deprived of any legal effect.
2. It shall be the responsibility of the holders of asset-referenced tokens to present evidence indicating that the issuer of asset-referenced tokens has infringed Article 17 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said asset-referenced tokens.

3. A holder of asset-referenced tokens shall not be able to claim damages for the information provided in a summary as referred to in Article 17(2), including the translation thereof, except where:
  - (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper;
  - (b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid consumers and investors when considering whether to purchase such asset-referenced tokens.
4. This Article does not exclude further civil liability claims in accordance with national law.

## Chapter 2

### Obligations of all issuers of asset-referenced tokens

#### Article 23

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

1. Issuers of asset-referenced tokens shall:
  - (3) (a) act honestly, fairly and professionally;
  - (4) (b) communicate with the holders of asset-referenced tokens in a fair, clear and not misleading manner.
2. Issuers of asset-referenced tokens shall act in the best interests of the holders of such tokens and shall treat them equally, unless any preferential treatment is disclosed in the crypto-asset white paper, and, where applicable, the marketing communications.

#### ~~Article 23a~~

#### ~~Payment asset-referenced tokens~~

- ~~1. Issuers of Payment asset-referenced tokens (Payment ART) are subject to the rules and requirements set out in Title IV of this Regulation unless provided otherwise in this article.~~
- ~~2. Payment ART shall not be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC.~~
- ~~3. Each unit of Payment ART created shall be pledged at par value with an official currency unit of an EU member state.~~
- ~~4. Issuers of Payment ART shall issue Payment ART at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366.~~
- ~~5. Holders of Payment ART are entitled to claim redemption at any moment and at par value, of the monetary value of the Payment ART held, either in cash or by credit transfer.~~
- ~~6. Issuers of Payment ART shall prominently state the conditions of redemption in the crypto-asset white paper as referred to in Article 46.~~
- ~~7. Where the issuer of a Payment ART token does not fulfil legitimate redemption requests from holders of Payment ART within 30 days, the holder is entitled to claim redemption to any following third party entities that has been in contractual arrangements with issuers of Payment ART.~~

~~(a) entities ensuring the safeguarding of funds received by issuers of Payment ART in exchange Payment ART in accordance with Article 7 of Directive 2009/110/EC;~~  
~~(b) any natural or legal persons in charge of distributing e-money tokens on behalf of issuers of e-money tokens.~~

**Commented [A198]:** deleted as requested by RENEW, GUE, ECR

**Commented [A199]:** AM 460 Heinäluoma et al. / AM 461 Kaili

#### Article 24

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

Issuers of asset-referenced tokens shall publish on their website their approved crypto-asset white paper as referred to in Article 19(1) and, where applicable, their modified crypto-asset white paper referred to in Article 21 and their marketing communications referred to in Article 25. The approved crypto-asset white papers shall be publicly accessible by no later than the starting date of the offer to the public of the asset-referenced tokens or the admission of those tokens to trading on a trading platform for crypto-assets. The approved crypto-asset white paper, and, where applicable, the modified crypto-asset white paper and the marketing communications, shall remain available on the issuer's website for as long as the asset-referenced tokens are held by the public.

#### Article 25

#### **Marketing communications**

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

- (a) the marketing communications shall be clearly identifiable as such;
- (b) the information in the marketing communications shall be fair, clear and not misleading;
- (c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper;
- (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets, **as well as an email address and a telephone number of the issuer.**

**Commented [A200]:** AM 462 Heinäluoma et al.

2. Where no direct claim or redemption right has been granted to all the holders of asset-referenced tokens, the marketing communications shall contain a clear and unambiguous statement that all the holders of the asset-referenced tokens do not have a claim on the reserve assets or cannot redeem those reserve assets with the issuer at any time.

#### Article 26

#### **Ongoing information to holders of asset-referenced tokens**

1. ~~Issuers~~ **Offerors** of asset-referenced tokens shall ~~at least every month and keep~~ in a clear, accurate and transparent manner disclose on their website the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets referred to in Article 32. **Such information shall be updated regularly and at a minimum every three months.**

**Commented [A201]:** AM 464 Beck also reflecting AM 465 the ECR Group

2. Issuers of asset-referenced tokens shall **publish** as soon as possible ~~and in a~~ **on their website a brief**, clear, accurate and transparent ~~manner disclose on their website the outcome~~ **summary** of the audit ~~of report as well as the full audit report in relation to~~ the reserve assets referred to in Article 32.

**Commented [A202]:** AM 466 Ferber

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

#### **Article 26a**

##### **Reporting obligations to ESMA**

**Issuers of asset-referenced tokens shall regularly report to ESMA on developments in the markets in relation to their asset-referenced tokens. An issuer of asset-referenced tokens shall provide the following information to ESMA in respect of each asset-referenced token:**

- (a) the customer base;**
- (b) the value and market capitalisation of the asset-referenced tokens;**
- (c) the size of the reserve;**
- (d) the average number of transactions per day;**
- (e) the average number of transactions linked with the purchase of goods or services.**

**Commented [A203]:** AM 468 the Greens/EFA Group

#### **Article 27**

##### **Complaint handling procedure**

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

**Commented [A204]:** AM 469 the Greens/EFA Group

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

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

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

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

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

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

#### **Article 28**

##### **Prevention, identification, management and disclosure of conflicts of interest**

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

- (a) their shareholders;
- (b) the members of their management body;
- (c) their employees;

**Commented [A205]:** AM 472 Ferber

- (d) any natural persons who either own, directly or indirectly, more than 20% of the asset-backed crypto-asset issuer's share capital or voting rights, or who exercise, by any other means, a power of control over the said issuer;
- (e) the holders of asset-referenced tokens;
- (f) any third party providing one of the functions as referred in Article 30(5), point (h);
- (g) where applicable, any legal or natural persons referred to in Article 35(3).

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

2. Issuers of asset-referenced tokens shall disclose to the holders of their asset-referenced tokens the general nature and sources of conflicts of interest and the steps taken to mitigate them.
3. Such disclosure shall be made on the website of the issuer of asset-referenced tokens in a prominent place.
4. The disclosure referred to in paragraph 3 shall be sufficiently precise to enable holders of their asset-referenced tokens to take an informed purchasing decision about the asset-referenced tokens.
5. The EBA shall develop draft regulatory technical standards to specify:
  - (a) the requirements for the policies and procedures referred to in paragraph 1;
  - (b) the arrangements for the disclosure referred to in paragraphs 3.

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

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

#### *Article 29*

#### ***Information to competent authorities***

Issuers of asset-referenced tokens shall notify their competent authorities of any changes to their management body.

#### *Article 30*

#### ***Governance arrangements***

1. Issuers of asset-referenced tokens shall have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.
2. Members of the management body of issuers of asset-referenced tokens shall have the necessary good repute and competence, in terms of qualifications, experience and skills, to perform their duties and to ensure the sound and prudent management of such issuers. They shall also demonstrate that they are capable of committing sufficient time to effectively carry out their functions.
3. Natural persons who either own, directly or indirectly, more than 20% of the share capital or voting rights of issuers of asset-referenced tokens, or who exercise, by any other means, a power of control over such issuers shall have the necessary good repute and competence.



4. None of the persons referred to in paragraphs 2 or 3 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.
5. Issuers of asset-referenced tokens shall adopt policies and procedures that are sufficiently effective to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Title. In particular, issuers of asset-referenced tokens shall establish, maintain and implement policies and procedures on:
  - (a) the reserve of assets referred to in Article 32;
  - (b) the custody of the reserve *assets including the segregation of* assets, as specified in Article 33;
  - (c) the rights or the absence of rights granted to the holders of asset-referenced tokens, as specified in Article 35;
  - (d) the mechanism through which asset-referenced tokens are issued, created and destroyed;
  - (e) the protocols for validating transactions in asset-referenced tokens;
  - (f) the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such DLT or similar technology that is operated by the issuer or a third party acting on its behalf;
  - (g) the mechanisms to ensure the redemption of asset-referenced tokens or to ensure their liquidity, as specified in Article 35(4);
  - (h) arrangements with third-party entities for operating the reserve of assets, and for the investment of the reserve assets, the custody of the reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;
  - (i) complaint handling, as specified in Article 27;
  - (j) conflicts of interests, as specified in Article 28;
  - (k) a liquidity management policy for issuers of significant asset-referenced tokens, as specified in Article 41(3).

Issuers of asset-referenced tokens that use third-party entities to perform the functions set out in point (h), shall establish and maintain contractual arrangements with those third-party entities that precisely set out the roles, responsibilities, rights and obligations of both the issuers of asset-referenced tokens and of each of those third-party entities. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.
6. Unless they have initiated a plan as referred to in Article 42, issuers of asset-referenced tokens shall employ appropriate and proportionate systems, resources and procedures to ensure the continued and regular performance of their services and activities. To that end, issuers of asset-referenced tokens shall maintain all their systems and security access protocols to appropriate Union standards.
7. Issuers of asset-referenced tokens shall identify sources of operational risk and minimise those risks through the development of appropriate systems, controls and procedures.
8. Issuers of asset-referenced tokens shall establish a business continuity policy that ensures, in case of an interruption of their systems and procedures, the preservation of essential data and functions and the maintenance of their activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.
9. Issuers of asset-referenced tokens shall have internal control mechanisms and effective procedures for risk assessment and risk management, including effective control and safeguard arrangements for managing ICT systems as required by Regulation (EU) 2021/xx of the European

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Parliament and of the Council.<sup>30</sup> The procedures shall provide for a comprehensive assessment relating to the reliance on third-party entities as referred to in paragraph 5, point (h). Issuers of asset-referenced tokens shall monitor and evaluate on a regular basis the adequacy and effectiveness of the internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies.

10. Issuers of asset-backed crypto-assets shall have systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information as required by Regulation (EU) 2021/xx of the European parliament and of the Council<sup>31</sup>. Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities.
11. Issuers of asset-referenced tokens shall ensure that they are regularly audited by independent auditors. The results of those audits shall be communicated to the management body of the issuer concerned and made available to the competent authority.
12. The EBA, in close cooperation with ESMA **and the ESCB**, shall develop draft regulatory technical standards specifying the minimum content of the governance arrangements on:
  - (a) the monitoring tools for the risks referred to in paragraph 1 and in the paragraph 7;
  - (b) the internal control mechanism referred to in paragraphs 1 and 9;
  - (c) the business continuity plan referred to in paragraph 8;
  - (d) **the required auditable documentation and** the audits referred to in paragraph 11;

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

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

**12a. When developing the regulatory technical standards on governance arrangements referred to in paragraph 12 of this Article, ESMA shall take into account the provisions in existing Union financial services legislation, including Directive 2014/65/EU.**

Commented [A207]: AM 487 Heinäluoma et al.

Commented [A208]: AM 488 Hoogeveen

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#### Article 31 Own funds requirements

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

- (a) EUR 350 000;
- (b) 2% of the average amount of the reserve assets referred to in Article 32.
- (ba) **a quarter of the fixed overheads of the preceding year, to be reviewed annually and calculated in accordance with Article 60(6).**

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

Commented [A210]: AM 8 Rapporteur

<sup>30</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595

<sup>31</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595

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

2. The own funds referred to in paragraph 1 shall consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Articles 46 and 48 of that Regulation.
3. Competent authorities of the home Member States may require issuers of asset-referenced tokens to hold an amount of own funds which is up to 20 % higher than the amount resulting from the application of paragraph 1, point (b), or permit such issuers to hold an amount of own funds which is up to 20 % lower than the amount resulting from the application of paragraph 1, point (b), where an assessment of the following indicates a higher or a lower degree of risk:
  - (a) the evaluation of the risk-management processes and internal control mechanisms of the issuer of asset-referenced tokens as referred to in Article 30, paragraphs 1, 7 and 9;
  - (b) the quality and volatility of the reserve assets referred to in Article 32;
  - (c) the types of rights granted by the issuer of asset-referenced tokens to holders of asset-referenced tokens in accordance with Article 35;
  - (d) where the reserve assets are invested, the risks posed by the investment policy on the reserve assets;
  - (e) the aggregate value and number of transactions carried out in asset-referenced tokens;
  - (f) the importance of the markets on which the asset-referenced tokens are offered and marketed;
  - (g) where applicable, the market capitalisation of the asset-referenced tokens.
- 3a. ***Without prejudice to paragraph 3, issuers of asset-referenced tokens shall conduct, on a regular basis, stress testing that shall take into account severe but plausible financial stress scenarios such as interest rate shocks and nonfinancial stress scenarios such as operational risk. Based on the outcome of such stress tests, the competent authorities of the home Member States shall require issuers of asset-referenced tokens to hold an amount of own funds which is at least 20% higher than the amount resulting from the application of paragraph 1, point (b) in certain circumstances given the risk outlook and stress test results.***
4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards further specifying:
  - (a) the methodology for the calculation of the own funds set out in paragraph 1;
  - (b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 3;
  - (c) the criteria for requiring higher own funds or for allowing lower own funds, as set out in paragraph 3.
  - (ca) ***the common reference parameters of the stress test scenarios to be included in the stress tests taking into account the factors specified in paragraph 1.***

***The draft regulatory standards shall be updated at least every two years taking into account the latest market developments.***

**Commented [A211]:** AM 496 Heinäluoma et al.

**Commented [A212]:** AM 499 the Greens/EFA Group also reflecting AM 500 Heinäluoma

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

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

## CHAPTER 3

### RESERVE OF ASSETS

#### Article 32

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

1. Issuers of asset-referenced tokens shall at all times constitute and maintain a reserve of assets **to cover the claims from holders in respect to the asset-referenced tokens in circulation. The aggregate value of reserve assets shall always be at least equal to the aggregate face value of the claims on the issuer from holders of asset referenced tokens in circulation. For the purpose of calculating the aggregate face value of token holders' claims, and for any valuation of the reserve assets under paragraph 5 of this Article, Article 30(11), Article 35(2), point (c), and Articles 41 Article 42, the face value of claims, and the value of funds and other reserve assets, including other crypto-assets, shall be expressed in the same official currency.**
  - 1a. **Issuers of asset-referenced tokens shall insulate the reserve assets against claims of other creditors in the interest of holders of the asset-referenced tokens.**
2. Issuers that offers two or more categories of asset-referenced tokens to the public shall operate and maintain separate reserve of assets for each category of asset-referenced tokens which shall be managed separately.
  - (4) Issuers of asset-referenced tokens that offer the same asset-referenced tokens to the public shall operate and maintain only one reserve of assets for that category of asset-referenced tokens.
3. The management bodies of issuers of asset-referenced tokens shall ensure effective and prudent management of the reserve assets. The issuers shall ensure that the creation and destruction of asset-referenced tokens is always matched by a corresponding increase or decrease in the reserve of assets and that such increase or decrease is adequately managed to avoid any adverse impacts on the market of the reserve assets.
4. Issuers of asset-referenced tokens shall have a clear and detailed policy describing the stabilisation mechanism of such tokens. That policy and procedure shall in particular:
  - (a) list the reference assets to which the asset-referenced tokens aim at stabilising their value and the composition of such reference assets;
  - (b) describe the type of assets and the precise allocation of assets that are included in the reserve of assets;
  - (c) contain a detailed assessment of the risks, including credit risk, market risk **concentration risk** and liquidity risk resulting from the reserve assets;
  - (d) describe the procedure by which the asset-referenced tokens are created and destroyed, and the consequence of such creation or destruction on the increase and decrease of the reserve assets;
  - (e) mention whether the reserve assets are invested;
  - (f) where issuers of asset-referenced tokens invest a part of the reserve assets, describe in detail the investment policy and contain an assessment of how that investment policy can affect the value of the reserve assets;
  - (g) describe the procedure to purchase asset-referenced tokens and to redeem such tokens against the reserve assets, and list the persons or categories of persons who are entitled to do so.

**Commented [A213]:** AM 503 Giegold also reflecting AM 504  
Lalucq  
AM 505 MacManus

**Commented [A214]:** AM 507 Ferber

**Commented [A215]:** AM 509 Heinäluoma et al.

5. Without prejudice to Article 30(11), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets every six months, as of the date of its authorisation as referred to in Article 19.

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

- (a) the issuer has been required to implement recovery arrangement or measures in accordance with Article 41a(3);*
- (b) the issuer has been required to implement an orderly wind-down of its activities in accordance with Article 42;*
- (c) it is deemed necessary to protect the economic interests of holders of the asset referenced token;*
- (d) it is deemed necessary to avoid a significant adverse effect on the financial system of the home Member State or another Member State.*

**Commented [A216]:** AM 511 Lalucq also reflecting AM 512 the Left Group

### *Article 33 Custody of reserve assets*

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

- (a) the reserve assets are segregated from the issuers' own assets;
- (b) the reserve assets are not encumbered nor pledged as a 'financial collateral arrangement', a 'title transfer financial collateral arrangement' or as a 'security financial collateral arrangement' within the meaning of Article 2(1), points (a), (b) and (c) of Directive 2002/47/EC of the European Parliament and of the Council<sup>32</sup>;
- (c) the reserve assets are held in custody in accordance with paragraph 4;
- (d) the issuers of asset-referenced tokens have prompt access to the reserve assets to meet any redemption requests from the holders of asset-referenced tokens.

Issuers of asset-referenced tokens that issue two or more categories of asset-referenced tokens in the Union shall have a custody policy for each reserve of assets. Issuers of asset-referenced tokens that have issued the same category of asset-referenced tokens shall operate and maintain only one custody policy.

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

- (a) a crypto-asset service provider authorised under Article 53 for the service mentioned in Article 3(1), point (10), where the reserve assets take the form of crypto-assets;
- (b) a credit institution for all other types of reserve assets.

*(ba) an investment firm registered in the Union in accordance with Directive (EU) 2019/2034 and Regulation (EU) 2019/2033 that provides the ancillary service of safekeeping and administration of financial instruments for the account of clients as defined in Annex I, Section B of Directive (EU) 2014/65.*

**Commented [A217]:** AM 515 Ferber

<sup>32</sup> Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

3. Issuers of asset-referenced tokens shall exercise all due skill, care and diligence in the selection, appointment and review of credit institutions and crypto-asset providers appointed as custodians of the reserve assets in accordance with paragraph 2.

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

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

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

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

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

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

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

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

**(da) *excessive concentration risks in the custody of the reserve assets are avoided;***

For the purpose of point (a), credit institutions shall ensure that fiat currencies are registered in the credit institutions' books within segregated account in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC<sup>33</sup> into the legal order of the Member States. The account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the fiat currencies held in custody can be clearly identified as belonging to the reserve of assets.

For the purposes of point (b), credit institutions shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the credit institution's books are registered in the credit institutions' books within segregated accounts in accordance with

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<sup>33</sup>

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

national provisions transposing Article 16 of Commission Directive 2006/73/EC<sup>34</sup> into the legal order of the Member States. The financial instruments account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the financial instruments held in custody can be clearly identified as belonging to the reserve of assets.

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

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

5. The appointment of a credit institution or a crypto-asset service provider as custodian of the reserve assets in accordance with paragraph 3 shall be evidenced by a written contract as referred to in Article 30(5), second subparagraph. Those contracts shall, amongst others, regulate the flow of information deemed necessary to enable the issuers of asset-referenced tokens and the credit institutions and the crypto-assets service providers to perform their functions.
6. The credit institutions and crypto-asset service providers that have been appointed as custodians in accordance with paragraph 3 shall act honestly, fairly, professionally, independently and in the interest of the issuer of the asset-referenced tokens and the holders of such tokens.
7. The credit institutions and crypto-asset service providers that have been appointed as custodians in accordance with paragraph 3 shall not carry out activities with regard to issuers of asset-referenced tokens that may create conflicts of interest between those issuers, the holders of the asset-referenced tokens, and themselves unless all of the following conditions have been complied with:
  - (a) the credit institutions or the crypto-asset service providers have functionally and hierarchically separated the performance of their custody tasks from their potentially conflicting tasks;
  - (b) the potential conflicts of interest have been properly identified, managed, monitored and disclosed by the issuer of the asset-referenced tokens to the holders of the asset-referenced tokens, in accordance with Article 28.
8. In case of a loss of a financial instrument or a crypto-asset held in custody as referred to in paragraph 4, the credit institution or the crypto-asset service provider that lost that financial instrument or crypto-asset shall return to the issuer of the asset-referenced tokens a financial instrument or a crypto-asset of an identical type or the corresponding value without undue delay. The credit institution or the crypto-asset service provider concerned shall not be liable where it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

<sup>34</sup> Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

*Article 34*  
***Investment of the reserve assets***

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

**Commented [A219]:** AM 520 Rinaldi et al. reflecting also AM 521 Ferber / AM 522 Heinäluoma et al.

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

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

4. The EBA shall, after consulting ESMA and the European System of Central Banks, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal credit and market risk as referred to in paragraph 1. When specifying the financial instruments referred to in paragraph 1, the EBA shall take into account:

- (a) the various types of reserve assets that can back an asset-referenced token;
- (b) the correlation between those reserve assets and the highly liquid financial instruments the issuers may invest in;
- (c) the conditions for recognition as high quality liquid assets under Article 412 of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61<sup>35</sup>.

*(ca) liquidity requirements establishing the percentage of the reserve assets to be comprised of daily maturing assets, the percentage of reserve repurchase agreements that are able to be terminated by giving one working day's prior notice, or the percentage of cash that is able to be withdrawn by giving one working day's prior notice;*

**Commented [A220]:** AM 523 the Greens/EFA Group reflecting also AM 524 Rinaldi et al. / AM 525 Heinäluoma et al.

*(cb) liquidity requirements establishing the percentage of the reserve assets to be comprised of weekly maturing assets, the percentage of reverse repurchase agreements that are able to be terminated by giving five working days' prior notice, or the percentage of cash that is able to be withdrawn by giving five working days' prior notice*

**Commented [A221]:** AM 526 Rinaldi et al. also reflecting AM 527 the Green/EFA Group // AM 528 Heinäluoma et al.

*(cc) concentration requirements preventing the issuers from investing more than a certain percentage of assets issued by a single body;*

**Commented [A222]:** AM 529 Rinaldi et al also reflecting AM 530 the Green/EFA Group / AM 531 Heinäluoma et al

*(cd) concentration requirements preventing the issuer from keeping in custody more than a certain percentage of crypto-assets or assets with credit institutions belonging to the same group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament of the Council<sup>36</sup>*

**Commented [A223]:** AM 532 Rinaldi et al. also reflecting AM 533 Heinäluoma et al. / AM 534 the Greens/EFA Group

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

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

<sup>35</sup> Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 011 17.1.2015, p. 1).

<sup>36</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).



*ESMA shall devise suitable thresholds to determine liquidity and concentration requirements. When doing so, ESMA shall take into account the relevant threshold laid down in [Article X] Directive 2009/65/EC.*

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#### Article 35

##### *Rights on issuers of asset-referenced tokens or on the reserve assets*

1. ~~Issuers~~ Each unit of asset-referenced tokens token created 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, be pledged at par value with an official currency unit of a Member State. Issuers of asset-referenced tokens shall grant holders redemption rights at all times on the reserve assets and shall establish, maintain and implement clear and detailed policies and procedures that ensure the redemption of the asset-referenced tokens at market value, at the latest, within two working days. The redemption request shall be processed and without undue costs for the holder.

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**Commented [A226]:** AM 542 Ferber also reflecting AM 540 Lallucq et Kaili / AM 541 the Left Group / AM 543 Rinaldi et al. / AM 544 the Greens/EFA Group.

1a. Any asset-referenced token that does not provide all holders with a permanent redemption right shall be prohibited. Upon request by the holder of asset-referenced tokens, the respective issuers shall redeem, at any moment and at market value, the monetary value of the asset-referenced tokens held to the holders of asset-referenced tokens, either in cash or by credit transfer.

Such right of redemption shall be granted without prejudice to the application of restrictive measures imposed on the issuer under other Union or national legislation and in particular in accordance with anti-money laundering and anti-terrorist financing rules, which may require the issuer to take appropriate action to freeze the funds or take any specific measure linked to the prevention and investigation of crimes.

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1b. By way of derogation from paragraph 1a, issuers of asset-referenced tokens may, in accordance with the conditions set out in the crypto-asset key information sheet and only in exceptional cases temporarily suspend the redemption of its tokens, where such suspension is in the interests of the holders of the asset-referenced tokens. In the event of a temporary suspension, the issuers of asset-referenced tokens shall, without delay, communicate their decision to ESMA. ESMA may require the suspension of the redemption of tokens in the interest of the holders of the asset-referenced tokens or of the public.

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2. ~~Where holders of~~ By way of derogation from paragraph 1: (a) the issuer of an asset-referenced tokens are granted rights token may, in accordance with the applicable national law and subject to the conditions set out in the crypto-asset white paper, temporarily suspend the redemption of its tokens. In the event of temporary suspension, the issuer shall, without delay, communicate its decision to its home Member State competent authorities. (b) the issuer's home Member State may allow its competent authorities to require the suspension of the redemption of tokens in the interest of tokenholders or of the public. The temporary suspension as referred to paragraph 1, in point (a) of the first subparagraph shall be provided for only exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the tokenholders.

**Commented [A229]:** AM 548 Lallucq et Kaili also reflecting AM 549 the Left

Issuers of asset-referenced tokens token shall establish issue a policy setting out asset-referenced token at par value and on the receipt of funds within the meanings of Article 4(25) of Directive 2015/2366.

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- ~~(a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise those rights;~~
  - ~~(b) 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;~~
  - ~~(c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when those rights are exercised by the holder of asset-referenced tokens;~~
  - ~~(d) the settlement conditions when those rights are exercised;~~
  - ~~(e) the fees applied by the issuers of asset-referenced tokens when the holders exercise those rights.~~
- ~~The fees referred to in point (e) shall be proportionate and commensurate with the actual costs incurred by the issuers of asset-referenced tokens.~~

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**Commented [A233]:** AM 557 the Left also AM 558 Berger

**Commented [A234]:** AM 560 Berger / AM 561 the Left Group

**Commented [A235]:** AM 562 the Greens/EFA Group also reflecting AM 563 the Left group / AM 564 Berger / AM 565 Lалуq et Kaili

**Commented [A236]:** AM 566 Berger also reflecting AM 567 the Greens/ EFA Group / AM 568 Lалуq et Kaili

**Commented [A237]:** to reflect general business practice

3. ~~Where issuers of asset-referenced tokens do not grant rights as referred to in paragraph 1 to all the holders of asset-referenced tokens, the detailed policies and procedures shall specify the natural or legal persons that are provided with such rights. The detailed policies and procedures shall also specify the conditions for exercising such rights and the obligations imposed on those persons. token are entitled to claim redemption at any moment and at par market value, of the monetary value of the asset-referenced token held, either in cash or by credit transfer.~~

~~Issuers of asset-referenced tokens shall establish and maintain appropriate contractual arrangements with those natural or legal persons who are granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and each of those natural or legal persons. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.~~

**Commented [A238]:** AM 570 the Greens/ EFA Group also reflecting AM 571 the Left Group / AM 572 Ferber / AM 573 Lалуq et Kaili / AM 574 Heinälumä / AM 575 Berger / AM 576 Berger

4. ~~Issuers of asset-referenced tokens that do not grant rights as referred to in paragraph 1 to all the holders of such asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service referred to in Article 3(1) point (12). The issuer of asset-referenced tokens shall ensure that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis.~~

~~Redemption may not be subject to a fee. Issuers of asset-referenced token shall prominently state the conditions of redemption in the crypto-asset white paper as referred to in Article 46.~~

~~Where the market value of asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets, the holders of asset-referenced tokens shall have the right to redeem the crypto-assets from the issuer of crypto-assets directly. In that case, any fee applied for such redemption shall be proportionate and commensurate with the actual costs incurred by the issuer of asset-referenced tokens.~~

~~The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn.~~

**Commented [A239]:** AM 577 the Greens/EFA Group reflecting AM 578 Lалуq/ Kaili / AM 579 Ferber / AM 580 Heinälumä et al. / AM 581 Berger / AM 583 Lалуq et Kaili / AM 584 Berger / AM 586 Berger

5. ~~Where the issuer of an asset-referenced token does not fulfil legitimate redemption requests from holders of asset-referenced token within 30 days, the holder is entitled to claim redemption to any following third party entities that has been in contractual arrangements with issuers of asset-~~

**referenced tokens.** The EBA shall, in close cooperation with ESMA **and the ESCB,** , develop draft regulatory technical standards specifying :

(a) ~~the obligations imposed on the crypto-asset service providers~~ **entities** ensuring liquidity the **safeguarding of funds received by issuers** of asset-referenced tokens ~~as set out in the first subparagraph of paragraph 4~~ **token in exchange for asset referenced token in accordance with Article 7 of Directive 2009/110/EC**

(b) ~~the variations of value triggering a direct right of redemption from the issuer of asset-referenced any natural or legal persons in charge of distributing e-money tokens as set out in the second subparagraph of paragraph 4, and the conditions for exercising such a right, on behalf of issuers of e-money tokens.~~

(ba) **the conditions which need to be met by the issuer after the adoption of the temporary suspension of the redemption of tokens as referred to in paragraph 2(a), once the suspension has been decided.**

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

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

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#### Article 36 **Prohibition of interest**

Issuers of asset-referenced tokens or crypto-asset service providers shall not provide for interest or any other benefit related to the length of time during which a holder of asset-referenced tokens holds asset-referenced assets.

### CHAPTER 4

#### ACQUISITIONS OF ISSUERS OF ASSET-REFERENCED TOKENS

#### Article 37 **Assessment of intended acquisitions of issuers of asset-referenced tokens**

- Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who intends to acquire, directly or indirectly, a qualifying holding in an issuer of asset-referenced tokens or to further increase, directly or indirectly, such a qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed **10 %**, 20 %, 30 % or 50 %, or so that the issuer of asset-referenced tokens would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that issuer thereof in writing, indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 38(4).
- Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an issuer of asset-referenced tokens (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below **10 %**.

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**Commented [A246]:** AM 9 Rapporteur also reflecting AM 603 Rinaldi et al.

20 %, 30 % or 50 % or so that the issuer of asset-referenced tokens would cease to be that person's subsidiary.

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

When acknowledging receipt of the notification, competent authorities shall inform the persons referred to in paragraph 1 of the date on which the assessment will be finalised.

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

Competent authorities shall halt the assessment referred to in paragraph 4, first subparagraph, until they have received the additional information referred to in the first subparagraph of this paragraph, but for no longer than 20 working days. Any further requests by competent authorities for additional information or for clarification of the information received shall not result in an additional interruption of the assessment.

Competent authority may extend the interruption referred to in the second subparagraph of this paragraph up to 30 working days where the persons referred to in paragraph 1 are situated or regulated outside the Union.

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.
7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.
8. Competent authority may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

#### *Article 38*

#### ***Content of the assessment of intended acquisitions of issuers of asset-referenced tokens***

1. When performing the assessment referred to in Article 37(4), competent authorities shall appraise the suitability of the persons referred to in Article 37(1) and the financial soundness of intended acquisition against all of the following criteria:
  - (a) the reputation of the persons referred to in Article 37(1);
  - (b) the reputation and experience of any person who will direct the business of the issuer of asset-referenced tokens as a result of the intended acquisition or disposal;

- (c) the financial soundness of the persons referred to in Article 37(1), in particular in relation to the type of business pursued and envisaged in the issuer of asset-referenced tokens in which the acquisition is intended;
  - (d) whether the issuer of asset-referenced tokens will be able to comply and continue to comply with the provisions of this Title;
  - (e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.
- (4) 2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 37(4) is incomplete or false.
3. Member States shall not impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.
4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards to establish an exhaustive list of information that is necessary to carry out the assessment referred to in Article 37(4), first subparagraph and that shall be provided to the competent authorities at the time of the notification referred to in paragraph 37(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 37(1).

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

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

## CHAPTER 5

### SIGNIFICANT ASSET-REFERENCED TOKENS

#### Article 39

#### *Classification of asset-referenced tokens as significant asset-referenced tokens*

1. The EBA shall classify asset-referenced tokens as significant asset-referenced tokens on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least ~~three~~ **two** of the following criteria are met:
- (a) the size of the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities referred to in Article 30(5), point (h);
  - (b) the value of the asset-referenced tokens issued or, where applicable, their market capitalisation;
  - (c) the number and value of transactions in those asset-referenced tokens;
  - (d) the size of the reserve of assets of the issuer of the asset-referenced tokens;
  - (da) ***the issuer of the asset-referenced tokens is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU) .../... ( Digital Markets Act)***
  - (e) the significance of the cross-border activities of the issuer of the asset-referenced tokens, including the number of Member States where the asset-referenced tokens are used, the use of

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the asset-referenced tokens for cross-border payments and remittances and the number of Member States where the third-party entities referred to in Article 30(5), point (h), are established;

(f) the interconnectedness with the financial system.

2. Competent authorities that authorised an issuer of asset-referenced tokens in accordance with Article 19 shall provide the EBA with information on the criteria referred to in paragraph 1 and specified in accordance with paragraph 6 on at least a yearly basis.

**(2a) Where an issuer of asset-referenced tokens authorised in accordance with Article 19 meets at least two of the thresholds in a paragraph 2, it shall notify ESMA without undue delay and at the latest seven days after those thresholds are satisfied and provide it with the relevant information identified in paragraph.**

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3. Where the EBAs of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State. The EBA shall give issuers of such asset-referenced tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the EBA one month after the notification of the decision referred to in paragraph 4.

The EBA and the competent authority concerned shall cooperate in order to ensure the smooth transition of supervisory competences.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 121 to further specify the criteria set out in paragraph 1 for an asset-referenced token to be deemed significant and determine:

(a) the thresholds for the criteria referred to in points (a) to (e) of paragraph 1, subject to the following:

i) the threshold for the customer base shall ~~not be lower than two~~ **be 20-10** million natural or legal persons;

Commented [A250]: AM 628 Ferber

ii) the threshold for the value of the asset-referenced token issued or, where applicable, the market capitalisation of such an asset-referenced token shall ~~not be lower than EUR 1~~ **be EUR 10-5** billion;

Commented [A251]: AM 629 Ferber

iii) the threshold for the number and value of transactions in those asset-referenced tokens shall ~~not be lower than 500 000~~ **be 2.5 million** transactions per day or EUR ~~100 million~~ **1-500 billion** per day respectively;

Commented [A252]: AM 631 Ferber

iv) the threshold for the size of the reserve assets as referred to in point (d) shall ~~not be lower than EUR 1~~ **be EUR 10-5** billion;

Commented [A253]: AM 633 Ferber

v) the threshold for the number of Member States where the asset-referenced tokens are used, including for cross-border payments and remittances, or where the third parties as referred to in Article 30(5), point (h), are established shall ~~not be lower than seven;~~ **be five**;

Commented [A254]: AM 636 Ferber

(aa) *the Commission, consulting EBA and ESMA, shall review the relevant thresholds at least every two years and make a legislative proposal to adjust those thresholds if appropriate.*

Commented [A255]: AM 637 Ferber

- (b) the circumstances under which asset-referenced tokens and their issuers shall be considered as interconnected with the financial system;
- (c) the content and format of information provided by competent authorities to EBA under paragraph 2.
- (d) the procedure and timeframe for the decisions taken by the EBA under paragraphs 3 to 5.

#### Article 40

##### *Voluntary classification of asset-referenced tokens as significant asset-referenced tokens*

1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Article 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA.  
For the asset-referenced tokens to be classified as significant at the time of authorisation, applicant issuers of asset-referenced tokens shall demonstrate, through its programme of operations as referred to in Article 16(2), point (c) that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).
2. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer's home Member State.  
The EBA shall give competent authority of the applicant issuer's home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.
3. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer's home Member State.  
The EBA shall give the applicant issuer and the competent authority of its home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.
4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.
5. Where asset-referenced tokens have been classified as significant in accordance with a decision referred to in paragraph 4, the supervisory responsibilities shall be transferred to the EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 19(1).

#### Article 40a

##### *Quasi e-money tokens and payment asset referenced tokens*

Commented [A256]: title change as requested by Greens / S&D AM460



Where ESMA considers that a significant asset-referenced token is being widely used for payments in the Union, it shall request an opinion from the EBA.

Where the EBA concludes, after consulting the ECB and the relevant central banks of Member States whose currency is not the euro, that the significant asset-referenced token has become widely used as a means of exchange, the asset referenced token shall be re-classified as a quasi-e-money token and the supervisory responsibilities shall be transferred to the EBA.

The EBA shall require the issuer of significant quasi-e-money tokens to comply with the same requirements regarding the issuance and redeemability provided for issuers of e-money tokens in accordance with Article 4.4, without prejudice to the application of higher fines and sanctions for significant asset referenced tokens.

Commented [A257]: AM 656 the Greens/ EFA Group

#### Article 41

##### Specific additional obligations for issuers of significant asset-referenced tokens

1. Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.
2. Issuers of significant asset-referenced tokens shall ensure that such tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1) point (10), including by crypto-asset service providers that do not belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council<sup>37</sup>, on a fair, reasonable and non-discriminatory basis.
3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 34, by holders of asset-referenced tokens. ~~For that purpose Issuers of significant asset-referenced tokens shall establish, maintain and implement also conduct liquidity management policy and procedures stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen That policy and those procedures shall ensure that the reserve assets have a resilient liquidity risk requirement. profile that enable~~ Where an issuer of significant asset-referenced tokens ~~to continue operating normally, including under liquidity stressed scenarios. offers two or more categories of crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner.~~
4. ~~The minimum own funds requirements referred to in Article 31(1) shall be multiplied with a factor of 1.5. The percentage of the reserve assets referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset referenced tokens. be calculated over a period of 12 months. In addition, issuers of significant asset-referenced tokens shall conduct, on a regular basis, stress testing that shall take into account severe but plausible financial stress scenarios such as interest rate shocks and non-financial stress scenarios such as operational risk. Where an issuer of significant asset referenced tokens offers two or more categories of crypto-asset tokens and/or provide crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner. Based on the outcome of such stress tests, the EBA where relevant, may impose additional own funds~~

Commented [A258]: AM 657 Berger also reflecting AM 658 Heinäluoma et al.

Commented [A259]: AM 659 Ferber

<sup>37</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).



*requirements on top of the 3% requirement. Moreover, issues of significant asset-referenced tokens shall also conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements.*

5. Where several issuers offer the same asset-referenced token that is classified as significant, each of those issuers shall be subject to the requirements set out in the paragraphs 1 to 4.

Where an issuer offers two or more categories of asset-referenced tokens in the Union and at least one of those asset-referenced tokens is classified as significant, such an issuer shall be subject to the requirements set out in paragraphs 1 to 4.

6. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying:

- (a) the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1;
- (b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 4.

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

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

## **Chapter 6**

### **Orderly wind-down**

#### *Article 42*

#### **Orderly wind-down**

1. Issuers of asset-referenced tokens shall have in place a plan that is appropriate to support an orderly wind-down of their activities under Art, including continuity or recovery of any critical activities performed by those issuers or by any third-party entities as referred in Article 30(5), point (h). That plan shall demonstrate the ability of the issuer of asset-referenced tokens to carry out an orderly wind-down without causing undue economic harm to the holders of asset-referenced tokens or to the stability of the markets of the reserve assets.
2. The plan referred to in paragraph 1 shall include contractual arrangements, procedures and systems to ensure that the proceeds from the sale of the remaining reserve assets are paid to the holders of the asset-referenced tokens.
3. The plan referred to in paragraph 1 shall be reviewed and updated regularly.

**Commented [A260]:** AM 660 Berger

**Commented [A261]:** Inconsistency is the minimum own funds requirements factor of 1.5 or 3%



**Compromise F: TITLE IV Requirements to be fulfilled by all issuers of electronic money tokens (Articles 43- 52)**

Covering AMs 10, 667-729, 731-735, 737-739, 741-742, 744, 746-747, 751, 753-755, 757-759, 1153, AMs fall if compromise is adopted

## Chapter 1

### Article 43 Authorisation

1. No electronic money tokens shall be offered to the public in the Union or shall be admitted to trading on a trading platform for crypto-assets unless the issuer of such electronic money tokens:
  - (a) is authorised as a credit institution **or an entity exempted by Article 2 (5) points (4) to (23) of Directive 2013/36/EU** or as an ‘electronic money institution’ within the meaning of Article 2(1) of Directive 2009/110/EC;
  - (b) complies with requirements applying to electronic money institution set out in Titles II and III of Directive 2009/110/EC, unless stated otherwise in this Title;
  - (c) publishes a crypto-asset white paper notified to the competent authority, in accordance with Article 46.

**Commented [A262]:** exemption of public banks

For the purpose of point (a), an ‘electronic money institution’ as defined in Article 2(1) of Directive 2009/110/EC shall be authorised to issue ‘e-money tokens’ and e-money tokens shall be deemed to be ‘electronic money’ as defined in Article 2(2) of Directive 2009/110/EC.

An e-money token which references a Union currency shall be deemed to be offered to the public in the Union.

***(1a) The ECB shall decide whether to authorise e-money tokens. The ECB shall not authorise if it cannot exclude a threat to financial stability or monetary sovereignty in the euro area because of the business model, anticipated market volume or other detrimental circumstances of the proposed e-money token. The ECB shall adopt its decision within three months of receiving the complete application for authorisation and inform the applicant issuer of that decision within five working days of its adoption.***

**Commented [A263]:** AM 10 Rapporteur/ AM 673 ECR

2. Paragraph 1 shall not apply to:
  - (a) e-money tokens that are marketed, distributed and held by qualified investors and can only be held by qualified investors;
  - (b) if the average outstanding amount of e-money tokens does not exceed EUR 5 000 000, or the corresponding equivalent in another **fiat** currency, over a period of 12 months, calculated at the end of each calendar day.

**Commented [A264]:** AM 676 Kovařík et al.

~~For the purpose of point (b), where the Member State has set a threshold lower than EUR 5 000 000 in accordance with Article 9 (1)(a) of Directive 2009/110/EC, such a threshold shall apply.~~

**Commented [A265]:** AM 677 Kovařík et al.

In the case referred to in points (a) and (b), the issuers of electronic money tokens shall produce a crypto-asset white paper and notify such crypto-asset white paper to the competent authority in accordance with Article 46.

**2a. E-money tokens offered to the public in Member States or admitted to trading on a trading platform for crypto-assets may reference any global currency that is legal tender.**

**By ... [18 months after the date of entry into force], EBA shall, after consulting all relevant stakeholders and reflecting all interests involved, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 concerning the prudential treatment of payment ART issued by credit institutions or electronic money institutions.**

**Commented [A266]:** AM 678 Rinaldi et al. , also reflecting AM 679 (Hoogeveen)

**Commented [HP267]:** The Article on payment ARTs has been deleted...

**Commented [A268]:** AM 680 Kaili

#### Article 44

##### Issuance and redeemability of electronic money tokens

1. By derogation of Article 11 of Directive 2009/110/EC, ~~only~~ the following requirements regarding the issuance and redeemability of e-money tokens shall apply to **offerors, or, if applicable**, issuers of e-money tokens.
2. Holders of e-money tokens ~~shall be provided with~~ **are entitled to** a claim ~~on the issuer of such e-money tokens. Any e-money token that does not provide all holders with a claim shall be prohibited.~~ **redemption at any moment and at par value, of the monetary value of the e-money tokens held, either in cash or by credit transfer.**
3. ~~Issuers of such e-money tokens shall issue~~ **Offerors shall deliver** e-money tokens at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366. **If applicable, the issuer, at the offeror's request, shall issue e-money tokens at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366.**
4. ~~Upon request by the holder of e-money tokens, the respective offeror or issuer, as applicable must redeem, at any moment and at par value, the monetary value of the e-money tokens held to the holders of e-money tokens, either in cash or by credit transfer.~~
5. **Offerors, or, if applicable, issuers** of e-money tokens shall prominently state the conditions of redemption, including any fees relating thereto, in the crypto-asset white paper as referred to in Article 46. **In any event, redemption shall be immediate or take place within no more than two working days.**
6. Redemption may be subject to a fee only if stated in the crypto-asset white paper. Any such fee shall be proportionate and commensurate with the actual costs incurred by issuers of e-money tokens.
7. Where ~~issuers~~ **offerors** of e-money tokens does not fulfil legitimate redemption requests from holders of e-money tokens within the time period specified in the crypto-asset white paper and which shall not exceed 30 days, the obligation set out in paragraph 3 applies to any following third party entities that has been in contractual arrangements with issuers of e-money tokens:
  - (a) entities ensuring the safeguarding of funds received by issuers of e-money tokens in exchange for e-money tokens in accordance with Article 7 of Directive 2009/110/EC;
  - (b) **any natural or legal persons in charge of distributing e-money tokens on behalf of issuers or offerors** of e-money tokens.

**Commented [A269]:** AM 683 Kaili

**Commented [A270]:** AM 685 Kaili

**Commented [A271]:** AM 688 ECR

**Commented [A272]:** AM 687 Kaili

**Commented [A273]:** AM 689 Rinaldi et al.

**Commented [A274]:** AM 700 ECR

(ba) issuers of e-money tokens, if different from the offeror.

Commented [A275]: AM 701 ECR

#### Article 45 Prohibition of interests

By derogation to Article 12 of Directive 2009/110/EC, no issuer of e-money tokens or crypto-asset service providers shall grant interest or any other benefit related to the length of time during which a holder of e-money tokens holds such e-money tokens.

#### Article 46 Content and form of the crypto-asset white paper for electronic money tokens

1. Before offering the offeror offers e-money tokens to the public in the EU or seeking seeks an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall publish a crypto-asset white paper on its website.
2. The crypto-asset white paper referred to in paragraph 1 shall contain all the following relevant information:
  - (a) a description of the issuer of e-money tokens;
  - (aa) a description of the offeror of e-money tokens;
  - (ab) a contact telephone number and an email address of the issuer and the offerer, and a period of days during which an investor contacting the issuer or the offeror via this telephone number or email address will receive an answer.
  - (b) a detailed description of the issuer's project, and a presentation of the main participants involved in the project's design and development; when known;
  - (c) an indication on whether the crypto-asset white paper concerns an offering of e-money tokens to the public and/or an admission of such e-money tokens to trading on a trading platform for crypto-assets;
  - (d) a detailed description of the rights and obligations attached to the e-money tokens, including the redemption right at par value as referred to in Article 44 and the procedures and conditions of exercise of these rights;
  - (e) the information on the underlying technology and standards met by the issuer of e-money tokens allowing for the holding, storing and transfer of such e-money tokens;
  - (ea) the information regarding the governance of the issuance of e-money tokens as decentralised crypto-assets, when applicable;
  - (f) the risks relating to the issuer(s) of the of e-money issuer, tokens, the offeror of the e-money tokens, the e-money tokens and the implementation of the project, including the technology;
  - (g) the disclosure items specified in Annex III.
3. All such information referred to in paragraph 2 shall be fair, clear and not misleading. The crypto-asset white paper shall not contain material omissions and it shall be presented in a concise and comprehensible form.

Commented [A276]: AM 705 ECR

Commented [A277]: AM 708 Kovařík et al.

Commented [KK278]: this was added following the discussions in the technical meeting.

Commented [A279]: AM 709 Kovařík et al.

Commented [A280]: AM 711 Beck

Commented [A281]: deleted as requested by ECR

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4. Every crypto-asset white paper shall also include a statement from the management body of the issuer of e-money confirming that the crypto-asset white paper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in the crypto-asset white paper is correct and that there is no significant omission.
5. The crypto-asset white paper shall include a summary which shall, in brief and non-technical language, provide key information in relation to the offer to the public of e-money tokens or admission of such e-money tokens to trading, and in particular about the essential elements of the e-money tokens. The summary shall indicate that:
  - (a) the holders of e-money tokens have a redemption right at any moment and at par value;
  - (b) the conditions of redemption, including any fees relating thereto.
6. Every crypto-asset white paper shall be dated.
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.**
8. The crypto-asset white paper shall be made available in machine readable formats, in accordance with Article 5.
9. The issuer of e-money tokens shall notify its draft crypto-asset white paper, and where applicable their marketing communications, to the relevant competent authority as referred to in Article 3(1) point (24)(b) at least 20 working days before its date of its publication.  
 After the notification and without prejudice of the powers laid down in Directive 2009/110/EC or the national laws transposing it, the competent authority of the home Member State may exercise the powers laid down in Article 82(1) of this Regulation.
10. Any change or new fact likely to have a significant influence on the purchase decision of any potential purchaser or on the decision of holders of e-money tokens to sell or exchange such e-money tokens to the issuer which occurs after the publication of the initial crypto-asset white paper shall be described in a modified crypto-asset white paper prepared by the issuer and notified to the relevant competent authority, in accordance with paragraph 9.

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#### *Article 47*

##### ***Liability of issuers of e-money tokens for the information given in a crypto-asset white paper***

1. Where an issuer of e-money tokens or its management body has infringed Article 46, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of such e-money tokens may claim damages from that issuer of e-money tokens or its management body for damage caused to her or him due to that infringement.  
 Any exclusion of civil liability shall be deprived of any legal effect.
2. It shall be the responsibility of the holders of e-money tokens to present evidence indicating that the issuer of e-money tokens has infringed Article 46 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said e-money tokens.
3. A holder of e-money tokens shall not be able to claim damages for the information provided in a summary as referred to in Article 46(5), including the translation thereof, except where:

- (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper;
  - (b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid consumers and investors when considering whether to purchase such e-money tokens.
4. This Article does not exclude further civil liability claims in accordance with national law.

*Article 48*  
**Marketing communications**

1. Any marketing communications relating to an offer of e-money tokens to the public, or to the admission of such e-money tokens to trading on a trading platform for crypto-assets, shall comply with all of the following:
  - (a) the marketing communications shall be clearly identifiable as such;
  - (b) the information in the marketing communications shall be fair, clear and not misleading;
  - (c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper;
  - (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the e-money tokens.
2. The marketing communications shall contain a clear and unambiguous statement that all the holders of the e-money tokens have a redemption right at any time and at par value on the issuer.

*Article 49*  
**Investment of funds received in exchange of e-money token issuers**

Funds received by issuers **or offerors** of e-money tokens in exchange of e-money tokens and that are invested in secure, low-risk assets **highly liquid financial instruments with minimal market and credit risks in accordance with Article 34(4) of this Regulation, instead of Article 7(2) of Directive 2009/110/EC**, in accordance with Article 7(2) of Directive 2009/110/EC shall be invested in assets denominated in the same currency as the one referenced by the e-money token.

**Commented [A284]:** AM 729 (ECR)

**Commented [A285]:** AM 728 Heinäluoma et al.

## Chapter 2

### Significant e-money tokens

*Article 50*  
**Classification of e-money tokens as significant e-money tokens**

1. The EBA **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro** shall classify e-money tokens as significant e-money tokens on the basis of the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least **three two** of those criteria are met.
2. Competent authorities of the ~~issuer's~~ **issuer or offeror's** home Member State shall provide the EBA **the ECB and the relevant central banks of Member States whose currency is not the**

**Commented [A286]:** AM 732 Heinäluoma et al.

**Commented [A287]:** AM 734 Kovařík, et al., also reflecting AM 735 ECR

euro with information on the criteria referred to in Article 39(1) ~~of this Article~~ and specified in accordance with Article 39(6) on at least a yearly basis.

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3. Where the EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro**, is of the opinion that e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers **or offeres** of those e-money tokens and the competent authority of the issuer's **or offerer's** home Member State. The EBA shall give issuers **ot offeres** of such e-money tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro**, shall duly consider those observations and comments.
4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 3 and immediately notify the issuers **or offerors** of such e-money tokens and their competent authorities thereof.

Commented [A289]: AM 739, Heinäluoma et al.

Commented [A290]: AM 737 734 Kovarik, et al

Commented [A291]: AM 739 Heinäluoma et al.

Commented [A292]: AM 741 Kovarik, et al

#### Article 51

##### *Voluntary classification of e-money tokens as significant e-money tokens*

1. An issuer of e-money tokens, authorised as a credit institution or as an 'electronic money institution' as defined in Article 2(1) of Directive 2009/110/EC or applying for such authorisation, may indicate that they wish to classify their e-money tokens as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA.

For the e-money tokens to be classified as significant, the issuer or applicant issuer of e-money tokens shall demonstrate, through a detailed programme of operations, that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro**, is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer's home Member State.

Commented [A293]: AM 747 Heinäluoma et al

The EBA shall give competent authority of the issuer or applicant issuer's home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro** is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuer or applicant issuer and the competent authority of the issuer or applicant issuer's home Member State.

Commented [A294]: AM 751 Heinäluoma et al

The EBA shall give the issuer or applicant issuer and the competent authority of its home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.



4. The EBA, *after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro*, shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. The decision shall be immediately notified to the issuer or applicant issuer of e-money tokens and to the competent authority of its home Member State. *The decision shall be immediately notified to the issuer or applicant issuer of e-money tokens and to the competent authority of its home Member State.*

Commented [A295]: AM 755 Heinäluoma et al

Commented [A296]: AM 755 Heinäluoma et al

#### Article 52

##### *Specific additional obligations for issuers of significant e-money tokens*

Issuers of at least one category of e-money tokens shall apply the following requirements applying to issuers of asset-referenced tokens or significant asset-referenced tokens:

- (a) Articles 33 and 34 of this Regulation, instead of Article 7 of Directive 2009/110/EC;
- (b) Article 41, paragraphs 1, 2, ~~and 3 and 4~~ of this Regulation;
- (c) Article 41 paragraph 4 of this Regulation, instead of Article 5 of Directive 2009/110/EC;
- (d) Article 42 of this Regulation.

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## ALTERNATIVE COMPROMISE G

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### Compromise G: TITLE V: Authorisation and operating conditions for Crypto-Asset Service providers (Articles 53- 75)

Covering COMP AM G and AMs 11-14, 760-965, AMs fall if compromise is adopted

The text is identical with the text of Compromise G (see below), except for the following passages:

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#### Article 68 – paragraph 1, subparagraph 3 (addition in bold/italics)

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Before admitting a crypto-asset to trading, crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that the crypto-asset complies the operating rules of the trading platform **and the requirements for crypto-assets set out in this Regulation** and assess the quality of the crypto-asset concerned. When assessing the quality of a crypto-asset, the trading platform shall take into account the experience, track record and reputation of the issuer and its development team. The trading platform shall also assess the quality of the crypto-assets benefiting from the exemption set out in Articles 4(2).

#### Article 68 – paragraph 1a (new)

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***1a. (new) Crypto-asset service providers shall have in place a plan that is appropriate to support an orderly phase-out of their activities with respect to the crypto-assets that do not comply with the standards referred to in Article 2a, without causing undue economic harm to the holders of crypto-assets or to the stability of the markets, within the date or dates set out by Commission delegated acts referred to in Article 2a paragraph 3.***

**Compromise G: TITLE V: Authorisation and operating conditions for Crypto-Asset Service providers (Articles 53- 75)**

Covering AMs 11-14, 760-965, AMs fall if compromise is adopted

## Chapter 1: Authorisation of crypto-asset service providers

### Article 53 Authorisation

1. Crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the Union and that have ~~been authorised as crypto-asset service providers~~ **an authorisation which allows them to provide those services** in accordance with Article ~~55~~**53a**.

**Commented [A298]:** AM 761 Lallucq et Kaili

***ESMA shall require significant crypto-asset service providers who intend to provide crypto-asset services, to obtain authorisation before commencing the provision of crypto-asset services. ESMA shall ensure the supervision of the significant CASP in close cooperation with the competent authority of the home Member State. ESMA shall develop draft regulatory standards to determine the criteria to be taken into account when assessing the significance of CASP***

**Commented [A299]:** AM 763 Kaili

Crypto-asset service providers shall, at all times, meet the conditions for **their initial** authorisation **and shall notify ESMA without undue delay, of any material changes to the conditions for their** authorisation.

**Commented [A300]:** AM 764 Greens/EFA Group

No person who is not a crypto-asset service provider shall use a name, or a corporate name, or issue marketing communications or use any other process suggesting that he or she is authorised as a crypto-asset service provider or that is likely to create confusion in that respect.

2. Competent authorities that grant an authorisation under Article 55 shall ensure that such authorisation specifies the crypto-asset services that crypto-asset service providers are authorised to provide.
3. An authorisation as a crypto-asset service provider shall be valid for the entire Union and shall allow crypto-asset service providers to provide throughout the Union the services for which they have been authorised, either through the right of establishment, including through a branch, or through the freedom to provide services.

Crypto-asset service providers ~~that provide crypto-asset services on a cross-border basis~~ shall ~~not be required to have a physical presence in the territory of a host Member State.~~ **appoint a resident director and to have substantive management** presence in the Union.

**Commented [A301]:** AM 772 Greens/EFA Group

4. Crypto-asset service providers seeking to add crypto-asset services to their authorisation shall request the competent authorities that granted the authorisation for an extension of their authorisation by complementing and updating the information referred to in Article 54. The request for extension shall be processed in accordance with Article 55.

#### Article 54

##### Application for authorisation

1. Legal persons that intend to provide crypto-asset services shall apply for authorisation as a crypto-asset service provider to ~~the competent authority of the Member State where they have their registered office.~~ **ESMA**
2. The application referred to in paragraph 1 shall contain all of the following:
  - (a) the name, including the legal name and any other commercial name to be used, the legal entity identifier of the applicant crypto-asset service provider, the website operated by that provider, **a contact email address, a contact telephone number** and its physical address;
  - (aa) **name and contact details of a central contact person in charge of compliance with this Regulation and anti-money laundering obligations;**
  - (b) the legal status of the applicant crypto-asset service provider;
  - (c) the articles of association of the applicant crypto-asset service provider;
  - (d) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;
  - (e) a description of the applicant crypto-asset service provider's governance arrangements;
  - (ea) **a statement that the applicant crypto-asset service provider is not a subsidiary of a crypto-asset service provider or of the parent holding of such crypto-asset service provider, and is not controlled by a crypto-asset service provider-, located in any of the following countries:**
    - (i) **a third country listed as a high-risk third country that has strategic deficiencies in its 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;**
    - (ii) **a third country not listed in Annex I or Annex II of the EU list of noncooperative jurisdictions for tax purposes.**
  - (f) for all natural persons involved in the management body of the applicant crypto-asset service provider, and for all natural persons who, directly or indirectly, hold ~~20%~~ **5% or more** of the share capital or voting rights, **or ownership interest in the crypto-asset service provider, including through bearer shareholdings, or through control via other means, information on their identities,** proof of the absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, counter-terrorism legislation, and professional liability obligations;
  - (g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider ~~collectively~~ **are of sufficient repute and** possess ~~sufficient~~ **appropriate** knowledge, skills and experience to manage that provider ~~and that those natural persons are required to commit sufficient time to the performance of their duties;~~
  - (h) a description of the applicant crypto-asset service provider's internal control mechanism, procedure for risk assessment and business continuity plan;

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Commented [A309]: AM 789 Kaili

- (i) descriptions both in technical and non-technical language of applicant crypto-asset service provider's IT systems and security arrangements;
- (j) proof that the applicant crypto-asset service provider meets the prudential safeguards in accordance with Article 60;
- (k) a description of the applicant crypto-asset service provider's procedures to handle complaints from clients;
- (l) a description of the procedure for the segregation of client's crypto-assets and funds;
- (m) a description of the procedure and system to detect market abuse.
- (n) where the applicant crypto-asset service provider intends to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;
- (o) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform;
- (p) where the applicant crypto-asset service provider intends to exchange crypto-assets for fiat currency or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy ***governing the relationship with clients, including a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or others crypto-assets,***
- (q) where the applicant crypto-asset service provider intends to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;
- (r) where the applicant intends to receive and transmit orders for crypto-assets on behalf of third parties, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations.
- (ra) ***a description of the applicant crypto-asset service provider's internal control mechanisms and procedures for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council, procedure for risk assessment and business continuity plan.***

Commented [A310]: AM 804 Kaili / AM 805 Heinäluoma

Commented [A311]: AM 808 Kaili

3. Competent authorities shall not require an applicant crypto-asset service provider to provide any information they have already received pursuant to Directive 2009/110/EC, Directive 2014/65/EU, Directive 2015/2366/EU or national law applicable to crypto-asset services prior to the entry into force of this Regulation, provided that such information or documents are still up-to-date and are accessible to the competent authorities.

#### Article 55

##### ***Assessment of the application for authorisation and grant or refusal of authorisation***

1. Competent authorities shall, within ~~25~~ **15** working days of receipt of the application referred to in Article 54(1), assess whether that application is complete by checking that the information listed in Article 54(2) has been submitted. Where the application is not complete, the authorities shall set a deadline by which the applicant crypto-asset service providers are to provide the missing information.
2. Competent authorities may refuse to review applications where such applications remain incomplete after the deadline referred to in paragraph 1.

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3. Competent authorities shall immediately notify applicant crypto-asset service providers of the fact that an application is complete.
4. Before granting or refusing to an authorisation as a crypto-asset service provider, competent authorities shall consult the competent authorities of another Member State in any of the following cases:
  - (a) the applicant crypto-asset service provider is a subsidiary of a crypto-asset service provider authorised in that other Member State;
  - (b) the applicant crypto-asset service provider is a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;
  - (c) the applicant crypto-asset service provider is controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.
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. 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.

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Competent authorities may refuse authorisation where there are objective and demonstrable grounds for believing that:

- (a) the management body of the applicant crypto-asset service provider poses a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market;
  - (b) the applicant fails to meet or is likely to fail to meet any requirements of this Title.
6. Competent authorities shall inform ESMA of all authorisations granted under this Article. ESMA shall add all the information submitted in successful applications to the register of authorised crypto-asset service providers provided for in Article 57. ESMA may request information in order to ensure that competent authorities grant authorisations under this Article in a consistent manner.
7. Competent authorities shall notify applicant crypto-asset service providers of their decisions to grant or to refuse authorisation within three working days of the date of that decision.

#### *Article 56*

#### **Withdrawal of authorisation**

1. Competent authorities shall withdraw the authorisations in any of the following situations the crypto-asset service provider:
  - (a) has not used its authorisation within 18 months of the date of granting of the authorisation;
  - (b) has expressly renounced to its authorisation;
  - (c) has not provided crypto-asset services for nine successive months;
  - (d) has obtained its authorisation by irregular means, including making false statements in its application for authorisation;

(e) no longer meets the conditions under which the authorisation was granted and has not taken the remedial actions requested by the competent authority within a set-time frame;

*(ea) fails to have in place effective measures and procedures to prevent, detect and investigate illicit activities connected to the provision of crypto-asset services;*

*(eb) its activity poses a threat to financial stability, market integrity or investor and consumer protection;*

(f) has seriously infringed this Regulation.

2. Competent authorities shall also have the power to withdraw authorisations in any of the following situations:

(a) the crypto-asset service provider or the members of its management body have infringed national law implementing Directive (EU) 2015/849<sup>38</sup> in respect of money laundering or terrorist financing;

(b) the crypto-asset service provider has lost its authorisation as a payment institution in accordance with Article 13 of Directive (EU) 2015/2366 or its authorisation as an electronic money institution granted in accordance with Title II of Directive 2009/110/EC and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.

3. Where a competent authority withdraws an authorisation, the competent authority designated as a single point of contact in that Member State in accordance with Article 81 shall notify ESMA and the competent authorities of the host Member States thereof without undue delay. ESMA shall register the information on the withdrawal of the authorisation in the register referred to in Article 57.

4. Competent authorities may limit the withdrawal of authorisation to a particular service.

5. Before withdrawing an authorisation, competent authorities shall consult the competent authority of another Member State where the crypto-asset service provider concerned is:

(a) a subsidiary of a crypto-asset service provider authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;

(c) controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.

6. The EBA, ESMA and any competent authority of a host Member State may at any time request that the competent authority of the home Member State examines whether the crypto-asset service provider still complies with the conditions under which the authorisation was granted.

7. Crypto-asset service providers shall establish, implement and maintain adequate procedures ensuring the timely and orderly transfer of the clients' crypto-assets and funds to another crypto-asset service provider when an authorisation is withdrawn.

**Commented [A314]:** AM 829 the Greens/ EFA Group

<sup>38</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117)

#### Article 56a

##### *Provision of crypto-asset services at the exclusive initiative of the client.*

1. *Whereas client established or situated in the Union initiates at its own exclusive initiative the provision of a crypto-asset service [or activity] by a third-country firm, the requirement for authorisation under Article 53 shall not apply to the provision of that service [or activity] by the third country firm to that person including a relationship specifically relating to the provision of that service or activity.*

*Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, regardless of the means of communication used for solicitation, promotion or advertising in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client.*

*The presumption of the second subparagraph shall apply regardless of any contractual clause or disclaimer purporting to state, for example, that the third country firm will be deemed to respond to the exclusive initiative of the client.*

2. *An initiative by a client as referred to in paragraph 1 shall not entitle the third-country firm to market new categories of crypto-asset services.*

**Commented [A315]:** AM 836 Heinäluoma et al. / AM 837 Kaili / AM 838 Yon-Courtin et al. /

#### Article 57

##### **Register of crypto-asset service providers**

1. ESMA shall establish a register of all crypto-asset service providers. That register shall be publicly available on its website and shall be updated on a regular basis.
2. The register referred to in paragraph 1 shall contain the following data:
  - (a) the name, legal form and the legal entity identifier and the branches of the crypto-asset service provider;
  - (b) the commercial name, physical address, *email address and telephone number of the crypto-asset service provider* and website of the crypto-asset service provider or the trading platform for crypto-assets operated by the crypto-asset service provider;
  - (c) the name and address of the competent authority which granted authorisation and its contact details; *including an email address as well as telephone number towards the single-point of contact in charge of questions and problems around crypto asset service providers.*
  - (d) the list of crypto-asset services for which the crypto-asset service provider is authorised;
  - (e) the list of Member States in which the crypto-asset service provider has notified its intention to provide crypto-asset services in accordance with Article 58;
  - (f) any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the relevant Union or national law.

**Commented [A316]:** AM 840 Heinäluoma et al.

**Commented [A317]:** AM 841 Heinäluoma



3. Any withdrawal of an authorisation of a crypto-asset service provider in accordance with Article 56 shall remain published in the register for five years.

#### *Article 58*

##### **Cross-border provision of crypto-asset services**

1. Crypto-asset service providers that intend to provide crypto-asset services in more than one Member State, shall submit the following information to the competent authority designated as a single point of contact in accordance with Article 81.
  - (a) a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services;
  - (b) the starting date of the intended provision of the crypto-asset services;
  - (c) a list of all other activities provided by the crypto-asset service provider not covered by this Regulation.
2. The single point of contact of the Member State where authorisation was granted shall, within 10 working days of receipt of the information referred to in paragraph 1 communicate that information to the competent authorities of the host Member States, to ESMA and to the EBA. ESMA shall register that information in the register referred to in Article 57.
3. The single point of contact of the Member State which granted authorisation shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.
4. Crypto-asset service providers may start to provide crypto-asset services in a Member State other than their home Member State from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after having submitted the information referred to in paragraph 1.

## **Chapter 2: Obligation for all crypto-asset service providers**

#### *Article 59*

##### **Obligation to act honestly, fairly and professionally in the best interest of clients and information to clients**

1. Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.
2. Crypto-asset service providers shall provide their clients with fair, clear and not misleading information, in particular in marketing communications, which shall be identified as such. Crypto-asset service providers shall not, deliberately or negligently, mislead a client in relation to the real or perceived advantages of any crypto-assets.
3. Crypto-asset service providers shall warn clients of risks associated with purchasing crypto-assets.
4. Crypto-asset service providers shall make their pricing policies publicly available, by online posting with a prominent place on their website.

- 4a. *Crypto-asset service providers shall make information related to the environmental and climate-related impact of each crypto-assets, in relation to which they offer services, publicly available in a prominent place on their website, including whether they have been mined in compliance with the EU sustainable finance taxonomy*

**Commented [OPC318]:** Rapporteur's suggestion for compromise 03.03.2022

#### Article 60

##### Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:
  - (a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;
  - (b) one quarter of the fixed overheads of the preceding year, reviewed annually;
2. The prudential safeguards referred to in paragraph 1 shall take any of the following forms:
  - (a) own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;
  - (b) an insurance policy covering the territories of the Union where crypto-asset services are actively provided or a comparable guarantee.
3. Crypto-asset service providers that have not been in business for one year from the date on which they started providing services shall use, for the calculation referred to in paragraph 1, point (b), the projected fixed overheads included in their projections for the first 12 months' of service provision, as submitted with their application for authorisation.
4. The insurance policy referred to in paragraph 2 shall *be disclosed to the public through the crypto asset service provider's website and shall* have at least all of the following characteristics:
  - (a) it has an initial term of no less than one year;
  - (b) the notice period for its cancellation is at least 90 days;
  - (c) it is taken out from an undertaking authorised to provide insurance, in accordance with Union law or national law;
  - (d) it is provided by a third-party entity.
5. The insurance policy referred to in paragraph 2, point (b) shall include, coverage against the risk of:
  - (a) loss of documents;
  - (b) misrepresentations or misleading statements made;
  - (c) acts, errors or omissions resulting in a breach of:
    - i) legal and regulatory obligations;

**Commented [A319]:** as requested by S&D (AM859)

- ii) the duty to act honestly, fairly and professionally towards clients;
  - iii) obligations of confidentiality;
  - (d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;
  - (e) losses arising from business disruption or system failures;
  - (f) where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds.
6. For the purposes of paragraph 1 point (b), crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:
- (a) staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the crypto-asset service providers in the relevant year;
  - (b) employees', directors' and partners' shares in profits;
  - (c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
  - (d) non-recurring expenses from non-ordinary activities.

#### Article 61

##### Organisational requirements

1. Members of the management body of crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties **and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism.** They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions.
2. Natural persons who either own, directly or indirectly, more than ~~20%~~ ~~10%~~ **5%** of the crypto-asset service provider's share capital or voting rights, or who exercise, by any other means, a power of control over the said crypto-asset service provider shall provide evidence that they have the necessary ~~good repute and competence~~ **and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism.**
3. None of the persons referred to in paragraphs 1 or 2 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes **or for misconduct or fraud in the management of a business.**
- 3b. **Crypto-asset service providers shall establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of crypto-asset service provider**

Commented [A320]: AM 867 Greens/ EFA Group

Commented [A321]: AM 870 Heinäluoma et al.

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Commented [A325]: AM 874 Greens/EFA Group

4. Crypto-asset service providers shall employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, the nature and range of crypto-asset services provided.
5. The management body shall assess and periodically review the effectiveness of the policies arrangements and procedures put in place to comply with the obligations set out in Chapters 2 and 3 of this Title and take appropriate measures to address any deficiencies.
6. Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.<sup>39</sup>
  - (5) They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council<sup>40</sup> aimed at ensuring, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.
7. Crypto-asset service providers shall have ~~internal control mechanisms, systems and effective procedures for risk assessment, including effective control and safeguard arrangements for managing ICT systems~~ in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council<sup>41</sup> **as well as effective procedures for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council.** They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies.
  - (6) Crypto-asset service providers shall have systems and procedures to safeguard the security, integrity and confidentiality of information in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.<sup>42</sup>
8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, orders and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to perform the enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all

Commented [A326]: AM 875 Kaili / AM 876 Heinälouma et al.

<sup>39</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

<sup>40</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

<sup>41</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

<sup>42</sup> Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

obligations including those with respect to clients or potential clients and to the integrity of the market.

9. Crypto-asset service providers shall have in place systems, procedures and arrangements to monitor and detect market abuse as referred in Title VI. They shall immediately report to their competent authority any suspicion that there may exist circumstances that indicate that any market abuse has been committed, is being committed or is likely to be committed.

**9a. *Crypto-asset service providers shall have in place systems, procedures and arrangements to prevent and detect money laundering and terrorist financing in accordance with Directive (EU) 2015/849 on the prevention of the use of financial system for the purposes of money laundering or terrorist financing.***

**Commented [A327]:** AM 880 Ferber / AM 881 Berger

**9b. *Crypto-asset service providers which transfer crypto-assets for payment purposes must have internal control mechanisms and effective procedures for full traceability of all crypto-asset transfers within the EEA, and of transfers of crypto-assets from the EEA to other regions and from others regions to the EEA, in accordance with the Regulation ((EU) 847/2015).***

**Commented [A328]:** AM 12 Rapporteur

**9c. ~~Crypto-asset providers shall not provide services related in any way, shape, or form to crypto-assets that do not meet the environmental sustainability criteria in accordance with Article 3a. In particular, they shall not facilitate the purchase or trading of such crypto-assets and shall not offer custody services for such crypto-assets.~~**

**Commented [A329]:** AM 884 Greens/ EFA Group

**Commented [A330]:** deleted as requested by ECR and for consistency, as there is no Art 3a

#### **Article 61a.**

##### **Know-your-customer policy**

1. All crypto-assets service providers shall have in place internal control mechanisms and effective procedures for the prevention, detection and investigation of money laundering and terrorist financing and other criminal activities, in accordance with ~~Directive (EU) 2015/849~~ [the Funds Transfer Regulation].

*They shall establish, implement and apply adequate customer due diligence procedures by identifying and verifying client identity on the basis of documents, data or information obtained from a reliable and independent source and by identifying the identity of the beneficial owner and taking reasonable measures to verify that person's identity.*

**Commented [A331]:** as requested by RENEW

2. The internal control mechanisms and procedures referred to in paragraph 1 shall provide for enhanced due diligence measures for customers that wish to transfer crypto-assets to or from unhosted wallets.
3. Crypto-asset service providers shall not have any operation or any controlled entities in a third country which is listed as a high-risk third country having strategic deficiencies in its national regime on antimoney laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council or in a third country which is listed in Annex I or Annex II of the EU list of noncooperative jurisdictions for tax purposes, or be controlled by an entity established in any of those jurisdictions.

~~4. Crypto-asset service providers transferring crypto-assets shall have internal control mechanisms and effective procedures in place to ensure the full traceability of all transfers of crypto-assets, which equal or exceed EUR 1 000, and in particular to ensure they comply with the following obligations:~~

- ~~(a) obtain and hold required and accurate information on the originator and the beneficiary and transmit this information to the crypto-service provider or financial institution of the beneficiary;~~
- ~~(b) make the information available to the competent authorities upon request;~~
- ~~(c) monitor the availability of information;~~
- ~~(d) take freezing actions, and prohibit transactions with persons and entities included in the list of persons and entities subject to sanctions or any transfers towards a crypto-assets service provider included in the EU Register of noncompliant crypto-asset service providers referred to in Article 61b.~~

~~For the purpose of point (a), the required information shall include:~~

- ~~(i) the originator's name;~~
- ~~(ii) originator's account number where such an account is used to process the transaction;~~
- ~~(iii) the originator's physical address, or national identity number, or customer identification number that uniquely identifies the originator to the ordering institution, or date and place of birth;~~
- ~~(iv) beneficiary's name;~~
- ~~(v) beneficiary account number where such an account is used to process the transaction;~~
- ~~(vi) date of the transaction and amount transferred.~~

~~Where crypto-asset service providers cannot obtain the information required in accordance with the paragraph above, they shall refuse to process the transaction.~~

Commented [KK332]: This will be covered by the FTR.

5. Crypto-assets service providers shall without delay immediately report to the competent authorities any reasonable suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing or other criminal activity, and provide the competent authority directly, at its request, with all necessary information.

Commented [A333]: AM 885 Greens/ EFA Group

#### Article 61b

##### ESMA Register of non-compliant crypto-assets service providers

For the purpose of Article 61a, point (d) of paragraph 3, ESMA shall identify crypto-asset service providers operating within and outside the EU which do not comply with EU or international standards for AML/CTF and tax purposes or do not at all times cooperate with EU law enforcement authorities and which pose significant threats to the financial system of the Union and the proper functioning of the internal market.

*ESMA shall set up and maintain a public register of 'non-compliant crypto-assets service providers' and update the register on a regular basis. In order to identify non-compliant crypto-asset service providers, ESMA shall take into account the following indicators:*

- (a) *the crypto-asset service provider has strong deficiencies in relation to customer due diligence procedures and only requires its clients minimal information, such as an email address, name and a phone number;*
- (b) *the crypto-asset service provider has not a clear domiciliation in any country;*
- (c) *the crypto-asset service provider is established in a country included in the list of high risk third countries set out in the Annex to Delegated Regulation (EU) 2016/1675;*
- (d) *the crypto-asset service provider is located in a country included in the EU list of non-cooperative jurisdictions for tax purposes;*
- ~~(e) *the crypto-asset service provider is a decentralised exchange;*~~

*When drawing up the list, ESMA shall take into account relevant evaluations, assessments or reports drawn up by international organisations with competence in the field of preventing money laundering and combating terrorist financing, law enforcement and intelligence agencies and any information provided by crypto-assets service providers.*

**Commented [KK334]:** 02 March 2022 : correction of a clerical error ; this deletion was agreed.

**Commented [A335]:** AM 886 Greens/EFA Group

#### *Article 62* **Information to competent authorities**

Crypto-asset service providers shall notify their competent authority of any changes to their management body and shall provide their competent authority with all the necessary information to assess compliance with Article 61.

#### *Article 63* **Safekeeping of clients' crypto-assets and funds**

1. Crypto-asset service providers that hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and to prevent the use of a client's crypto-assets *for their own account except with the client's express consent.*
2. Where their business models or the crypto-asset services require holding clients' funds, crypto-asset service providers shall have adequate arrangements in place to safeguard the rights of clients and prevent the use of clients' funds, as defined under Article 4(25) of Directive (EU) 2015/2366<sup>43</sup>, for their own account.

**Commented [A336]:** AM 888 Kaili

<sup>43</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (*OJL* 33, 23.12.2015, p.35)

3. Crypto-asset service providers shall, promptly place any client's funds, with ~~a central bank or~~ a credit institution **or, where the relevant eligibility criteria and conditions for opening an account are met, a central bank.**

Commented [A337]: AM 891 Heinäluoma / AM 892 Berger

(7) Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds held with a central bank or a credit institution **or, where the relevant eligibility criteria and conditions for opening an account are met, with a central bank,** are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

Commented [A338]: AM 893 Berger

4. Crypto-asset service providers may themselves, or through a third party, provide payment services related to the crypto-asset service they offer, provided that the crypto-asset service provider itself, or the third-party, is a payment institution as defined in Article 4, point (4), of Directive (EU) 2015/2366.
5. Paragraphs 2 and 3 of this Article shall not apply to crypto-asset service providers that are electronic money institutions as defined in Article 2, point 1 of Directive 2009/110/EC or payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366.

#### Article 64

##### Complaint handling procedure

1. Crypto-asset service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.
2. Clients shall be able to file complaints with crypto-asset service providers free of charge.
3. Crypto-asset service providers shall develop and make available to clients a template for complaints and shall keep a record of all complaints received and any measures taken in response thereof.
4. Crypto-assets service providers shall investigate all complaints in a ~~timely and~~ fair manner, **and within 3 working days after reception of the complaint. The crypto asset service provider shall notify a reference number of complaint to the client** and communicate the outcome of such investigations to their clients within a ~~reasonable~~ period of time **not going beyond 25 working days.**

Commented [A339]: AM 894 Heinäluoma et al.

#### Article 65

##### Prevention, identification, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall maintain and operate an effective policy to prevent, identify, manage and disclose conflicts of interest between themselves and:
- (a) their shareholders or any person directly or indirectly linked to them by control;
  - (b) their managers and employees,
  - (c) their clients, or between one client and another client.
2. Crypto-asset service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.

Crypto-asset service providers shall make such disclosures on their website in a prominent place.



3. The disclosure referred to in paragraph 2 shall be sufficiently precise, taking into account the nature of each client and to enable each client to take an informed decision about the service in the context of which the conflicts of interest arises.
4. Crypto-asset service providers shall assess and at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

*Article 66*

**Outsourcing**

1. Crypto-asset service providers, that rely on third parties for the performance of operational functions, take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of their obligations under this Title and shall ensure at all times that all the following conditions are complied with:
  - (a) outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;
  - (b) outsourcing does not alter the relationship between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service providers towards their clients;
  - (c) outsourcing does not change the conditions for the authorisation of the crypto-asset service providers;
  - (d) third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions by those competent authorities, including on-site access to acquire any relevant information needed to fulfil those functions;
  - (e) crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
  - (f) crypto-asset service providers have direct access to the relevant information of the outsourced services;
  - (g) crypto-asset service providers ensure that third parties involved in the outsourcing meet the standards laid down in the relevant data protection law which would apply if the third parties were established in the Union.

For the purposes of point (g), crypto-asset service providers are responsible for ensuring that the standards laid down in the relevant data protection legislation are set out in the contract referred to in paragraph 3.

2. Crypto-asset service providers shall have a policy on their outsourcing, including on contingency plans and exit strategies.
3. Crypto-asset service providers shall enter into a written agreement with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations of both the crypto-asset service providers and of the third parties concerned, and shall allow the crypto-asset service providers concerned to terminate that agreement.

4. Crypto-asset service providers and third parties shall, upon request, make available to the competent authorities and the relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.

#### **Article 66a**

##### **Orderly wind-down of providers**

*Crypto-asset service providers carrying out one of the services referred to in Articles 67 to 71 shall have in place a plan that is appropriate to support an orderly wind-down of their activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers or by any-third party entities. That plan shall demonstrate the ability of the crypto-asset service provider to carry out an orderly wind-down without causing undue economic harm to its clients or to the stability of the markets of the reserve assets.*

**Commented [A340]:** AM 13 Rapporteur and AM 904 Ferber

### **Chapter 3: Obligations for the provision of specific crypto-asset services**

#### *Article 67*

##### **Custody and administration of crypto-assets on behalf of third parties**

1. Crypto-asset service providers that are authorised for the custody and administration on behalf of third parties shall enter into an agreement with their clients to specify their duties and their responsibilities. Such agreement shall include at least all the following:
  - (a) the identity of the parties to the agreement;
  - (b) the nature of the service provided and a description of that service;
  - (c) the means of communication between the crypto-asset service provider and the client, including the client's authentication system;
  - (d) a description of the security systems used by the crypto-assets service provider;
  - (e) fees applied by the crypto-asset service provider;
  - (f) the law applicable to the agreement.
2. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. Crypto-asset service providers shall record as soon as possible, in that register any movements following instructions from their clients. Their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.
3. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall establish a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets, such as cryptographic keys.

Those rules and procedures shall ensure that the crypto-asset service provider cannot lose clients' crypto-assets or the rights related to those assets due to frauds, cyber threats or negligence.

4. Where applicable, crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register as soon as possible.

**4a. In the case of forks or others changes to the underlying distributed ledger technology, or any other event likely to create or modify the client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the event's occurrence by such change, except when a valid agreement signed with the custodian pursuant to paragraph 1 prior to the event expressly provides otherwise.**

Commented [A341]: AM 908 Kaili

5. Crypto-asset providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients, at least once every three months and at each request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in a durable medium. The statement of position shall mention the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients as soon as possible with any information about operations on crypto-assets that require a response from those clients.

6. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall ensure that **necessary procedures are in place to return** crypto-assets held on behalf of their clients or the means of access ~~to those crypto-assets are returned~~ as soon as possible to those clients. **When it is impossible to return the crypto-asset or the control over the means of access of those crypto-assets and except in the case of events not directly or indirectly attributable to the crypto-assets services provider, the crypto-assets custodian shall compensate its client.**

Commented [A342]: AM 909 Kaili

7. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall segregate holdings **of crypto-assets** on behalf of their clients from their own holdings **and ensure that the means of access to the crypto assets from their clients are clearly identified as such.** They shall ensure that, on the DLT, their clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

Commented [A343]: AM 910 Kaili

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall ~~be liable~~ **not restrict the liability** to their clients for **the** loss of crypto-assets **or of the means of access to the crypto-assets as a result from** ~~as a result from~~ **an operational incident associate with the provision of the service or the operation of the service provider or , including** malfunction or hacks **that are attributed to the provision of the relevant service and the operation of the service provider. The liability of the crypto-asset service provider shall be** up to the market value of the ~~crypto-assets~~ **crypto-asset** lost.

Commented [A344]: EM 912 Kaili / AM 913 Greens/ EFA Group

Article 68

**Operation of a trading platform for crypto-assets**

1. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall lay down operating rules for the trading platform. These operating rules shall at least:
  - (a) set the requirements, due diligence and approval processes that are applied before admitting crypto-assets to the trading platform;
  - (b) define exclusion categories, if any, which are the types of crypto-assets that will not be admitted to trading on the trading platform, if any.
  - (c) set out the policies, procedures and the level of fees, if any, for the admission of trading of crypto-assets to the trading platform;
  - (d) set objective and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;
  - (e) set requirements to ensure fair and orderly trading;
  - (f) set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;
  - (g) set conditions under which trading of crypto-assets can be suspended;
  - (h) set procedures to ensure efficient settlement of both crypto-asset transactions and fiat currency transactions.
  - (ha) **(i) set transparent and non-discriminatory rules, based on objective criteria, governing access to its facility.**

For the purposes of point (a), the operating rules shall clearly state that a crypto-asset shall not be admitted to trading on the trading platform, where a crypto-asset white paper has **not been published unless such a crypto-asset benefits from the exemption set out in Articles 4(2), or where the crypto asset provider is not connected to an open-real name bank account.**

Before admitting a crypto-asset to trading, crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that the crypto-asset complies the operating rules of the trading platform and assess the quality of the crypto-asset concerned. When assessing the quality of a crypto-asset, the trading platform shall take into account the experience, track record and reputation of the issuer and its development team. The trading platform shall also assess the quality of the crypto-assets benefiting from the exemption set out in Articles 4(2).

The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of crypto-assets which have inbuilt anonymisation function unless the holders of the crypto-assets and their transaction history can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets or by competent authorities.

2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States **or and in another language that is customary in the sphere of finance English.** Those operating rules shall be made public on the website of the crypto-asset service provider concerned.

**Commented [A345]:** AM 916 Kaili

**Commented [A346]:** AM 917 Heinäluoma

**Commented [A347]:** AM 919 Ferber / AM 920 Jamet  
Am 921 Heinäluoma

3. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall not deal on own account on the trading platform for crypto-assets they operate, even when they are authorised for the exchange of crypto-assets for fiat currency or for the exchange of crypto-assets for other crypto-assets.
4. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall have in place effective systems, procedures and arrangements to ensure that their trading systems:
  - (a) are resilient;
  - (b) have sufficient capacity to ensure orderly trading under conditions of severe market stress;
  - (c) are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;
  - (d) are fully tested to ensure that conditions under points (a), (b) and (c) are met;
  - (e) are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system.
5. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through the systems of the trading platform for crypto-assets. The crypto-asset service providers concerned shall make that information available to the public during the trading hours on a continuous basis.
6. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public the price, volume and time of the transactions executed in respect of crypto-assets traded on their trading platforms. They shall make details of all such transactions public as close to real-time as is technically possible.
7. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make the information published in accordance with paragraphs 5 and 6 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine readable format and remain published for at least 2 years.
8. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ~~complete~~ **initiate** the final settlement of a crypto-asset transaction on the DLT, **in the case of crypto-asset deposit or withdrawal activities only, the same date as the transactions has been within 72hrs of the transaction being executed on the trading platform, or in the case of transactions settled outside the DLT, on the closing day of the various related transactions**.
9. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

**Commented [A348]:** AM 924 Kovarik / AM 925 Hoogeveen / AM 926 Rinaldi et al.

**Commented [A349]:** Contradiction with AM 925

10. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall maintain resources and have back-up facilities in place to be capable of reporting to their competent authority at all times.

10a. *Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets whose annual revenue is above a threshold set by ESMA shall report complete and accurate details of transactions in crypto-assets traded on its platform to the competent authority as quickly as possible, and no later than the close of the following working day.*

*Crypto-asset service providers that are authorised as offerors for the operation of a trading platform and of certain crypto-assets, shall ensure compliance with publication and audit requirements as laid down in this Regulation by having a dedicated page on their website and/or app on the crypto-asset they offer.*

Commented [A350]: AM 927 Heinäluoma et al. / AM 928 Kaili

Commented [A351]: AM 933 Kovarik et al.

10b. *Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets whose annual revenue is below the threshold mentioned in paragraph 12 or 11 shall keep at the disposal of the competent authority, for at least five years, complete and accurate details of transactions in crypto-assets traded on its platform.*

Commented [A352]: AM 929 Heinäluoma et al. / AM 930 Kaili

10c. *Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in crypto-assets which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported or kept at the disposal of the competent authority in accordance with paragraphs 11 and 12.*

Commented [A353]: AM 931 Heinäluoma et al. / AM 932 Kaili

#### Article 69

#### Exchange of crypto-assets against fiat currency or exchange of crypto-assets against other crypto-assets

1. Crypto-asset providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they accept to transact with and the conditions that shall be met by clients.
2. Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets they propose for exchange against fiat currency or other crypto-assets.
3. Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall execute the clients' orders at the prices displayed at the time of their receipt.
4. Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall publish the details of the orders and the transactions concluded by them, including transaction volumes and prices.

Article 70

**Execution of orders for crypto-assets on behalf of third parties**

1. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall take all necessary steps to obtain, when executing orders, the best possible result for their clients taking into account the best execution factors of price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order, unless the crypto-asset service provider concerned executes orders for crypto-assets following specific instructions given by its clients.
2. To ensure compliance with paragraph 2, a crypto-asset service provider that are authorised to execute orders for crypto-assets on behalf of third parties shall establish and implement effective execution arrangements. In particular, they shall establish and implement an order execution policy to allow them to obtain, for their clients' orders, the best possible result. In particular, this order execution policy shall provide for the prompt, fair and expeditious execution of clients' orders and prevent the misuse by the crypto-asset service providers' employees of any information relating to clients' orders.
3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it.

*That information shall explain clearly, in sufficient detail and in way that can be easily understood by clients, how orders will be executed by the crypto-asset service provider for the client. Crypto-asset service providers shall obtain the prior and informed consent of their clients to the order execution policy.*

*Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.*

*Where the crypto-asset service provider consider, on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the crypto-asset service provider shall warn the client or potential client. That warning may be provided in a standardised format. Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for them. That warning may be provided in a standardised format.*

**Commented [A354]:** AM 940 Greens/EGA Group

Article 71

**Placing of crypto-assets**

1. Crypto-asset service providers that are authorised for placing crypto-assets shall communicate the following information to the issuer or any third party acting on their behalf, before concluding a contract with them:
  - (a) the type of placement considered, including whether a minimum amount of purchase is guaranteed or not;
  - (b) an indication of the amount of transaction fees associated with the service for the proposed operation;

- (c) the considered timing, process and price for the proposed operation;
- (d) information about the targeted purchasers.

Crypto-asset service providers that are authorised for placing crypto-assets shall, before placing the crypto-assets concerned shall obtain the agreement of the issuers or any third party acting on their behalf as regards points (a) to (d).

2. The rules on conflicts of interest referred to in Article 65 shall have specific and adequate procedures in place to prevent, monitor, manage and potentially disclose any conflicts of interest arising from the following situations:
  - (a) the crypto-asset service providers place the crypto-assets with their own clients;
  - (b) the proposed price for placing crypto-assets has been overestimated or underestimated.

#### Article 72

##### Reception and transmission of orders on behalf of third parties

1. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall establish and implement procedures and arrangements which provide for the prompt and proper transmission of client's orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.
2. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not receive any remuneration, discount or non-monetary benefit for routing clients' orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.
3. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not misuse information relating to pending clients' orders, and shall take all reasonable steps to prevent the misuse of such information by any of their employees.

#### Article 73

##### Advice on crypto-assets

1. **Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall assess the compatibility, suitability and appropriateness of such crypto-assets and services with the needs, requirements, preferences and specific situation of the clients client or potential client and recommend provide them only when this is in the interest of the clients. they are suitable for the client or potential client and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.**
  - 1a. **Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto 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.**

**Commented [A355]:** AM 948 Greens/EFA Group also reflecting AM 949 Lalucq et al and AM 950 Left group.

**Commented [A356]:** AM 948 Green/EFA Group

**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:**

- (a) **whether or not 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, 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 may pay for it, also encompassing any third-party payments.*

**Commented [A357]:** AM 951 Lalucq et al. / AM 952 Heinälouma et al. / AM 953 the Left

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 experience to fulfil their obligations.

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets ~~or portfolio management of crypto-assets shall request information about~~ *obtain from the client or prospective client's knowledge of, potential client the information referred to in Article 73a (2) so as to enable the crypto-asset service provider to provide to the client or prospective client the services and experience in crypto-assets, objectives, financial situation including the that are suitable for him or her and, in particular, are in accordance with his risk tolerance and ability to bear losses and a basic understanding of risks involved in purchasing.*

*Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall warn clients that:*

*(a) due to their tradability, the value of crypto-assets may fluctuate;*

*(b) the crypto-assets may be subject to full or partial losses;*

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

*(d) the crypto-assets may not be liquid;*

*(e) where applicable, public protection of schemes protecting the value of crypto assets and public compensation schemes do not exist and crypto-assets are not covered by public investor compensation or deposit guarantee schemes.*

**Commented [A358]:** AM 954 Greens/EFA Group but also reflect AM 955 Lalucq et al. / AM 956 the Left and also reflecting AM 957

4. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall establish, maintain and implement policies and procedures to enable them to collect and assess all information necessary to conduct this assessment for each client. They shall take reasonable steps to ensure that the information collected about their clients or prospective clients is reliable.

5. Where clients do not provide the information required pursuant to paragraph 4, or where crypto-asset service providers that are authorised to provide advice on crypto-assets consider, on the basis of the information received under paragraph 4, that the prospective clients or clients have insufficient knowledge, crypto-asset service providers that are authorised to provide advice on crypto-assets shall inform those clients or prospective clients that the crypto-assets or crypto-asset services may be inappropriate for them and issue them a warning on the risks associated with crypto-assets. That risk warning shall clearly state the risk of losing the entirety of the

money invested or converted into crypto-assets. Clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider concerned.

6. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall for each client review the assessment referred to in paragraph 1 every two years after the initial assessment made in accordance with that paragraph.
7. Once the assessment referred to in paragraph 1 has been performed, crypto-asset service providers that are authorised to provide advice on crypto-assets shall provide clients with a report summarising the advice given to those clients. That report shall be made and communicated to the clients in a durable medium. That report shall, as a minimum:
  - (a) specify the clients' demands and needs;
  - (b) provide an outline of the advice given.

## Chapter 4: Acquisition of crypto-asset service providers

### Article 74

#### *Assessment of intended acquisitions of crypto-asset service providers*

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a crypto-asset service provider or to further increase, directly or indirectly, such a qualifying holding in a crypto-asset service provider so that the proportion of the voting rights or of the capital held would reach or exceed ~~10 %~~, 20 %, 30 % or 50 % or so that the crypto-asset service provider would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that crypto-asset service provider thereof in writing indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4).
2. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a crypto-asset service provider (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below ~~10 %~~, 20 %, 30 % or 50 % or so that the crypto-asset service provider would cease to be that person's subsidiary.
3. Competent authorities shall, promptly and in any event within two working days following receipt of the notification required under paragraph 1 acknowledge receipt thereof in writing to the proposed acquirer.
4. Competent authorities shall assess the intended acquisition referred to in paragraph 1 and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4), within sixty working days from the date of the written acknowledgement of receipt referred to in paragraph 3.

When acknowledging receipt of the notification, competent authorities shall inform the persons referred to in paragraph 1 of the date on which the assessment will be finalised.

Commented [A359]: AM 964 Rinaldi et al.

Commented [A360]: AM 965 Rinaldi et al.

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

Competent authorities shall halt the assessment referred to in paragraph 4, first subparagraph, until they have received the additional information referred to in the first subparagraph of this paragraph, but for no longer than 20 working days. Any further requests by competent authorities for additional information or for clarification of the information received shall not result in an additional interruption of the assessment.

Competent authority may extend the interruption referred to in the second subparagraph of this paragraph up to 30 working days where the persons referred to in paragraph 1 are situated or regulated outside the Union.

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.
7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.
8. Competent authority may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

#### *Article 75*

##### ***Content of the assessment of intended acquisitions of crypto-asset service providers***

1. When performing the assessment referred to in Article 74(4), competent authorities shall appraise the suitability of the persons referred to in Article 74(1) and the financial soundness of intended acquisition against all of the following criteria:
  - (a) the reputation of the persons referred to in Article 74(1);
  - (b) the reputation and experience of any person who will direct the business of the crypto-asset service provider as a result of the intended acquisition or disposal;
  - (c) the financial soundness of the persons referred to in Article 74(1), in particular in relation to the type of business pursued and envisaged in the crypto-asset service provider in which the acquisition is intended;
  - (d) whether the crypto-asset service provider will be able to comply and continue to comply with the provisions of this Title;
  - (e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive

(EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.

2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 74(4) is incomplete or false.
3. Member States shall not impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.
4. ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards to establish an exhaustive list of information that is necessary to carry out the assessment referred to in Article 74(4), first subparagraph and that shall be provided to the competent authorities at the time of the notification referred to in Article 74(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 74(1).

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

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

## Compromise H: TITLE VI: Prevention of Market Abuse involving crypto-assets (Articles 76 - 80)

Covering AMs 966-991, AMs fall if compromise is adopted

### Article 76

#### Scope of the rules on market abuse

The prohibitions and requirements laid down in this Title shall apply to acts carried out by any person and that concern crypto-assets that are admitted to trading on a trading platform for crypto-assets operated by an authorised crypto-asset service provider, or for which a request for admission to trading on such a trading platform has been made.

### Article 77

#### Disclosure of inside information

1. Issuers **and offerors** of crypto-assets shall inform the public as soon as possible of inside information which concerns them, in a manner that enables the public to access that information in an easy manner and to assess that information in a complete, correct and timely manner.
2. Issuers **and offerors** of crypto-assets may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:
  - (a) immediate disclosure is likely to prejudice the legitimate interests of the issuers **or offerors, as applicable**;
  - (b) delay of disclosure is not likely to mislead the public;
  - (c) the issuers **or the offerors, as applicable** are able to ensure the confidentiality of that information.

**Commented [A361]:** AM 969 Rinaldi et al. AM 970 Beck, AM 971 Kovařík et al., AM 972 ECR

**Commented [A362]:** AM 976 Rinaldi et al. AM 977 Hoogeveen, AM 978 Kovařík et al., AM 979 Beck, AM 980 ECR

**Commented [A363]:** AM 981 Kovařík et al., AM 982 Rinaldi et al, AM 983 Hoogeveen, AM 984 ECR, AM 985 Beck,

**Commented [A364]:** AM 986 Rinaldi et al, AM 987 Hoogeveen, AM 988 ECR, AM 989 Kovařík et al., AM 990 Beck,

### Article 78

#### Prohibition of insider dealing

1. No person shall use inside information about crypto-assets to acquire those crypto-assets, or to dispose of those crypto-assets, either directly or indirectly and either for his or her own account or for the account of a third party.
2. No person that possesses inside information about crypto-assets shall:
  - (a) recommend, on the basis of that inside information, that another person acquires those crypto-assets or disposes of those crypto-assets to which that information relates, or induce that person to make such an acquisition or disposal;
  - (b) recommend, on the basis of that inside information, that another person cancels or amends an order concerning those crypto-assets, or induce that person to make such a cancellation or amendment.

*Article 79*

**Prohibition of unlawful disclosure of inside information**

No person that possesses inside information shall disclose such information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

*Article 80*

**Prohibition of market manipulation**

1. No person shall engage into market manipulation which shall include any of the following activities:
  - (a) unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, entering into a transaction, placing an order to trade or any other behaviour which:
    - i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a crypto-asset;
    - ii) sets, or is likely to set, the price of one or several crypto-assets at an abnormal or artificial level.
  - (b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several crypto-assets, while employing a fictitious device or any other form of deception or contrivance;
  - (c) disseminating information through the media, including the internet ~~and social networks~~, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a crypto-asset, or is likely to secure, the price of one or several crypto-assets, at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.
2. The following behaviour shall, inter alia, be considered as market manipulation:
  - (a) securing a dominant position over the supply of or demand for a crypto-asset, which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;
  - (b) the placing of orders to a trading platform for crypto-assets, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 1(a), by:
    - i) disrupting or delaying the functioning of the trading platform for crypto-assets or engaging into any activities that are likely to have that effect;
    - ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or engaging into any activities that are likely to have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

**Commented [A365]:** deleted as requested by ECR and RENEW  
**Commented [A366]:** AM 991 Jamet

- iii) creating a false or misleading signal about the supply of, or demand for, or price of, a crypto-asset, in particular by entering orders to initiate or exacerbate a trend, or engaging into any activities that are likely to have that effect;
- (c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a crypto-asset, while having previously taken positions on that crypto-asset, and profiting subsequently from the impact of the opinions voiced on the price of that crypto-asset, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

**Compromise I: Title VII: competent Authorities, the EBA and ESMA (Articles 81-120) and Title VIII: Delegated acts and implementing acts (Article 121)**

Covering AMs 992-1005, 1007-1015, 1021, 1023, 1025, 1028, 1037-1039, 1041, 1044, 1051-1053, 1093, 1106, AMs fall if compromise is adopted

**Chapter 1: Powers of competent authorities and cooperation between competent authorities, the EBA and ESMA**

*Article 81*

**Competent authorities**

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation and shall inform the EBA and ESMA thereof.
2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one of them as a single point of contact for cross-border administrative cooperation between competent authorities as well as with the EBA and ESMA.
3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

*Article 82*

**Powers of competent authorities**

1. In order to fulfil their duties under Titles II, III, IV and V of this Regulation, **ESMA, EBA and the national** competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:
  - (a) to require crypto-asset service providers and the natural or legal persons that control them or are controlled by them, to provide information and documents; **where there are reasonable grounds for believing that the information and documents provided are not in line with this Regulation, the competent authority may require crypto-asset service providers and the natural or legal persons who control them, or who are controlled by them, to amend the information and documents or to produce new ones, within one month of the request;**
  - (b) to require members of the management body of the crypto-asset service providers to provide information; **where there are reasonable grounds for believing that the information provided is not in line with this Regulation, the competent authority may require the members of the management body of the crypto-asset service providers to amend the information and documents or to produce new ones, within one month of the request;**
  - (c) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset service for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

**Commented [A367]:** AM 993 the Greens/EFA Group

**Commented [A368]:** AM 994 Rinaldi et al.

**Commented [A369]:** AM 995 Rinaldi et al.



- (d) to prohibit the provision of crypto-asset services where they find that this Regulation has been infringed;
- (e) to disclose, or to require a crypto-asset service provider to disclose, all material information which may have an effect on the provision of the crypto-asset services in order to ensure consumer protection or the smooth operation of the market;
- (f) to make public the fact that a crypto-asset service provider is failing to comply with its obligations;
- (g) to suspend, or to require a crypto-asset service provider to suspend the provision of crypto-asset services where the competent authorities consider that the crypto-asset service provider's situation is such that the provision of the crypto-asset service would be detrimental to consumers' interests;
- (h) to transfer existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 56, subject to the agreement of the clients and the receiving crypto-asset service provider;
- (i) where there is a reason to assume that a person is providing a crypto-asset service without authorisation, to require information and documents from that person;
- (j) where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation, to require information and documents from that person;
- (k) in urgent cases, where there is a reason to assume that a person is providing crypto-asset services without authorisation, to order the immediate cessation of the activity without prior warning or imposition of a deadline;
- (l) to require issuers of crypto-assets, including asset-referenced tokens and e-money tokens, or persons asking for admission to trading on a trading platform for crypto-assets, and the persons that control them or are controlled by them, to provide information and documents;
- (m) to require members of the management body of the issuer of crypto-assets, including asset-referenced tokens and e-money tokens, or person asking for admission of such crypto-assets to trading on a trading platform for crypto-assets to provide information;
- (n) to require issuers of crypto-assets, including asset-referenced tokens and e-money tokens, to include additional information in their crypto-asset white papers, where necessary for consumer protection or financial stability;
- (o) to suspend an offer to the public of crypto-assets, including asset-referenced tokens or e-money tokens, or an admission to trading on a trading platform for crypto-assets for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;
- (p) to prohibit an offer to the public of crypto-assets, including asset-referenced tokens or e-money tokens, or an admission to trading on a trading platform for crypto-assets where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
- (q) to suspend or require a trading platform for crypto-assets to suspend trading of the crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 10 consecutive

working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

- (r) to prohibit trading of crypto-assets, including asset-referenced tokens or e-money tokens, on a trading platform for crypto-assets where they find that this Regulation has been infringed;
- (s) to make public the fact that an issuer of crypto-assets, including an issuer of asset-referenced tokens or e-money tokens, or a person asking for admission to trading on a trading platform for crypto-assets is failing to comply with its obligations;
- (t) to disclose, or to require the issuer of crypto-assets, including an issuer of asset-referenced tokens or e-money tokens, to disclose, all material information which may have an effect on the assessment of the crypto-assets offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure consumer protection or the smooth operation of the market;
- (u) to suspend or require the relevant trading platform for crypto-assets to suspend the crypto-assets, including asset-referenced tokens or e-money tokens, from trading where it considers that the issuer's situation is such that trading would be detrimental to consumers' interests;
- (v) in urgent cases, where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation or a person is issuing crypto-assets without a crypto-asset white paper notified in accordance with Article 7, to order the immediate cessation of the activity without prior warning or imposition of a deadline;
- (w) to require the temporary cessation of any practice that the competent authority considers contrary to this Regulation;
- (x) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

Supervisory and investigative powers exercised in relation to e-money token issuers are without prejudice to powers granted to relevant competent authorities under national laws transposing Directive 2009/110/EC.

2. In order to fulfil their duties under Title VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers in addition to powers referred to in paragraph 1:
  - (a) to access any document and data in any form, and to receive or take a copy thereof;
  - (b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;
  - (c) to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;
  - (d) to refer matters for criminal investigation;

- (e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 77, 78, 79 and 80;
  - (f) to request the freezing or sequestration of assets, or both;
  - (g) to impose a temporary prohibition on the exercise of professional activity;
  - (h) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer of crypto-assets or other person who has published or disseminated false or misleading information to publish a corrective statement.
3. Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in paragraphs 1 and 2.
  4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways:
    - (a) directly;
    - (b) in collaboration with other authorities;
    - (c) under their responsibility by delegation to such authorities;
    - (d) by application to the competent judicial authorities.
  5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.
  6. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

#### *Article 83*

#### **Cooperation between competent authorities**

1. Competent authorities shall cooperate with each other for the purposes of this Regulation. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Where Member States have chosen, in accordance with Article 92(1), to lay down criminal penalties for an infringement of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for infringements of this Regulation and to provide the same information to other competent authorities as well as to the EBA and ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.

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

- (a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;
  - (b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of the Member State addressed;
  - (c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.
3. Competent authorities shall, on request, without undue delay supply any information required for the purposes of this Regulation.
  4. A competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may take any of the following actions:

- (a) carry out the on-site inspection or investigation itself;
  - (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
  - (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
  - (d) share specific tasks related to supervisory activities with the other competent authorities.
5. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, ESMA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. By derogation to paragraph 5, the competent authorities may refer to the EBA in situations where a request for cooperation, in particular to exchange information, concerning an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, the EBA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1093/2010.

7. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation, and provide cross-jurisdictional assessments in the event of any disagreements.

For the purpose of the first sub-paragraph, the EBA and ESMA shall fulfil a coordination role between competent authorities and across colleges as referred to in Articles 99 and 101 with a view of building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes, especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact.

8. Where a competent authority finds that any of the requirements under this Regulation has not been met or has reason to believe that to be the case, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner.
9. ESMA, after consultation of the EBA, shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

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

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

10. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

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

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

#### Article 84

##### Cooperation with the EBA and ESMA

1. For the purpose of this Regulation, the competent authorities shall cooperate closely with ESMA in accordance with Regulation (EU) No 1095/2010 and with the EBA in accordance with Regulation (EU) No 1093/2010. They shall exchange information in order to carry out their duties under this Chapter and Chapter 2 of this Title.
2. A requesting competent authority shall inform the EBA and ESMA of any request referred to in the Article 83(4).

In the case of an on-site inspection or investigation with cross-border effect, ESMA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation. Where the on-site inspection or investigation with cross-border effects concerns an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, the EBA where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

3. The competent authorities shall without delay provide the EBA and ESMA with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 35 of Regulation (EU) No 1095/2010 respectively.
4. In order to ensure uniform conditions of application of this Article, ESMA, in close cooperation with the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and with the EBA and ESMA.

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

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

#### *Article 85*

#### **Cooperation with other authorities**

Where an issuer of crypto-assets, including asset-referenced tokens or e-money tokens, or a crypto-asset service provider engages in activities other than those covered by this Regulation, the competent authorities shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities.

#### *Article 86*

#### **Notification duties**

Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission, the EBA and ESMA by... *[please insert date 12 months after the date of entry into force]*. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

#### *Article 87*

#### **Professional secrecy**

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information is permitted to be disclosed or such disclosure is necessary for legal proceedings.
2. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authorities. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of provisions laid down by Union or national law.

#### *Article 88*

#### **Data protection**

With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679<sup>44</sup>.

With regard to the processing of personal data by the EBA and ESMA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725<sup>45</sup>.

<sup>44</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (*OJ L 119, 4.5.2016, p. 1*)

<sup>45</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies

#### *Article 89*

##### **Precautionary measures**

1. Where the competent authority of a host Member State has clear and demonstrable grounds for believing that irregularities have been committed by a crypto-asset service provider or by an issuer of crypto-assets, including asset-referenced tokens or e-money tokens, it shall notify the competent authority of the home Member State and ESMA thereof.  
  
(8) Where the irregularities concerns an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authorities of the host Member States shall also notify the EBA.
2. Where, despite the measures taken by the competent authority of the home Member State, the crypto-asset service provider or the issuer of crypto-assets persists in infringing this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State, ESMA and where appropriate the EBA, shall take all appropriate measures in order to protect consumers and shall inform the Commission, ESMA and where appropriate the EBA, thereof without undue delay.
3. Where a competent authority disagrees with any of the measures taken by another competent authority pursuant to paragraph 2 of this Article, it may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.  
  
(9) By derogation to the first subparagraph, where the measures concerns an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority may bring the matter to the attention of the EBA. The EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

#### *Article 90*

##### **Cooperation with third countries**

1. The competent authorities of Member States shall, where necessary, conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.  
  
A competent authority shall inform the EBA, ESMA and the other competent authorities where it proposes to enter into such an arrangement.
2. ESMA, in close cooperation with the EBA, shall, where possible, facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

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and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance) OJ L 295, 21.11.2018, p. 39–98

ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

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

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

3. ESMA, in close cooperation with EBA, shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Chapter 2.
4. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 87. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

#### Article 91

##### Complaint handling by competent authorities

1. Competent authorities shall set up procedures which allow clients and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to issuer of crypto-assets, including asset-referenced tokens or e-money tokens, and crypto-asset service providers' alleged infringements of this Regulation. In all cases, complaints should be accepted in written or electronic form and in an official language of the Member State in which the complaint is submitted or in a language accepted by the competent authorities of that Member State.
2. Information on the complaints procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to the EBA and ESMA. ESMA shall publish the references to the complaints procedures related sections of the websites of the competent authorities in its crypto-asset register referred to in Article 57.

## Chapter 2: administrative measures and sanctions by competent authorities

#### Article 92

##### Administrative sanctions and other administrative measures

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory powers of competent authorities under Article 82, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:
  - (a) infringements of Articles 4 to 14;
  - (b) infringements of Articles **15 to 17** and 21, Articles 23 to ~~36~~ **37** and Article 42;
  - (c) infringements of Articles 43 to 49, except Article 47;

Commented [A370]: AM 1009 Heinäluoma et al.



(d) infringements of Article 56 and Articles 58 to ~~74~~ <sup>74</sup>;

(e) infringements of Articles 76 to 80;

(f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 82(2).

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in points (a), (b), (c), (d) or (e) of that subparagraph are already subject to criminal sanctions in their national law by *[please insert date 12 months after entry into force]*. Where they so decide, Member States shall notify, in detail, to the Commission, ESMA and to EBA, the relevant parts of their criminal law.

By *[please insert date 12 months after entry into force]*, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission, the EBA and ESMA. They shall notify the Commission, ESMA and EBA without delay of any subsequent amendment thereto.

Commented [A371]: AM 1010 Heinäluoma

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and other administrative measures in relation to the infringements listed in point (a) of paragraph 1:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement in accordance with Article 82;

(b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;

(c) maximum administrative pecuniary ~~sanctions~~ <sup>finer</sup> of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;

(d) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert date of entry into force of this Regulation]*, or 3 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU<sup>46</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert date of entry into force of this Regulation]*.

Commented [A372]: AM 1011 Heinäluoma et al.

3. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and other administrative measures in relation to the infringements listed in point (b) of paragraph 1:

<sup>46</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;
  - (b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;
  - (c) maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;
  - (d) in the case of a legal person, maximum administrative pecuniary sanctions of at least 15% of the total annual turnover of that legal person according to the last available financial statements approved by the management body.
4. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and other administrative measures in relation to the infringements listed in point (c) of paragraph 1:
- (a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;
  - (b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;
  - (c) maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;
  - (d) in the case of a legal person, maximum administrative pecuniary sanctions of at least 15% of the total annual turnover of that legal person according to the last available financial statements approved by the management body.
5. Member States shall, in accordance with their national law, ensure that competent authorities have the power to impose at least the following administrative penalties and other administrative measures in relation to the infringements listed in point (d) of the first subparagraph of paragraph 1:
- (a) a public statement indicating the natural or legal person responsible for, and the nature of, the infringement;
  - (b) an order requiring the natural or legal person to cease the infringing conduct and to desist from a repetition of that conduct;
  - (c) a ban preventing any member of the management body of the legal person responsible for the infringement, or any other natural person held responsible for the infringement, from exercising management functions in such undertakings;
  - (d) maximum administrative fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if it exceeds the maximum amounts set out in point (e);
  - (e) in the case of a legal person, maximum administrative fines of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... *[please insert date of entry into force of this Regulation]* or of up to 5% of the total annual turnover of that legal person according to the last available financial statements approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements

in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(f) in the case of a natural person, maximum administrative fines of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... *[please insert date of entry into force of this Regulation]*.

6. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and to take at least the following administrative measures in the event of the infringements referred to in point (e) of the first subparagraph of paragraph 1:

(a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of a crypto-asset service provider;

(e) a temporary ban of any member of the management body of the crypto-asset service provider or any other natural person, who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(f) in the event of repeated infringements of Articles 78, 79 or 80, a permanent ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(g) a temporary ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary sanctions of at least 3 times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert date of entry into force of this Regulation]*;

(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least EUR 15 000 000 or 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert date of entry into force of this Regulation]*. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual

turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

7. Member States may provide that competent authorities have powers in addition to those referred to in paragraphs 2 to 6 and may provide for higher levels of sanctions than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

#### *Article 93*

##### **Exercise of supervisory powers and powers to impose penalties**

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed in accordance with Article 92, shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances, including, where appropriate:
  - (a) the gravity and the duration of the infringement;
  - (b) the degree of responsibility of the natural or legal person responsible for the infringement;
  - (c) the financial strength of the natural or legal person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
  - (d) the importance of profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as those can be determined;
  - (e) the losses for third parties caused by the infringement, insofar as those can be determined;
  - (f) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
  - (g) previous infringements by the natural or legal person responsible for the infringement;
  - (h) measures taken by the person responsible for the infringement to prevent its repetition;
  - (i) the impact of the infringement on consumers or investors' interests.
2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 92, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative penalties and other administrative measures that they impose, are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

#### *Article 94*

##### **Right of appeal**

Member States shall ensure that any decision taken under this Regulation is 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 a crypto-asset service provider which provides all the information required, no decision is taken within six months of its submission.

***Member States shall provide that one or more of the following bodies, as determined by national law, also may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that this Regulation are applied:***

- a. public bodies or their representatives;***
- b. consumer organisations having a legitimate interest in protecting consumers;***
- c. professional organisations having a legitimate interest in acting to protect their members.***

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#### *Article 95* **Publication of decisions**

1. A decision imposing administrative penalties and other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the natural or legal person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.
2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation, competent authorities shall take one of the following actions:
  - (a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;
  - (b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;
  - (c) not publish the decision to impose a penalty or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
    - i) that the stability of financial markets is not jeopardised;
    - ii) the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.
- (10) In the case of a decision to publish a penalty or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.
3. Where the decision to impose a penalty or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal.

Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article remains on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

#### *Article 96*

##### **Reporting of penalties and administrative measures to ESMA and EBA**

1. The competent authority shall, on an annual basis, provide ESMA and EBA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 92. ESMA shall publish that information in an annual report.  
  
(5) Where Member States have chosen, in accordance with Article 92(1), to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide the EBA and ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.
2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.
3. Competent authorities shall inform the EBA and ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to the EBA and ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to the EBA and ESMA, and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

#### *Article 97*

##### **Reporting of breaches and protection of reporting persons**

Directive (EU) 2019/1937<sup>47</sup> shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

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<sup>47</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law OJ L 305, 26.11.2019, p. 17.

### Chapter 3: Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

#### Article 98

##### *Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens*

1. Where an asset-referenced token has been classified as significant in accordance with Article 39 or Article 40, the issuer of such asset-referenced tokens shall carry out their activities under the supervision of the EBA.  
The EBA shall exercise the powers of competent authorities conferred by Articles 21, 37 and 38 as regards issuers of significant asset-referenced tokens.
2. Where an issuer of significant asset-referenced tokens provide crypto-asset services or issue crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State.
3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that issuers of significant asset-referenced tokens comply with the requirements under Title III.
4. Where an e-money token has been classified as significant in accordance with Articles 50 or 51, the EBA shall be responsible of the compliance of the issuer of such asset-significant e-money tokens with the requirements laid down in Article 52.

#### Article 99

##### *Colleges for issuers of significant asset-referenced tokens and significant e-money tokens*

1. Within 30 calendar days of a decision to classify an asset-referenced token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced tokens to facilitate the exercise of its supervisory tasks under this Regulation.  
**1a. If the issuer of a significant asset-referenced token is also the issuer of a significant e-money token, there shall only be single supervisory college to supervise the entire entity.**
2. The college shall consist of:
  - (a) the EBA, as the chair of the college;
  - (b) ESMA;
  - (c) the competent authority of the home Member State where the issuer of significant asset-referenced tokens is established;
  - (d) the competent authorities of the most relevant credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;
  - (e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading;

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(f) where applicable, the competent authorities of the most relevant crypto-asset service providers in charge of ensuring the liquidity of the significant asset-referenced tokens in accordance with the first paragraph of Article 35(4);

(g) where applicable, the competent authorities of the entities ensuring the functions as referred to in Article 30(5), point (h);

(h) where applicable, the competent authorities of the most relevant crypto-asset service providers providing the crypto-asset service referred to in Article 3(1) point (10) in relation with the significant asset-referenced tokens;

(i) the ECB;

(j) where the issuer of significant asset-referenced tokens is established in a Member State the currency of which is not euro, or where a currency that is not euro is included in the reserve assets, the national central bank of that Member State;

(k) relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 100;

(b) the exchange of information in accordance with Article 107;

(c) agreement on the voluntary entrustment of tasks among its members, including delegation of tasks under Article 120;

(d) the coordination of supervisory examination programmes based on the risk assessment carried out by the issuer of significant asset-referenced tokens in accordance with Article 30(9).

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.

5. The establishment and functioning of the college shall be based on a written agreement between all its members.

The agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on:

(a) voting procedures as referred in Article 100(4);

(b) the procedures for setting the agenda of college meetings;

(c) the frequency of the college meetings;

(d) the format and scope of the information to be provided by the EBA to the college members, especially with regard to the information to the risk assessment as referred to in Article 30(9);



- (e) the appropriate minimum timeframes for the assessment of the relevant documentation by the college members;
- (f) the modalities of communication between college members.

The agreement may also determine tasks to be entrusted to the EBA or another member of the college.

6. In order to ensure the consistent and coherent functioning of colleges, the EBA shall, in cooperation with ESMA and the European System of Central Banks, develop draft regulatory standards specifying the conditions under which the entities referred to in points (d) to (h) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

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

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

#### *Article 100*

#### ***Non-binding opinions of the colleges for issuers of significant asset-referenced tokens***

1. The college for issuers of significant asset-referenced tokens may issue a non-binding opinion on the following:
  - (a) the supervisory reassessment as referred to in Article 98(3);
  - (b) any decision to require an issuer of significant asset-referenced tokens to hold a higher amount of own funds or to permit such an issuer to hold a lower amount of own funds in accordance with Article 41(4);
  - (c) any update of the orderly wind-down plan of an issuer of significant asset-referenced tokens pursuant to Article 42;
  - (d) any change to the issuer of significant asset-referenced tokens' business model pursuant to Article 21(1);
  - (e) a draft amended crypto-asset white paper in accordance with Article 21(2);
  - (f) any measures envisaged in accordance with Article 21(3);
  - (g) any envisaged supervisory measures pursuant to Article 112;
  - (h) any envisaged agreement of exchange of information with a third-country supervisory authority with Article 108;
  - (i) any delegation of supervisory tasks from the EBA to a competent authority pursuant to Article 120;
  - (j) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in Article 99(2), points (d) to (h).
2. Where the college issues an opinion in accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the EBA or the competent authorities.

3. The EBA shall facilitate the adoption of the opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No 1093/2010.
4. A majority opinion of the college shall be based on the basis of a simple majority of its members.

For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member, shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote.

Where the ECB is a member of the college pursuant to Article 99(2), point (i), it shall have two votes.

Supervisory authorities of third countries referred to in Article 99(2), point (k), shall have no voting right on the opinion of the college.

5. The EBA and competent authorities shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of the envisaged action or supervisory measure envisaged on an issuer of significant asset-referenced tokens or on the entities and crypto-asset service providers referred to in points (d) to (h) of Article 99(2). Where the EBA or a competent authority does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the envisaged action or supervisory measure envisaged, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

#### *Article 101*

##### *College for issuers of significant electronic money tokens*

1. Within 30 calendar days of a decision to classify an e-money token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant e-money tokens to facilitate the exercise of supervisory tasks under this Regulation.

**1a. *If the issuer of a significant e-money token is also the issuer of a significant asset-referenced token, there shall only be a single supervisory college to supervise the entire entity.***

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2. The college shall consist of:
  - (a) the EBA, as the Chair;
  - (b) the competent authority of the home Member State where the issuer of e-money token has been authorised either as a credit institution or as an electronic money institution;
  - (c) ESMA;
  - (d) the competent authorities of the most relevant credit institutions ensuring the custody of the funds received in exchange of the significant e-money tokens;
  - (e) the competent authorities of the most relevant payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to the significant e-money tokens;
  - (f) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant e-money tokens are admitted to trading;

(g) where applicable, the competent authorities of the most relevant crypto-asset service providers providing the crypto-asset service referred to in Article 3(1) point (10) in relation to significant e-money tokens;

(h) where the issuer of significant e-money tokens is established in a Member State the currency of which is euro, or where the significant e-money token is referencing euro, the ECB;

(i) where the issuer of significant e-money tokens is established in a Member State the currency of which is not euro, or where the significant e-money token is referencing a currency which is not the euro, the national central bank of that Member State;

(j) relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 102;

(b) the exchange of information in accordance with this Regulation;

(c) agreement on the voluntary entrustment of tasks among its members, including delegation of tasks under Article 120.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.

5. The establishment and functioning of the college shall be based on a written agreement between all its members.

The agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on:

(a) voting procedures as referred to in Article 102;

(b) the procedures for setting the agenda of college meetings;

(c) the frequency of the college meetings;

(d) the format and scope of the information to be provided by the competent authority of the issuer of significant e-money tokens to the college members;

(e) the appropriate minimum timeframes for the assessment of the relevant documentation by the college members;

(f) the modalities of communication between college members.

The agreement may also determine tasks to be entrusted to the competent authority of the issuer of significant e-money tokens or another member of the college.

6. In order to ensure the consistent and coherent functioning of colleges, the EBA shall, in cooperation with ESMA and the European System of Central Banks, develop draft regulatory standards specifying the conditions under which the entities referred to in points (d) to (g) of

paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

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

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

#### *Article 102*

##### ***Non-binding opinions of the college for issuers of significant electronic money tokens***

1. The college for issuers of significant e-money tokens may issue a non-binding opinion on the following:
  - (a) any decision to require an issuer of significant e-money tokens to hold a higher amount of own funds or to permit such an issuer to hold a lower amount of own funds in accordance with Articles 31 and 41(4);
  - (b) any update of the orderly wind-down plan of an issuer of significant e-money tokens pursuant to Article 42;
  - (c) a draft amended crypto-asset white paper in accordance with Article 46(10);
  - (d) any envisaged withdrawal of authorisation for an issuer of significant e-money tokens as a credit institution or pursuant to Directive 2009/110/EC;
  - (e) any envisaged supervisory measures pursuant to Article 112;
  - (f) any envisaged agreement of exchange of information with a third-country supervisory authority;
  - (g) any delegation of supervisory tasks from the competent authority of the issuer of significant e-money tokens to the EBA or another competent authority, or from the EBA to the competent authority in accordance with Article 120;
  - (h) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in points (d) to (g) of Article 101(2).
2. Where the college issues an opinion in accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the competent authorities or by the EBA.
3. The EBA shall facilitate the adoption of the opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No 1093/2010.
4. A majority opinion of the college shall be based on the basis of a simple majority of its members.

For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member, shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote.

Where the ECB is a member of the college pursuant to point (h) of Article 101(2), it shall have 2 votes.

Supervisory authorities of third countries referred to in Article 101(2) point (j) shall have no voting right on the opinion of the college.

5. The competent authority of the issuer of significant e-money tokens, EBA or any competent authority for the entities and crypto-asset service providers referred to in points (d) to (g) of Article 101(2) shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of any envisaged action or supervisory measure. Where the EBA or a competent authority do not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the envisaged action or supervisory measure, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

## **Chapter 4: the EBA's powers and competences on issuers of significant asset-referenced tokens and issuers of significant e-money tokens**

### *Article 103*

#### ***Exercise of powers referred to in Articles 104 to 107***

The powers conferred on the EBA by Articles 104 to 107, or on any official or other person authorised by the EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

### *Article 104*

#### **Request for information**

1. In order to carry out its duties under Article 98, the EBA may by simple request or by decision require the following persons to provide all information necessary to enable the EBA to carry out its duties under this Regulation:
  - (a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;
  - (b) any third parties as referred to in Article 30(5), point (h) with which the issuers of significant asset-referenced tokens has a contractual arrangement;
  - (c) any crypto-assets service provider as referred to in Article 35(4) which provide liquidity for significant asset-referenced tokens;
  - (d) credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;
  - (e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;
  - (f) any payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;
  - (g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

- (h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1) point (10) in relation with significant asset-referenced tokens or significant e-money tokens;
  - (i) any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;
  - (j) the management body of the persons referred to in points (a) to (i).
2. Any simple request for information as referred to in paragraph 1 shall:
    - (a) refer to this Article as the legal basis of that request;
    - (b) state the purpose of the request;
    - (c) specify the information required;
    - (d) include a time limit within which the information is to be provided;
    - (e) indicate the amount of the fine to be issued in accordance with Article 113 where the information provided is incorrect or misleading.
  3. When requiring to supply information under paragraph 1 by decision, the EBA shall:
    - (a) refer to this Article as the legal basis of that request;
    - (b) state the purpose of the request;
    - (c) specify the information required;
    - (d) set a time limit within which the information is to be provided;
    - (e) indicate the periodic penalty payments provided for in Article 114 where the production of information is required.
    - (f) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading;
    - (g) indicate the right to appeal the decision before the EBA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1093/2010.
  4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
  5. The EBA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

#### *Article 105*

#### ***General investigative powers***

1. In order to carry out its duties under Article 98 of this Regulation, EBA may conduct investigations on issuers of significant asset-referenced tokens and issuers of significant e-

money tokens. To that end, the officials and other persons authorised by the EBA shall be empowered to:

- (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
- (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
- (c) summon and ask any issuer of significant asset-referenced tokens or issuer of significant e-money tokens, or their management body or staff for oral or written inspection and to record the answers;
- (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- (e) request records of telephone and data traffic.

The college for issuers of significant asset-referenced tokens as referred to in Article 99 or the college for issuers of significant e-money tokens as referred to in Article 101 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

- 2. The officials and other persons authorised by the EBA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 114 where the production of the required records, data, procedures or any other material, or the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are not provided or are incomplete, and the fines provided for in Article 113, where the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are incorrect or misleading.
- 3. The issuers of significant asset-referenced tokens and issuers of significant e-money tokens are required to submit to investigations launched on the basis of a decision of the EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 and the right to have the decision reviewed by the Court of Justice.
- 4. In due time before an investigation referred to in paragraph 1, the EBA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of the EBA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.
- 5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
- 6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

- (a) the decision adopted by the EBA referred to in paragraph 3 is authentic;
- (b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of point (b) paragraph 6, the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

*Article 106*  
***On-site inspections***

1. In order to carry out its duties under Article 98 of this Regulation, the EBA may conduct all necessary on-site inspections at any business premises of the issuers of significant asset-referenced tokens and issuers of significant e-money tokens.  
  
The college for issuers of significant asset-referenced tokens as referred to in Article 99 or the college for issuers of significant e-money tokens as referred to in Article 101 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.
2. The officials and other persons authorised by the EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by the EBA and shall have all the powers stipulated in Article 105(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In due time before the inspection, the EBA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, the EBA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens.
4. The officials and other persons authorised by the EBA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 114 where the persons concerned do not submit to the inspection.
5. The issuer of significant asset-referenced tokens or the issuer of significant e-money tokens shall submit to on-site inspections ordered by decision of the EBA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 as well as the right to have the decision reviewed by the Court of Justice.
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of the EBA, actively assist the



officials and other persons authorised by the EBA. Officials of the competent authority of the Member State concerned may also attend the onsite inspections.

7. The EBA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 105(1) on its behalf.
8. Where the officials and other accompanying persons authorised by the EBA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:
  - (a) the decision adopted by the EBA referred to in paragraph 4 is authentic;
  - (b) any measures to be taken are proportionate and not arbitrary or excessive.
11. For the purposes of paragraph 10, point (b), the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

#### *Article 107*

#### **Exchange of information**

In order to carry out its duties under Article 98 and without prejudice to Article 84, the EBA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, competent authorities shall exchange with the EBA any information related to:

- (a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;
- (b) any third parties as referred to in Article 30(5), point (h) with which the issuers of significant asset-referenced tokens has a contractual arrangement;
- (c) any crypto-assets service provider as referred to in Article 35(4) which provide liquidity for significant asset-referenced tokens;
- (d) credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;

- (e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;
- (f) any payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;
- (g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;
- (h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1), point (10), in relation with significant asset-referenced tokens or significant e-money tokens;
- (i) any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;
- (j) the management body of the persons referred to in point (a) to (i).

#### *Article 108*

#### ***Administrative agreements on exchange of information between the EBA and third countries***

1. In order to carry out its duties under Article 98, the EBA may conclude administrative agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 111.
2. Exchange of information referred to in paragraph 1 shall be intended for the performance of the tasks of the EBA or those supervisory authorities.
3. With regard to transfer of personal data to a third country, the EBA shall apply Regulation (EU) No 2018/1725.

#### *Article 109*

#### ***Disclosure of information from third countries***

The EBA may disclose the information received from supervisory authorities of third countries only where the EBA or a competent authority has obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings.

#### *Article 110*

#### ***Cooperation with other authorities***

Where an issuer of significant asset-referenced tokens or an issuer of significant e-money tokens engages in activities other than those covered by this Regulation, the EBA shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities.

*Article 111*  
**Professional secrecy**

The obligation of professional secrecy shall apply to the EBA and all persons who work or who have worked for the EBA or for any other person to whom the EBA has delegated tasks, including auditors and experts contracted by the EBA.

*Article 112*  
**Supervisory measures by the EBA**

1. Where the EBA finds that an issuer of a significant asset-referenced tokens has committed one of the infringements listed in Annex V, it may take one or more of the following actions:
  - (a) adopt a decision requiring the issuer of significant asset-referenced tokens to bring the infringement to an end;
  - (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;
  - (c) adopt a decision requiring the issuer of significant asset-referenced tokens supplementary information, where necessary for consumer protection;
  - (d) adopt a decision requiring the issuer of significant asset-referenced tokens to suspend an offer to the public of crypto-assets for a maximum period of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;
  - (e) adopt a decision prohibiting an offer to the public of significant asset-referenced tokens where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
  - (f) adopt a decision requiring the relevant trading platform for crypto-assets that has admitted to trading significant asset-referenced tokens, for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;
  - (g) adopt a decision prohibiting trading of significant asset-referenced tokens, on a trading platform for crypto-assets where they find that this Regulation has been infringed;
  - (h) adopt a decision requiring the issuer of significant asset-referenced tokens to disclose, all material information which may have an effect on the assessment of the significant asset-referenced tokens offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure consumer protection or the smooth operation of the market;
- (6) (i) issue warnings on the fact that an issuer of significant asset-referenced tokens is failing to comply with its obligations;
- (7) (j) withdraw the authorisation of the issuer of significant asset-referenced tokens.
2. Where the EBA finds that an issuer of a significant e-money tokens has committed one of the infringements listed in Annex VI, it may take one or more of the following actions:
  - (a) adopt a decision requiring the issuer of significant e-money tokens to bring the infringement to an end;

- (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;
  - (c) issue warnings on the fact that an issuer of significant e-money tokens is failing to comply with its obligations.
3. When taking the actions referred to in paragraphs 1 and 2, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
- (a) the duration and frequency of the infringement;
  - (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
  - (c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;
  - (d) whether the infringement has been committed intentionally or negligently;
  - (e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;
  - (f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
  - (g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;
  - (h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
  - (i) the level of cooperation of the issuer of significant asset-referenced tokens, or for the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
  - (j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of e-money tokens responsible for the infringement;
  - (k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.
4. Before taking the actions referred in points (d) to (g) and point (j) of paragraph 1, the EBA shall inform ESMA and, where the significant asset-referenced tokens refers Union currencies, the central banks of issues of those currencies.
5. Before taking the actions referred in points (a) to (c) of paragraph 2, the EBA shall inform the competent authority of the issuer of significant e-money tokens and the central bank of issue of the currency that the significant e-money token is referencing.
6. The EBA shall notify any action taken pursuant to paragraph 1 and 2 to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement without undue delay and shall communicate that action to the competent

authorities of the Member States concerned and the Commission. The EBA shall publicly disclose any such decision on its website within 10 working days from the date when that decision was adopted.

7. The disclosure to the public referred to in paragraph 6 shall include the following:
  - (a) a statement affirming the right of the person responsible for the infringement to appeal the decision before the Court of Justice;
  - (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
  - (c) a statement asserting that it is possible for EBA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1093/2010.

#### *Article 113*

##### *Fines*

1. The EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with Article 116(8), it finds that:
  - (a) an issuer of significant asset-referenced tokens has, intentionally or negligently, committed one of the infringements listed in Annex V;
  - (b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements listed in Annex VI.

An infringement shall be considered to have been committed intentionally if the EBA finds objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.
2. When taking the actions referred to in paragraph 1, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
  - (a) the duration and frequency of the infringement;
  - (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
  - (c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;
  - (d) whether the infringement has been committed intentionally or negligently;
  - (e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;
  - (f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

- (g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;
  - (h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
  - (i) the level of cooperation of the issuer of significant asset-referenced tokens, or for the issuer of significant e-money tokens, for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
  - (j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens responsible for the infringement;
  - (k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.
3. For issuers of significant asset-referenced tokens, the maximum amount of the fine referred to in paragraph 1 shall up to 15% of the annual turnover as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.
  4. For issuers of significant e-money tokens, the maximum amount of the fine referred to in paragraph 1 shall up to ~~5%~~ **15%** of the annual turnover, as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

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#### *Article 114* ***Periodic penalty payments***

1. The EBA shall, by decision, impose periodic penalty payments in order to compel:
  - (a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 112;
  - (b) a person referred to in Article 104(1):
    - i) to supply complete information which has been requested by a decision pursuant to Article 104;
    - ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 105;
    - iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 106.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of

the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of the EBA's decision. Following the end of the period, the EBA shall review the measure.

#### *Article 115*

##### **Disclosure, nature, enforcement and allocation of fines and periodic penalty payments**

1. The EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 113 and 114 unless such disclosure to the public would seriously jeopardise the financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679<sup>48</sup>.
2. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be of an administrative nature.
3. Where the EBA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.
4. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be enforceable.
5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.
6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

#### *Article 116*

##### ***Procedural rules for taking supervisory measures and imposing fines***

1. Where, in carrying out its duties under Articles 98, the EBA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annexes V or VI, the EBA shall appoint an independent investigation officer within the EBA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the issuers of significant asset-referenced tokens or issuers of significant e-money tokens and shall perform its functions independently from the EBA.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to EBA.
3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 104 and to conduct investigations and on-site inspections

<sup>48</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

in accordance with Articles 105 and 106. When using those powers, the investigation officer shall comply with Article 103.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by the EBA in its supervisory activities.
5. Upon completion of his or her investigation and before submitting the file with his findings to the EBA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.
6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.
7. When submitting the file with his findings to the EBA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties or the EBA's internal preparatory documents.
8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 117, the EBA shall decide if one or more of the infringements of provisions listed in Annex V or VI have been committed by the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 112 and/or impose a fine in accordance with Article 113.
9. The investigation officer shall not participate in EBA's deliberations or in any other way intervene in EBA's decision-making process.
10. The Commission shall adopt delegated acts in accordance with Article 121 by *[please insert date 12 months after entry into force]* specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.
11. The EBA shall refer matters to the appropriate national authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the EBA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.



*Article 117*  
***Hearing of persons concerned***

1. Before taking any decision pursuant to Articles 112, 113 and 114, the EBA shall give the persons subject to the proceedings the opportunity to be heard on its findings. The EBA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.
2. Paragraph 1 shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial stability or consumer protection. In such a case the EBA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.
3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to the EBA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or the EBA's internal preparatory documents.

*Article 118*  
***Review by the Court of Justice***

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the EBA has imposed a fine or a periodic penalty payment or imposed any other sanction or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

*Article 119*  
***Supervisory fees***

1. The EBA shall charge fees to the issuers of significant asset-referenced tokens and the issuers of significant e-money tokens in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall cover the EBA's expenditure relating to the supervision of issuers of significant asset-referenced tokens and the supervision of issuers of significant e-money token issuers in accordance with Article 98, as well as the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 120.
2. The amount of the fee charged to an individual issuer of significant asset-referenced tokens shall be proportionate to the size of its reserve assets and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.  

(11) The amount of the fee charged to an individual issuer of significant e-money tokens shall be proportionate to the size of the e-money issued in exchanged of funds and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.
3. The Commission shall adopt a delegated act in accordance with Article 121 by *[please insert date 12 months after entry into force]* to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by the EBA.

*Article 120*

***Delegation of tasks by the EBA to competent authorities***

1. Where necessary for the proper performance of a supervisory task for issuers of significant asset-referenced tokens or significant e-money tokens, the EBA may delegate specific supervisory tasks to the competent authority of a Member State. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Article 105 and Article 106.
2. Prior to delegation of a task, the EBA shall consult the relevant competent authority about:
  - (a) the scope of the task to be delegated;
  - (b) the timetable for the performance of the task; and
  - (c) the transmission of necessary information by and to the EBA.
3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 119(3), the EBA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.
4. The EBA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

*Article 121*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 3(2), 39(6), 116(10) and 119(3) shall be conferred on the Commission for a period of 36 months from ... *[please insert date of entry into force of this Regulation]*.
3. The delegation of powers referred to in Articles 3(2), 39(6), 116(10) and 119(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 3(2), 39(6), 116(10) and 119(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

**Compromise K: Title IX Transitional and final provisions (Articles 122-126)**

Covering AMs 1119- 1149, AMs fall if compromise is adopted

*Article 122*  
**Report**

1. By ... *[36 months after the date of entry into force of this Regulation]* after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, where appropriate accompanied by a legislative proposal.
2. The report shall contain the following:
  - (a) the number of issuances of crypto-assets in the EU, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-assets issued and their market capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;
  - (b) an estimation of the number of EU residents using or investing in crypto-assets issued in the EU;
  - (ba) an estimation of the number of EU residents using or investing in crypto-assets issued and offered outside the EU*
  - (c) the number and value of fraud, *scams*, hacks, *the use of crypto-assets in ransomware attacks* and thefts of crypto-assets reported in the EU, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;
  - (d) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in asset-referenced tokens;
  - (e) the number of issuers of significant asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in significant asset-referenced tokens;
  - (f) the number of issuers of e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;
  - (g) the number of issuers of significant e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves and the volume of payments in significant e-money tokens;
  - (h) an assessment of the functioning of the market for crypto-asset services in the Union, including of market development and trends, taking into account the experience of the supervisory authorities, the number of crypto-asset service providers authorised and their respective average market share;

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- (i) an assessment of the level of consumer protection, including from the point of view of the operational resilience of issuers of crypto-assets and crypto-asset service providers, market integrity and financial stability provided by this Regulation;
- (ib) *an assessment of fraudulent marketing communications and scams involving crypto-assets occurring through social media networks;*
- (ic) *an assessment of the level of threat of money laundering, terrorist financing and other criminal activity in relation to crypto-assets channelled through decentralised finance systems and the necessity and feasibility to establish appropriate and effective measures, including transactional restrictions on payments in crypto-assets for goods and services involving payments above a de minimis thresholds, stronger intelligence channels and a regime of effective, proportionate and dissuasive sanctions to prevent illicit transactions in crypto-assets;*
- (j) an assessment of whether the scope of crypto-asset services covered by this Regulation is appropriate and whether any adjustment to the definitions set out in this Regulation is needed; *and whether any additional innovative crypto-asset forms would need to be added to this regulation;*
- (ja) *an assessment of whether the prudential requirements for crypto-assets service providers are appropriate and whether they should be aligned with the requirements for initial capital and own funds applicable to investment firms under Regulation (EU) 2019/2033 and Directive 2019/2034 EU,*  
*an assessment of the appropriateness of the thresholds to determine significant asset-referenced tokens and significant e-money tokens set out in Article 39 of this regulation and the impact on this regulation on decentralised finance applications.*
- (k) an assessment of whether an equivalence regime should be established for third-country crypto-asset service providers, issuers of asset-referenced tokens or issuers of e-money tokens under this Regulation;
- (l) an assessment of whether the exemptions under Articles 4 and 15 are appropriate;
- (m) an assessment of the impact of this Regulation on the proper functioning of the internal market for crypto-assets, including any impact on the access to finance for small and medium-sized enterprises and on the development of new means of payment instruments;
- (n) a description of developments in business models and technologies in the crypto-asset market *with a particular focus on the environmental impact of new technologies;*
- (o) an appraisal of whether any changes are needed to the measures set out in this Regulation to ensure consumer protection, market integrity and financial stability;
- (p) the application of administrative penalties and other administrative measures;
- (q) an evaluation of the cooperation between the competent authorities, the EBA and ESMA, and an assessment of advantages and disadvantages of the competent authorities and the EBA being responsible for supervision under this Regulation;
- (r) the costs of complying with this Regulation for issuers of crypto-assets, other than asset-referenced tokens and e-money tokens as a percentage of the amount raised through crypto-asset issuances;

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Commented [A384]: AM 1127 Kovařík et al.

Commented [A385]: AM 1128 the Greens/EFA Group

Commented [A386]: AM 1129 Ferber and AM 1130 Heinäluoma et al.

Commented [A387]: AM 1131 Heinäluoma

- (s) the costs for crypto-asset service providers to comply with this Regulation as a percentage of their operational costs;
- (t) the costs for issuers of asset-referenced tokens and issuers of e-money tokens to comply with this Regulation as a percentage of their operational costs;
- (u) the number and amount of administrative fines and criminal penalties imposed for infringements of this Regulation by competent authorities and the EBA.

**2a.** *Each year after the publication of the report referred to in paragraph 1, ESMA shall present a brief report on the state of European markets in crypto assets describing the most important statistics, trends and risks.*

Commented [A388]: AM 1136 Ferber

#### **Article 122a**

##### **ESMA annual report on market developments**

*By ... [12 months from the date of application of this Regulation] and every year thereafter, ESMA, in close cooperation with the EBA, shall submit a report to the European Parliament and to the Council on the application of this Regulation and the developments in the markets in crypto-assets. The report shall be made publicly available.*

*The report shall include the following elements:*

- a) *the number of issuances of crypto-assets in the Union, the number of crypto-asset white paper registered with the competent authorities, the type of crypto-asset issued and their market capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;*
- b) *the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in asset-referenced tokens;*
- c) *the number of issuers of e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;*
- d) *the number of issuers of significant e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves and the volume of payments in significant e-money tokens;*
- e) *an estimation of the number of Union residents using or investing in crypto-assets issued in the Union;*
- f) *an estimation of the number of Union residents using or investing in crypto-assets issued and offered by crypto-assets service providers outside the Union;*
- g) *a mapping of the geographical location and level of KYC and customer due diligence procedures of unauthorised exchanges providing services in crypto-assets to Union residents, including number of exchanges without a clear domiciliation and number of exchanges located in jurisdictions included in the EUAML/CFT list of high-risk third countries or in the list of non-cooperative jurisdictions for tax purposes, classified by level of compliance with adequate KYC procedures;*

- h) *volume of transactions in decentralised finance protocols and decentralised exchanges, accompanied by an analysis of risks posed for money laundering, terrorist financing and other criminal activities;*
- i) *proportion of transactions in crypto-assets that occur through a crypto asset service provider or unauthorised service provider or peer-to-peer, and transaction volume;*
- j) *the number and value of fraud, scams, hacks, cyberattacks, ransoms, thefts or losses of crypto-assets reported in the Union, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;*
- k) *number of complaints received by crypto-asset service providers, issuers of crypto-assets and national competent authorities in relation to false and misleading information contained in the crypto-asset key information sheet or in marketing communications, including via social media platforms;*
- l) *possible approaches and options, based on best practices and reports by relevant international organisations, to mitigate financial crime risks and illicit activity connected with the use of crypto-assets.*
- m) *possible approaches and options, based on best practices and reports by relevant international organisations, to contain and sanction the circumvention of the standards of this Regulation by third-country actors providing crypto-asset services in the Union without authorisation.*

*Member States and EBA shall provide ESMA with the information necessary for the preparation of the report. For the purpose of the report, the Commission may request information from law enforcement agencies*

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#### Article 123

##### *Transitional measures*

1. Articles 4 to 14 shall not apply to crypto-assets, other than asset-referenced tokens and e-money tokens, which were offered to the public in the Union or admitted to trading on a trading platform for crypto-assets before *[please insert date of entry into application]*.
2. By way of derogation from this Regulation, crypto-asset service providers which provided their services in accordance with applicable law before *[please insert the date of entry into application]*, may continue to do so until *[please insert the date ~~18~~ 12 6 months after the date of application]* or until they are granted an authorisation pursuant to Article 55, whichever is sooner.
- 2a. *By way of derogation from this Regulation, crypto-assets that are issued or made available and/or traded in the Union or admitted for trading on a trading platform for crypto-assets on or after please insert the date of entry into application in accordance with the laws applicable to such crypto-assets prior to the date of application of this Regulation, may continue to be offered and/or traded for a period until [please insert the date ~~18~~ 12 6 months after the date of application] or until they are granted or finally refused an authorization in accordance with this Regulation provided that the offeror of such crypto-assets has applied for authorization not later than [please insert the date ~~18~~ 12 6 months after the date of application].*

**Commented [A390]:** AM 1143 Gunnar Beck but also reflect AM 1144 Kovařík et al.

3. By way of derogation from Articles 54 and 55, Member States may apply a simplified procedure for applications for an authorisation which are submitted between the *[please insert the date of application of this Regulation]* and *[please insert the date ~~18~~ ~~42~~ 6 months after the date of application]* by entities that, at the time of entry into force of this Regulation, were authorised under national law to provide crypto-asset services. The competent authorities shall ensure that the requirements laid down in Chapters 2 and 3 of Title IV are complied with before granting authorisation pursuant to such simplified procedures.
4. The EBA shall exercise its supervisory responsibilities pursuant to Article 98 from the date of the entry into application of the delegated acts referred to in Article 39(6).

#### *Article 124*

#### **Amendment of Directive (EU) 2019/1937**

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

"(xxi) Regulation (EU) .../... of the European Parliament and of the Council of ... on Markets in Crypto-Assets (EU) 2021/XXX, and amending Directive (EU) 2019/37 (OJ L ...)"<sup>49</sup>."

#### *Article 125*

#### **Transposition of amendment of Directive (EU) 2019/1937**

1. Member States shall adopt, publish and apply, by ... *[12 months after the date of entry into force of this Regulation]*, the laws, regulations and administrative provisions necessary to comply with Article 97. However, if that date precedes the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937, the application of such laws, regulations and administrative provisions shall be postponed until the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937.
2. Member States shall communicate to the Commission, the EBA and ESMA the text of the main provisions of national law which they adopt in the field covered by Article 97.

#### *Article 126*

#### **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from *[please insert date 18 months after the date of entry into force]*.
3. However, the provisions laid down in Title III and Title IV shall apply from *[please insert the date of the entry into force]*.
4. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,  
For the European Parliament

<sup>49</sup> OJ: Please insert in the text the number, date and OJ reference of this Regulation.