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Subject:	Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - Mandate for negotiations with the European Parliament

2020/0265 (COD)

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

[1] OJ C […], […], p. […].

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

[2] OJ C […], […], p. […].

(3) Some crypto-assets may qualify as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU[3] of the European Parliament and of the Council, as deposits as defined in Article 2, point (3), of Directive 2014/49/EU[4] of the European Parliament and of the Council, including structured deposits as defined in Article 4(1), point (15) of Directive 2014/65/EU, as funds as defined in Article 4(25), of Directive 2015/2366/EU[5] of the European Parliament and of the Council, other than e-money tokens, as securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402[6] of the European Parliament and of the Council, and as non-life or life insurance contracts, pensions products or schemes and social security schemes. In such cases the existing regulatory framework should apply, regardless of the technology used for their issuance or their transfer, rather than this Regulation, as Union legislation on financial services should be neutral as regards the use of technology.

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3 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).

4 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

5 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)

6 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

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

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

(5) A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of protection of retail holders and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. It should also ensure financial stability, the smooth operation of payment systems, and address monetary policy risks that could arise from crypto-assets that aim at stabilising their price in relation to a currency, an asset or a basket of such. While increasing protection of retail holders, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate the underlying technology.

(6)

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

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

(7a) Pursuant to the fourth indent of Article 127(2), of the Treaty on the Functioning of the European Union (TFEU), one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. The European Central Bank (ECB) may, pursuant to Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), make regulations to ensure efficient and sound clearing and payment systems within the Union and with other countries. In this respect, the ECB has adopted regulations on requirements for systemically important payment systems. This Regulation is without prejudice to the responsibilities of the ECB and the national central banks (NCBs) in the ESCB to ensure efficient and sound clearing and payment systems within the Union and with third countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the ESCB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of payment systems, including clearing of payment instructions.

(8) Any legislation adopted in the field of crypto-assets should be specific, future-proof and be able to keep pace with innovation and technological developments. 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets which can have a financial use, such as being used as a means of exchange or for investment, 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. For this reason, entities offering products or services within the scope of this Regulation will be required to follow applicable rules on AML in the EU, which integrate international standards.

(8a) This Regulation should only apply to crypto-assets that may be transferred among holders. This means that crypto-assets which are only accepted by the issuer or the offeror, being technically impossible to transfer directly to other holders are excluded from the scope. Examples of such crypto-assets may include some loyalty schemes that use DLT system, with the crypto-assets analogous to loyalty points.

(8b) This Regulation should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles, whose value is attributable to each crypto-asset's unique characteristics and the utility it gives to the token holder. Similarly, it also does not apply to crypto-assets representing services or physical assets that are unique and not fungible, such as product guarantees or real estate. While these crypto-assets may be traded in market places, be accumulated speculatively and, in limited cases be used as means of exchange, they are not readily interchangeable and the relative value of one crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which these crypto-assets can have a financial use, thus limiting risks to users and the system and justifies the exemption. The fractional parts of an 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 a unique or not fungible. The assets or rights represented should also be unique and not fungible for the crypto-asset to be considered unique and not fungible.

(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 of crypto-assets are 'asset-referenced tokens'. Such asset-referenced tokens aim at maintaining a stable value by referring to any value or right, or combination thereof, including one or several official currencies. A second sub-category of crypto-assets are crypto-assets that reference only one official currency of a country. The function of such crypto-assets is very similar to the function of electronic money, as defined in in Article 2, point 2, of Directive 2009/110/EC[7] of the European Parliament and of the Council. Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments or as a store of value. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'. The third sub-category are those crypto-assets that are not 'asset-referenced tokens' or 'e-money tokens', which cover a wide variety of crypto-assets, including utility tokens.

[7] 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).

(10) Currently, despite their similarities, electronic money and crypto-assets referencing a single official currency of a country differ in some important aspects. Holders of electronic money as defined in Article 2, point 2, of Directive 2009/110/EC are always provided with a claim on the electronic money institution and have a contractual right to redeem their electronic money at any moment against an official currency of a country at par value with that currency. By contrast, some of the crypto-assets referencing one official currency of a country do not provide their holders with such a claim on the issuers of such assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one official currency of a country do not provide a claim at par with the currency they are referencing or limit the redemption period. The fact that holders of such crypto-assets do not have a claim on the issuers of such assets, or that such claim is not at par with the currency those crypto-assets are referencing, could undermine the confidence of users of those crypto-assets. To avoid circumvention of the rules laid down in Directive 2009/110/EC, any definition of 'e-money tokens' should be as wide as possible to capture all the types of crypto-assets referencing one single official currency of a country and strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution as defined in Regulation (EU) No 575/2013[8] of the European Parliament and of the Council, or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a right to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of protection of retail holders and market integrity specific to crypto-assets, they should also be subject to rules laid down in this Regulation to address these challenges to protection of retail holders and market integrity.

[8] 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).

(11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers, which is the entity which has control over the creation of crypto-assets, and offerors of crypto-assets as well as persons seeking the admission of such crypto-assets to a trading platform for crypto-assets.

(12) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against funds 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. 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, the provision of advice on crypto-assets and portfolio management. Any person that provides such crypto-asset services on a professional basis should be considered as a 'crypto-asset service provider'.

(12a) This Regulation applies to natural and legal persons and the activities and services performed, provided or controlled in any manner, directly or indirectly, by them, including when part of such activity or services is performed in a decentralized way. This Regulation covers the rights and obligations applicable to issuers, offerors and persons seeking admission to trading of crypto-assets and to crypto-asset service providers. Where crypto-assets have no offeror and are not traded in trading platform which is considered to be operated by a service provider the provisions of Title II do not apply. Crypto-asset services provided for such crypto-assets should be subject to this Regulation. Nevertheless, when those crypto-assets are offered by a person or traded in a crypto-assets trading platform the requirements of this Regulation apply to that person and to that crypto-assets trading platform.

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

(14) In order to ensure protection of retail holders of crypto-assets, potential holders of crypto-assets should be informed about the characteristics, functions and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union or when seeking admission of crypto-assets to trading on a trading platform for such crypto-assets, offerors or persons seeking admission to trading should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information if applicable on the issuer, offeror or person seeking admission to trading, on the project to be carried out with the capital raised, on the public offer of crypto-assets or on their admission to trading on a trading platform for crypto-assets, on the rights and obligations attached to the crypto-assets, on the underlying technology used for such assets and on the related risks. The information contained in the crypto-asset white paper and marketing communication, including advertising messages and marketing material, also through new channels such as social media platforms, should be fair, clear and not misleading. Advertising messages and marketing material should be consistent with the information provided in the crypto-asset white paper.

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

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

(15a) The publication of a bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where such publication is accompanied by a communication constituting an 'offer to the public' as defined in this Regulation.

(16) Small and medium-sized enterprises and start-ups should not be subject to excessive administrative burdens. Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union that do not exceed an adequate aggregate threshold over a period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. Some requirements related to the conduct and organisation of the offeror remain, however, applicable. Additionally, where applicable, EU horizontal legislation ensuring consumer protection, such as Directive 2005/29/EC[9] of the European Parliament and of the Council or the Council Directive 93/13/EEC[10] of 5 April 1993 on unfair terms in consumer contracts, including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations.

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

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

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

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

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

(18b) The operator of the trading platform may become liable for compliance with most of the requirements of Title II when the crypto-asset are admitted to trading on its own initiative or upon agreement with the persons seeking admission to trading or when that person is established in a third country. In those cases, the person seeking admission to trading shall still be liable vis à vis the holders for matters not delegated or not covered by this Regulation and when it provides false or misleading information to the operator of the trading platform.

(19) Undue administrative burdens should be avoided. Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, 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) The offeror or person asking admission to trading is responsible for the classification of the crypto-asset which may be challenged by competent authorities, both before the date of publication and at any moment afterwards. Competent authorities have the ability to request EBA, ESMA or EIOPA an opinion on the classification proposed. Competent authorities should be able to suspend or prohibit a public offer of crypto-assets, other than asset-referenced tokens or e-money tokens, or the admission of such crypto-assets to trading on a trading platform for crypto-assets where such an offer to the public or an admission to trading does not comply with the applicable requirements, including when the white paper or the marketing communications are not fair, not clear or are misleading. Competent authorities should also have the power to publish a warning that the offeror or person seeking admission to trading has failed to meet those requirements, either on its website or through a press release.

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

(21a) Offerors of crypto-assets, other than asset-referenced tokens or e-money tokens, shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets raised. These arrangements shall also ensure that any funds or other crypto-assets collected from holders or potential holders are duly returned as soon as possible, where an offer to the public that is time limited is cancelled for any reason or where a retail holder exercises a right of withdrawal. The offeror shall contract a third party to safeguard those funds or other crypto-assets or may safeguard them itself if an adequate custody mechanism is available, ensuring segregation and security standards, which could include smart contracts.

(22) In order to further ensure protection of retail holders of crypto-assets who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the offeror or from a crypto-asset service provider placing the crypto-assets on behalf of the offeror should be provided with a right of withdrawal during a limited period of time after their acquisition. Furthermore, the right of withdrawal should not apply where the crypto-assets, other than asset-referenced tokens or e-money tokens, are admitted to trading on a trading platform for crypto-assets, as, in such a case, the price of such crypto-assets would depend on the fluctuations of crypto-asset markets. Where a retail holder does not have a right of withdrawal under this Regulation but has a right of withdrawal under Directive 2002/65/EC of the European Parliament and of the Council, such right of withdrawal shall be subject solely to the requirements set forth therein, including the fulfilment of the information requirements in accordance with Article 5(1) or (2) of Directive 2002/65/EC.

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

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

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

(26) When a crypto-asset is within the asset-referenced tokens or e-money tokens definitions it should comply with the rules provided in Titles III and IV of this Regulation, as applicable, irrespectively of how the issuer intends to design the crypto-asset, including the mechanisms to maintain a stable value. This could also include so-called algorithmic 'stablecoins' that aim at maintaining a stable value in relation to an official currency of a country or to one or several assets, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand.

(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. The verification of compliance with such threshold should be made with a 12 months average, using the aggregated value of outstanding tokens at the end of each day contributing to the average.

(28a) Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council[11] should not need another authorisation under this Regulation in order to issue asset-referenced tokens. National procedures established under the transposition of Directive 2013/36/EU would apply complemented by a requirement to notify the home competent authority designated under this Regulation with elements enabling it to verify their ability to issue asset-referenced tokens. In the case of credit institutions authorised under Directive 2013/36/EU, the issuer of such asset-referenced tokens would still be subject to all remaining MiCA applicable requirements without prejudice of targeted exceptions, and 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 subject it to the approval of the relevant competent authority, before publication. The relevant administrative powers provided in Directive 2013/36/EU and in this regulation, as implemented in national law, including the power to restrict or limit a credit institution's business and the powers to suspend or prohibit an offer to the public, would also be applicable.

(28b) Credit institutions authorised under Directive 2013/36/EU are also exempted from own funds requirements as well as from approval procedures as regards shareholders under this Regulation given that the requirements set out in Directive 2013/36/EU and Regulation (EU) 575/2013 are considered to be adequate and that subjecting them to such requirements under this Regulation would be unnecessarily burdensome. Credit institutions are subject to the other provisions of Title III which may, to a certain extent, overlap with existing requirements from Directive 2013/36/EU, which may be more specific or stricter. In such cases the credit institutions should ensure compliance with the most specific or stricter requirement, thus ensuring compliance with both set of rules.

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11 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).

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

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

(31) In addition to information included in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets, on at least a weekly 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 protection of retail holders, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best interest of the holders of asset-referenced tokens. Issuers of asset-referenced tokens should also put in place a clear procedure for handling the complaints received from the holders of crypto-assets.

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

(34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The 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 activities related to the asset-referenced token. 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.

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

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

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

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

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

(40) The issuer of asset-referenced tokens shall provide a permanent redemption right to the holders, in the sense that holders are entitled to request the issuer the redemption of the asset-referenced token at any moment. Issuers may redeem either by paying the sum equivalent to the market value of the assets referenced by the token or by delivering the assets referenced by the asset-referenced token. The issuer should clearly disclose to the holder what are the forms of redemption available. Issuers of asset-referenced tokens that voluntarily stop their operations should prepare a plan for the orderly redemption of the asset-referenced tokens.

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

(41a) Some asset-referenced tokens and e-money tokens should be considered significant due to their large customer base, their high market capitalisation, the size of the reserve of assets backing the value of such asset-referenced tokens or e-money tokens, the high number of transactions or the interconnectedness with the financial system. Asset-referenced tokens and e-money tokens could also be considered significant, upon request by the issuer at the moment of authorisation, when they are likely to be classified as such in the future.

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

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

(42aa) It is particularly important to estimate those transactions associated to uses as means of exchange within a single currency area, namely those associated to payments of debts including those in the context of transactions with merchants. Those transactions should not include transactions which are associated with investments functions and services such as the exchange with other crypto-assets or funds, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets.

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

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

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

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

(43) Issuers of asset-referenced tokens should have a plan for the orderly redemption of the tokens to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens are not able to comply with their obligations. Where the issuer of asset-referenced tokens is a credit institution the competent authority should consult the resolution authority. The resolution authority thereof, should take into consideration the operational plan to support an orderly redemption of the asset-referenced tokens when drafting the resolution plans and when preparing the resolution of such credit institutions and assess its compatibility with the preferred resolution strategy. Taking into account of the redemption plan by the resolution authority should not affect the resolution authority's powers to take a crisis prevention measure or a crisis management measure.

(44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC. E-money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, including the requirements for the taking up, pursuit and prudential supervision of the business of e-money institutions and the requirements on issuance and redeemability of e-money tokens, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Exemptions as regards limited networks, certain transactions by providers of electronic communications networks, electronic money institutions with limited license for amounts bellow EUR 5 000 000, applicable under Directive 2009/110/EC remain applicable to e-money tokens. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority.

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

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

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

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

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

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

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

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

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(54) Some firms subject to Union legislation on financial services should be allowed to provide crypto-asset services without prior authorisation if they notify the respective competent authority, at least 30 working days before providing those services for the first time. That notification should contain information about the types of crypto-asset services that they wish to provide, including where and how these services are to be marketed, descriptions both in technical and non-technical language of the IT systems and security arrangements and other information related to the specific crypto-asset services they wish to provide. In such cases, the relevant administrative powers provided in this regulation, including the power to suspend or prohibit certain crypto-asset services would be applicable.

(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[12] of the European Parliament and of the Council, in case the criteria of that Directive are met. Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive as well, unless this Regulation expressly states otherwise. Crypto-asset service providers should provide their clients with clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest.

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

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

(57) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity 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 and to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849[13] of the European Parliament and of the Council. 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.

[13] 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).

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

(59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy that must be made available to clients on their request in an electronic format. Such agreement should inter alia specify the nature of the service provided, which may include holding of the crypto-assets or the means of access to such crypto-assets, in which case the client might keep control over the crypto-assets in custody, or the crypto-assets or the means of access to such crypto-assets may be transferred in full control of the service provider. Crypto-asset service providers offering custody and administration of crypto-assets are not allowed to actively use the customers´ crypto-assets for their own business. The service providers have to ensure that all held crypto-assets are always under unencumbered control of the crypto-asset service provider. 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. Unhosted wallets, where there are no crypto-asset service providers but where there may be a software or hardware provider, are not considered custody services and are not addressed by this Regulation.

(60) To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient, should be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market and set transparent and non-discriminatory rules, based on objective criteria, governing access to its platform. Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled timely. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions. Crypto-asset service providers operating a trading platform for crypto-assets should have the possibility to settle transactions on and off chain and should aim at ensuring a timely settlement. The settlement of transactions shall be initiated within 24 hours. In the case of settlement outside the DLT (off chain) the settlement should be completed when it is initiated while in the case of settlement on the DLT (on chain) the settlement may take longer as it is not controlled by the crypto-asset service providers operating the trading platform.

(60a) To ensure protection of their clients, crypto-asset service providers that are authorised for placing crypto-assets shall have specific and adequate procedures in place to prevent, monitor, manage and disclose any conflicts of interest when they place the crypto-assets with their own clients and when the proposed price for placing crypto-assets has been overestimated or underestimated. The placing of crypto-assets on behalf of an offeror is not considered to be a separate offer. The crypto-asset service provider should ensure that all requirements applicable to the offeror are complied with before placing the crypto-assets.

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

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

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

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

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

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

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

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

(63d) The transfer of crypto-assets is a service difficult to define due to the technology used, including in relation to e-money tokens. Crypto-asset service providers may provide services enabling the transfer and, in that context, should inform clients on the procedures and policies employed including clients' rights. Depending of the precise features the services associated to the transfer of e-money tokens, such services can amount to a payment service as defined in Directive (EU) 2015/2366. In such case these transfers should be provided by an entity authorised to provide payment services in accordance with Directive (EU) 2015/2366. EBA should draft guidelines on those services, which should also help to better understand which of those services are considered payment services.

(63e) This regulation does not address lending and borrowing in crypto-assets, including e-money tokens, and therefore does not prejudice applicable national law. The feasibility and necessity of regulating such activities should be further assessed as part of the Article 122a report.

(64) It is important to ensure confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the provisions of Regulation (EU) No 596/2014[14] of the European Parliament and of the Council to them. It is therefore necessary to lay down specific rules prohibiting certain behaviours that are likely to undermine users' confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information and market manipulation related to crypto-assets. These bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a trading platform for crypto-assets.

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14 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).

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

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

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

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

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

(65c) To facilitate transparency of crypto-assets of crypto-assets service providers ESMA should establish a register of crypto-assets white papers and of crypto-asset service providers.

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

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(68) Competent authorities in charge of supervision under Directive 2009/110/EC should supervise issuers of e-money tokens. However, given the potential widespread use of significant e-money tokens as a means of payment and the risks they can pose to financial stability, a dual supervision by both competent authorities and the EBA of issuers of significant e-money tokens is necessary. The EBA should supervise the compliance by issuers of significant e-money tokens with the specific additional requirements set out in this Regulation for significant e-money tokens. Such assignment should not set any precedent for any other areas of financial services legislation.

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

(70) To supervise the issuers of significant asset-referenced tokens and e-money tokens, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. The EBA, when adopting a decision imposing a fine, should also take into account the nature and seriousness of the infringement. For these purposes, an infringement should prima vista 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.

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

(72) 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. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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

(74) The Commission should be empowered to adopt regulatory technical standards developed by the EBA and ESMA with regard to the procedure for approving crypto-asset white papers produced by credit institutions when issuing asset-referenced tokens, the information to be provided in an application for authorisation as an issuer of asset-referenced tokens, the methodology for the calculation of capital requirements for issuers of asset-referenced tokens, governance arrangements for issuers of asset-referenced tokens, the information necessary for the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, the pre-trade and post-trade transparency requirements on trading platforms, the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010[15] of the European Parliament and of the Council and Regulation (EU) No 1095/2010[16] of the European Parliament and of the Council.

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15 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).

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

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

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

(77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets that have been offered to the public before the entry into force of this Regulation, offerors of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements. Transitional provisions should also apply to issuers of asset-referenced tokens and to crypto-asset service providers that, in any case, should apply for 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[17] of the European Parliament and of the Council in order to make it applicable to breaches of this Regulation.

[17] 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).

(79) The date of application of this Regulation should be deferred by 24 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.

(80) The offer to the public of crypto-assets and the provision of crypto-asset services could involve the processing of personal data. Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulations (EU) 2016/679[18] and (EU) 2018/1725[19].

HAVE ADOPTED THIS REGULATION:

TITLE I: Subject Matter, Scope and Definitions

Article 1

Subject matter

This Regulation lays down uniform rules for the following:

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

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18 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).

19 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(b) the authorisation and supervision of crypto-asset service providers, issuers of asset-referenced tokens and issuers of electronic money tokens;

(c) the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers;

(d) protection of holders of crypto-assets in the issuance, offering to the public and admission to trading;

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

(e) measures to prevent market abuse to ensure the integrity of crypto-asset markets.

Article 2

Scope

1. This Regulation applies to legal and natural persons and undertakings that are engaged in the issuance, offer to the public and the admission to trading of crypto-assets or provide services related to crypto-assets in the Union and to any transaction, order or behaviour associated to crypto-assets, concerning market abuse rules.

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)

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

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

(d)

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

(f) non-life or life insurance products which fall in the classes listed in Annex I and II to Directive 2009/138/EC[20] or reinsurance and retrocession contracts pursuant to the reinsurance or retrocession activities referred to in Directive 2009/138/EC;

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

[20] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

(h) officially recognised occupational pension schemes within the scope of Directive (EU) 2016/2341[21] or Directive 2009/138/EC;

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

(j) a pan-European Personal Pension Product as defined in Article 2(2) of Regulation 2019/1238[22];

(k) Social security schemes which are covered by Regulations (EC) No 883/2004[23] and (EC) No 987/2009[24] of the European Parliament and of the Council.

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

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

22 Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1).

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

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

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 of the Member States;

(b)

(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.

(a)

(b)

4a. This regulation shall be without prejudice to Regulation (EC) 1024/2013 and shall be interpreted in such a way that it shall not be in conflict with that regulation.

5.

6.

(a)

(b)

(c)

(d)

(e)

(f)

Article 3

Definitions

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

(1) ‘distributed ledger technology’ or ‘DLT’ means a technology that enables the operation and use of distributed ledgers, whereas;

(1a) ‘distributed ledger’ means an information store that keeps records of transactions and is shared across a set of DLT network nodes and synchronized between the DLT network nodes, using a consensus mechanism;

(1b) a ‘consensus mechanism’ means rules and procedures by which an agreement, among DLT network nodes, is achieved that a transaction is validated;

(1c) “DLT network node” is a device or process that participates in a network and that holds a complete or partial replica of DLT records;

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

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

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

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

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

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

(7a) ‘offeror’ means a natural or legal person, or undertaking including, as the case may be, the issuer of crypto-assets, which offers crypto-assets to the public;

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

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

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

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

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

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

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

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

(f) placing of crypto-assets;

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

(h) providing advice on crypto-assets;

(i) providing portfolio management on crypto-assets;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) ‘home Member State’ means:

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

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

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

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

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

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

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

(24) ‘competent authority’ means:

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

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

(25) ‘commodity’ means ‘commodity’ as defined in Article 2(6) of Commission Delegated Regulation (EU) 2017/565[25];

(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[26] of the European Parliament and of the Council, taking into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the issuer of asset-referenced tokens or in a crypto-asset service provider in which that holding subsists;

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25 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).

26 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).

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

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

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

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

(28c) ‘matched principal trading’ means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.

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.

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

Article 4

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

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

(a) is a legal person;

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

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

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

(da) has published the marketing communications in accordance with Article 8;

(e) complies with the requirements laid down in Articles 6 and 13;

2. Title II shall not apply in the offers where:

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

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

(c)

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

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

(d)

(e)

(f)

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

For offers referred in the letter cb) of the first subparagraph for which over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of crypto-assets in the Union exceeds EUR 1 000 000, or the amount set by Member States in paragraph 2a, offeror shall send a notification to competent authorities containing a description of the offer, specifying why the offer is exempted in accordance with letter cb.

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

2a0. An authorisation pursuant to Article 53 is not required regarding the custody and administration of crypto-assets whose offers are listed in paragraph 2, unless:

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

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

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

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

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

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

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

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

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

No additional crypto-asset white paper shall be required in any subsequent offer of crypto-assets as long as a crypto-asset white paper is available in accordance with Article 5, updated in accordance with Article 11, and the person responsible for drawing up such white paper consents to its use by means of a written agreement.

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

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

Article 4a

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

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

   (a) is a legal person;

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

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

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

   (da) has published the marketing communications in accordance with Article 8;

(e) complies with the requirements laid down in Article 6 ;

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

The operator of the trading platform shall be liable to comply with this paragraph when the crypto-assets are admitted to trading on its own initiative.

2. Notwithstanding paragraph 1, a person seeking admission of a crypto-asset to trading on a trading platform and the respective operator may conclude a written agreement providing that the operator of the trading platform shall ensure compliance and be liable for such compliance with all or part of the requirements of points b) to e) of paragraph 1.

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

3. The operator of the trading platform shall ensure compliance and be liable for such compliance with points b) to e) of paragraph 1 when the person seeking admission of a crypto-asset to trading is established in a third country.

In such case, the operator of the trading platform shall ensure that the person seeking admission of a crypto-assets to trading provides all the necessary information to enable the operator to comply with the requirements set out in points b) to e) of paragraph 1.

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

(a)

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

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

Article 5

Content and form of the crypto-asset white paper

1. The crypto-asset white paper referred to in Article 4(1), point (b), and Article 4a, point (b), shall contain all the following information as specified in Annex I including, where applicable:

(0a) a detailed description of the offeror or the person seeking admission to trading;

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

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

(a) a detailed description of the crypto-assets' project, and a presentation of the main participants involved in the project's design and development;

(b) information about the crypto-assets, in particular the type of crypto-asset that will be offered to the public or for which admission to trading is sought;

(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, vesting period and the subscription terms and conditions, including minimum and maximum target subscription goals and information on the consequences if those goals are not reached or exceeded, where applicable, and a disclosure of conflicts of interests and of the custody arrangements foreseen in Article 9; the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and where relevant the planned use of the funds or other crypto-assets collected via the offer to the public;

(d) a detailed description of the rights and obligations attached to the crypto-assets, including any limitation of those rights and obligations, conditions under which the rights and obligations may be modified, and the procedures and conditions for exercising those rights;

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

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

(g)

(h) the country of incorporation of the issuer and the offeror if different from the issuer, the applicable law and the competent court of the offer and of the crypto-assets;

(i) a detailed description of the crypto-asset trading platforms on which crypto-assets are to be admitted to trading, how investors can access such trading platforms and what costs are involved.

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

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

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

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

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

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

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

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

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

(e) where applicable, public protection schemes protecting the value of crypto-assets and public compensation schemes do not exist.

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

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

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

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

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

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129[27] or another offering document pursuant to Union legislation or national laws.

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

8a. Every crypto-asset white paper shall contain an index of the information contained in the document, placed after the summary pursuant to paragraph 7.

9. The crypto-asset white paper shall be drawn up in a language accepted by the competent authority of the home Member State and, if offered in another Member State, either in a language accepted by the competent authorities of each host Member State notified or in a language customary in the sphere of international finance. The respective summary shall be drawn up in a language accept by the competent authority of the home Member State and in the languages accept by the competent authorities of each host Member State.

[27] 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).

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.

Article 6

Marketing communications

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

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

(b) the information in the marketing communications shall be fair, clear and not misleading, and shall describe the risks and rewards of purchasing crypto-assets in an equally prominent manner;

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

(d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the offeror or the person seeking admission to trading of the crypto-assets concerned.

(e) marketing communications shall contain the following clear and prominent statement: "This crypto-asset marketing communication has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset marketing communications".
Where the marketing communication is prepared by the person seeking admission to trading a reference to its name should be included in the statement instead of "offeror".

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

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

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

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

Article 7

Notification of the crypto-asset white paper

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

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

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

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

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

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

(c)

(d)

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

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

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

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

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

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

6. In order to ensure uniform conditions of application of this Regulation, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the white paper referred to in paragraph 2.

   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.

7.

Article 8

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

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

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

Article 9

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

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

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

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

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

   (b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties;

   (c) the offeror itself if an adequate custody mechanism is available, ensuring segregation and appropriate security standards.

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

3a ESMA shall develop draft regulatory technical standards to specify the requirements applicable to the offeror when it provides the custody mechanism referred to in letter c) of paragraph 2, including IT security standards, segregation requirements and the necessary audits, in order to ensure that the rights of the potential holders are not adversely affected.

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

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

Article 10

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

1. After publication of the crypto-asset white paper in accordance with Articles 7 and 8, and, where applicable, Article 11, offerors may offer crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and such crypto-assets may be admitted to trading on a trading platform for crypto-assets in the Union.

2. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, that have published a crypto-asset white paper in accordance with Article 7 and 8, and where applicable Article 11, shall not be subject to any further information requirements, with regard to the offer of those crypto-assets or the admission of such crypto-assets to a trading platform for crypto-assets.

Article 11

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

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

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

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

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

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

4.

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

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

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

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

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

8a. The older versions of the crypto-asset white paper and the marketing communications shall remain on the website with a prominent warning stating that they are no longer valid and with the hyperlink to the dedicated website sections where the final version is published.

Article 12

Right of withdrawal

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

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

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

   The reimbursement shall be carried out using the same means of payment as the retail holder used for the initial transaction, unless the retail holder has expressly agreed otherwise and provided that the retail holder does not incur any fees nor costs as a result of such reimbursement.

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

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

5.

5a. Where the retail holder has a right of withdrawal in accordance with this Article, the right of withdrawal pursuant to Article 6 of Directive 2002/65/EC or of other Directives shall not apply.

Article 13

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

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

   (a) act honestly, fairly and professionally;

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

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

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

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

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

3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled, offerors of such crypto-assets shall ensure that any funds collected from holders or potential holders are duly returned to them, no later than 30 days after the date of cancellation.

Article 14

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

1. Member States shall ensure that the offeror, persons seeking admission to trading or the operator of the trading platform, or its administrative, management or supervisory bodies are responsible for the information given in the crypto-asset white paper or in a modified crypto-asset white paper, as the case may be. The crypto-asset white paper or the modified crypto-asset white paper shall also include declarations by the persons responsible for the crypto-asset white paper or the modified crypto-asset white paper that, to the best of their knowledge, the information contained in the crypto-asset white paper or in the modified crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper or the modified crypto-asset white paper makes no omission likely to affect its import.

Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a white paper.

When the white paper and marketing communications are prepared by the operator of the trading platform in accordance with Article 4(2) and 4(3) the person seeking admission to trading shall also be responsible when it provides false, misleading or incomplete information to the operator of the trading platform.

2.

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

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

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

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

TITLE III: Asset-referenced tokens

Chapter 1: Authorisation to offer asset-referenced tokens to the public and to seek their admission to trading on a trading platform for crypto-assets

Article 15

Authorisation

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

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

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

   Member states may allow asset-referenced tokens to be issued by undertakings which are not legal persons, as long as that their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and that they are subject to equivalent prudential supervision appropriate to their legal form.

2.

3. Paragraph 1 shall not apply to any of the following types of offers of crypto-assets to the public:

(a) where, over a period of 12 months, calculated at the end of each calendar day, the average outstanding value of all asset-referenced tokens issued in the EU by an issuer of asset-referenced tokens never exceeds EUR 5 000 000, or the equivalent amount in another currency; or

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

In cases under letters a) and b) issuers shall, produce a crypto-asset white paper as referred to in Article 17 and notify that crypto-asset white paper, and where applicable, their marketing communications, to the competent authority of their home Member State in accordance with Article 7.

4.

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

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

7. Upon a written consent from the issuer, other persons may offer or seek admission to trading the asset-referenced tokens. Those entities shall comply with Articles 23, 24, 25 and 36.

Article 15a

Requirements applicable to credit institutions

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

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

(b) notifies the respective competent authority, at least 120 working days before issuing the asset-referenced token for the first time, with the following information:

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

(b) an independent written and reasoned legal opinion that the asset-referenced tokens does not qualify as:

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

(ii) a e-money token;

(iii)

(iv)

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

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

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

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

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

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

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

1b. Competent authorities receiving the notification as referred to in paragraph 1a shall, within 30 working days of receipt of such information, assess whether all required information has been provided. They shall immediately inform the credit institution when they conclude some information is missing and thus that the notification is not complete. Where the information is not complete, they shall set a deadline by which the credit institution has to provide any missing information.

The 120 working days' period referred in paragraph 1(b) shall be counted from the moment when the complete notification was received.

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

3. Paragraph 1 does not prejudice procedures implemented under national law for authorisation of credit institution, namely to provide services referred in Annex I of Directive 2013/36/EU pursuant the transposition of said Directive.

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

The ECB and, where applicable, a central bank as referred to in the first sub-paragraph shall, within 2 months after having received the information, issue an opinion on the application and transmit it to the competent authority.

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

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

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

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

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

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

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

Article 16

Application for authorisation

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

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

   (a) the address of the applicant issuer;

   (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) an independent written and reasoned legal opinion that the asset-referenced token does not qualify as

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

(ii) a e-money token,

(iii)

(iv)

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

(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 any natural or legal persons who own a qualifying holding or, where there are no qualifying holdings, of the 20 largest shareholders or members, have good repute;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The EBA shall, in close cooperation with ESMA, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

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 15a(1), point (a) and Article 16(2), point (i), shall comply with all the requirements laid down in Article 5. In addition to the information referred to in Article 5the crypto-asset white paper shall contain all of the following information as specified in Annex II:

(0a) a detailed description of the claim that the asset-referenced token represents for holders, including i) the description of each referenced asset and specified proportions of each of these assets ii) the relation between the value of the referenced assets and the amount of the claim and the reserve of assets and; iii) how fair and transparent valuation of components of the claim is undertaken, identifying, where relevant, independent parties;

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

(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 the permanent redemption rights that holders of asset-referenced tokens have against the issuer and any rights natural or legal persons as referred in Article 35(3) may have against the issuer, including how such rights may be treated in insolvency procedures;

(ea) detailed information on how the asset-referenced token is redeemed, including whether the holder will be able to choose the form of redemption, the form of transference or the currency of redemption;

(f)

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

(h)

(i) information of rights during the implementation of the recovery plan and orderly redemption plan.

2.

(a)
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(d)

3.

4.

5.

6. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of Article 5(10) when applied to asset-referenced tokens.

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.

Article 18

Assessment of the application for authorisation

1. Competent authorities receiving an application for authorisation as referred to in Article 16 shall, within 30 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 comprises all required information. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset white paper, is missing required information. Where the application, including the crypto-asset white paper, is not complete, they shall set a deadline by which the applicant issuer is to provide any missing information.

Where the applicant issuer indicates in their application for authorisation that it wishes to classify its asset-referenced token as significant pursuant to Article 40(1) or where the asset-referenced token is deemed to be potentially relevant for financial stability, monetary policy transmission, monetary sovereignty or market integrity, the competent authority shall inform the EBA 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 also inform the central bank of that Member State, in the cases described in the previous sub-paragraph.

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

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

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

4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 20 working days after having received the draft decision and the application file, issue an opinion and transmit their opinions to the competent authority concerned. Those opinions shall be non-binding, without prejudice of the cases specified in Article 19(2a).

4a. In their opinions:

(a) the EBA and ESMA shall only evaluate the legal opinion referred in Article 16(2)(d).

(b) the ECB and, where applicable, a central bank as referred to in paragraph 3, shall only evaluate the risks posed to monetary policy transmission, monetary sovereignty and the smooth operation of payment systems.

5. That competent authority shall duly consider the opinions referred in paragraph 4 and refuse the authorisation in the cases specified in Article 19(2a).

Article 19

Grant or refusal of the authorisation

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

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

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;

(aa) the shareholders that have qualifying holdings or members of the management body are not deemed suitable.

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

(c) the applicant issuer's business model may pose a serious threat to financial stability, the smooth operation of payment systems or market integrity.

EBA shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1095/2010 on the assessment of the suitability of the members of the management body and of the shareholders that have qualifying holdings.

2a. Competent authorities shall also refuse authorisation:

(a) When the ECB or, where applicable, a central bank as referred to in Article 18(3), gives a negative opinion under Article 18(4) on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty.

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

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

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

(a)
(b)
(c)
(d)

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

Article 19a

Monitoring of asset-referenced tokens

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

   (a) the customer base;

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

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

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

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

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

1a. The competent authority may require issuers to comply with the reporting obligation of paragraph1 for asset-referenced tokens with less than EUR 100 million issued.

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

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

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

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

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

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

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

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

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

Article 19b

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

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

   (i) stop issuing the asset-referenced token;

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

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

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

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

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

Article 20

Withdrawal of the authorisation and precautionary measures

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

   (a) the issuer has not used its authorisation within 12 months after the authorisation has been granted;

   (b) the issuer has ceased to engage in business for 12 successive months;

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

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

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

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

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

(h) the issuer's activity poses a serious threat to financial stability, the smooth operation of payment systems, or market integrity.

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

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

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

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

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

(b) the fact that 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 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 or the approval of the white paper pursuant Article 15a, including in the context of the Article 19b. Such changes include, among others, any material modifications to:

   (a) the governance arrangements;

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

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

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

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

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

   (g) the mechanisms to ensure the liquidity of asset-referenced tokens;

(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)

(j) the complaint handling procedure.

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

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

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

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

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

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

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

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

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

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

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

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

Article 21a

Review by the Court of Justice

The Court of Justice shall have jurisdiction to review decisions by which

(a) an authorisation has been refused by competent authorities because a negative opinion by ECB as provided for in Article 19(2a);

(b) an authorisation has been withdrawn as a result of an opinion of the ECB as provided for in Article 20(1a);

(c) limits to the amount issued or minimum denomination have been imposed as a result of an opinion of the ECB as provided for in Article 20(1b);

(d) measures have been imposed as a result of an opinion of the ECB as provided for in Article 21(3).

Article 22

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

1. Member States shall ensure that the issuer, or its administrative, management or supervisory bodies are responsible for the information given in the crypto-asset white paper or in a modified crypto-asset white paper. The crypto-asset white paper or the modified crypto-asset white paper shall include declarations by persons responsible for the crypto-assets white paper or the modified crypto-asset white paper that, to the best of their knowledge, the information contained in the crypto-asset white paper or in the modified crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper or the modified crypto-asset white paper makes no omission likely to affect its import.

   Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a white paper.

2.

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

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

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

4. This Article 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:

(a) act honestly, fairly and professionally;

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

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

Article 24

Publication of the crypto-asset white paper, 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.

2.

3. Marketing communications and the respective modifications shall be published in the issuer website. Competent authorities shall not require an approval of marketing communications before publication.

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

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

Article 26

Ongoing information to holders of asset-referenced tokens

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

2. Issuers of asset-referenced tokens shall as soon as possible and in a clear, accurate and transparent manner disclose on a publicly and easily accessible place on their website the full and unredacted report of the audit of the reserve assets referred to in Article 32(5).

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 of assets referred to in Article 32.

Article 27

Complaint handling procedure

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

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

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

4. Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to the holders of their asset-referenced tokens within a reasonable period of time and in accordance with the regulatory technical standards pursuant to paragraph 5.

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

Identification, prevention, management and disclosure of conflicts of interest

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

   (a) their shareholders;

   (b) the members of their management body;

   (c) their employees;

   (d) any natural or legal persons with qualifying holdings of the asset-referenced token 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)

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

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

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

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

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

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

(b) the 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.

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

3. Natural persons who either own, directly or indirectly, more than 10 % 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.

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 offences that would question the person's good repute and competence as a member of the management body.

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 asset segregation, as specified in Article 33;

(c) the rights or the absence of rights granted to the holders of asset-referenced tokens, as specified in Article 35;

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

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

(f) the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such DLT or similar technology that is operated by the issuer or a third party acting on its behalf;

(g)

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

(ha) arrangements with any entities that may offer or admit to trading the asset-referenced tokens, ensuring that any offer or admittance to trading is subject to prior consent of the issuer of the asset-referenced token;

(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 and plans that ensure, in case of an interruption of their systems and procedures, the preservation of essential data and functions and the maintenance of their activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

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

10. Issuers of asset-referenced tokens shall have systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information as required by Regulation (EU) 2021/xx of the European parliament and of the Council on digital operational resilience[28] and in line with Regulation (EU) 2016/679[29] of the European parliament and of the Council (General Data Protection Regulation). Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities.

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

12. The EBA, in close cooperation with ESMA and the 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 policy and plan referred to in paragraph 8;

    (d) 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.

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28 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

29 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).

Article 31

Own funds requirements

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

   (a) EUR 350 000;

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

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

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

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

2a. 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 non-financial such as operational risk.

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

(a) the evaluation of the risk-management processes and internal control mechanisms of the issuer of asset-referenced tokens as referred to in Article 30, paragraphs 1, 7 and 9;

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

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

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

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

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

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

(h) the outcome of the stress test referred to in paragraph 2a.

3a. Competent authorities of the home Member States may require issuers of asset-referenced tokens which are not significant to comply with any requirement set out in Article 41, where necessary, to address the risks identified pursuant to article 31(3), or other risks considered under Article 41, such as but not limited to liquidity risks.

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

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

(b)

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

(d) the minimum requirements for the design of stress testing programmes, taking into account the size, complexity and nature of the asset-referenced tokens, including but not limited to a) the types of stress testing and their main objectives and applications; b) the frequency of the different stress testing exercises; c) the internal governance arrangements; d) the relevant data infrastructure; e) the methodology and the plausibility of assumptions, and the application of the proportionality principle to all of these minimum requirements, whether quantitative or qualitative. The minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios, in accordance with paragraph 2a.

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

The draft regulatory technical standards shall be updated periodically taking into account the latest market developments.

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

Chapter 3: Reserve of Assets

Article 32

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

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

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

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

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

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

It shall establish in particular:

(a) relevant percentage of the reserve of assets according to daily, weekly or other relevant maturities and overall techniques for liquidity management;

(b) the minimum amount of deposits in each official currency referenced, which cannot be inferior than 30% of the amount referenced in each official currencies;

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

The draft regulatory technical standards shall be updated periodically taking into account the latest market developments.

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

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

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

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

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

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

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

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

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

(d) describe the procedure by which the asset-referenced tokens are created and destroyed, and the procedure by which such creation or destruction will result in a corresponding increase and decrease of the reserve of assets;

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

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

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

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

6. The valuation referred to in paragraph 3 at market prices shall be made by using mark-to-market whenever possible.

When using mark- to-market:

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

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

(i) the number and quality of the counterparties;

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

(iii) the issue size and the portion of the issue that the issuer plans to buy or sell.

Where use of mark-to-market is not possible or the market data is not of sufficient quality, a reserve asset shall be valued conservatively by using mark-to-model.

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

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

(b) the issue size and the portion of the issue that the MMF plans to buy or sell;

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

When using mark-to-model, the amortised cost method shall not be used.

Article 33

Custody of reserve assets

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

(a)

(b) the reserve assets are not encumbered nor pledged as a 'financial collateral arrangement' within the meaning of Article 2(1), points (a),of Directive 2002/47/EC[30] of the European Parliament and of the Council;

[30] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

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

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

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

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

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

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

(a) a crypto-asset service provider 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 types of reserve assets, subject to the relevant notification set out in Article 53a for the crypto-assets;

(c) an investment firm having its registered office in the Union, where the reserve assets take the form of financial instruments or crypto-assets, subject the relevant notification set out in Article 53a for crypto-assets and to capital adequacy requirements in accordance with Directive (EU) 2019/2034 and Regulation (EU) No 2019/2033 including capital requirements for operational risks and authorised in accordance with Directive 2014/65/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2014/65/EC, for financial instruments; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of Directive (EU) 2019/2034;

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

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

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

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

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

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

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

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

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

For the purpose of point (a), credit institutions shall ensure that funds are registered in the credit institutions' books within segregated account in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC[31] into the legal order of the Member States. The account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets of each asset-referenced token, so that the funds held in custody can be clearly identified as belonging to each reserve of assets.

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

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

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

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

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

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

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

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

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

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

Article 34

Investment of the reserve of assets

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

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

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

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

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

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

(c) the conditions for recognition as high quality liquid assets under Article 412 of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61[32];

(d)

(e)

(f) constrains on concentration, preventing the issuer from investing in more than a certain percentage of reserve assets issued by a single body;

(g) constrains on concentration, preventing the issuer from keeping in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers, investment firms or credit institutions which belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU[33].

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.

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32 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).

33 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).

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

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

Article 35

Rights on issuers of asset-referenced tokens

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

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

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

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

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

(d) the settlement conditions when this right is exercised

(e)

(f) adequate management of increases or decreases of the reserve to avoid any adverse impacts on the market of the assets included in the reserve.

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

3.

4.

4b. Without prejudice of Article 41a the redemption of asset-referenced tokens shall not be subject to a fee.

4c. When the issuer of asset-referenced tokens decides to discontinue the asset-referenced token it shall present a plan to the competent authority for such discontinuation, for approval by the competent authority. The discontinuation of the asset-referenced token may trigger the implementation of the plan referred to in Article 42 where the issuer is unable or likely to be unable to comply with its obligations.

5.

(a)

(b)

Article 36

Prohibition of interest

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

2. No crypto-asset service providers, when providing crypto-asset services, related to asset-referenced tokens, shall grant interest.

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

Chapter 4: Acquisitions of issuers of asset-referenced tokens

Article 37

Assessment of intended acquisitions of issuers of asset-referenced tokens

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

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

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

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

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

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

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

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

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.

7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.

8. Competent authorities may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 38

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

1. When performing the assessment referred to in Article 37(4), competent authorities shall appraise the suitability of the persons referred to in Article 37(1) and the financial soundness of intended acquisition against all of the following criteria:

(a) the reputation of the persons referred to in Article 37(1);

(b) the reputation, knowledge and experience of any person who will direct the business of the issuer of asset-referenced tokens as a result of the intended acquisition;

(c) the financial soundness of the persons referred to in Article 37(1), in particular in relation to the type of business pursued and envisaged in the issuer of asset-referenced tokens in which the acquisition is intended;

(d) whether the issuer of asset-referenced tokens will be able to comply and continue to comply with the provisions of this Title;

(e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.

2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 37(4) is incomplete or false.

3. Member States shall not impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. 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 the same three of the following criteria are met in at least two consecutive reporting's from the competent authorities of the issuer's home Member State under paragraph 2 of this article:

   (a) the size of the customer base of the asset-referenced tokens, including those which do not interact directly with the issuer, is higher than 10 million;

   (b) the value of the asset-referenced tokens issued, where applicable, their market capitalisation or the size of the reserve of assets of the issuer of the asset-referenced token, is higher than EUR 5 billion;

(c) the number and value of transactions in those asset-referenced tokens, is higher than 2 500 000 transactions and EUR 500 million respectively, per day;

(d)

(e)

(f) the interconnectedness with the financial system;

(g) the same person or related group of persons issue several e-money tokens, asset-referenced tokens and provide crypto-asset provider services.

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

2. Competent authorities of the issuer's home Member State shall provide the EBA and the ECB with information on the criteria referred to in paragraph 1 as received in Article 19a and as specified in accordance with paragraph 6 on at least a biannual basis.

Where the issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall transmit the information referred to in the previous sub paragraph to the central bank of that Member State.

3. Where the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give 20 working days, to issuers of such asset-referenced tokens, their competent authorities, the ECB and the central bank as referred to in the second paragraph, to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within 60 working days after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the EBA 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. EBA shall assess yearly the eligibility of the asset-referenced tokens under its supervision on the basis of information provided by the issuers.

Where the EBA is of the opinion that asset-referenced tokens no longer meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give issuers of such asset-referenced tokens, their competent authorities, the ECB and the central bank referred in paragraph 2 twenty working days to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

5b. The EBA shall take its final decision on whether an asset-referenced token is no longer a significant asset-referenced token within 60 working days after receiving the information referred to in paragraph 5a and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5c. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the competent authority of the home Member State 20 working days after the notification of the decision referred to in paragraph 5b.

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

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

(a)

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iii)

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v)

(b) the circumstances under which asset-referenced tokens and their issuers shall be considered as interconnected with the financial system;

(ba) the circumstances under which the issuance of other e-money tokens and asset-referenced tokens and provision of crypto-asset provider services should be considered for the purposes of identification of an asset-referenced token as significant;

(c) the content and format of information provided by competent authorities to EBA under paragraph 2;

(d) the procedure and timeframe for the decisions taken by the EBA under paragraphs 3 to 5.

Article 40

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

1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Articles 15a and 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA, to the ECB and to central bank as referred to in Article 39(2).

   For the asset-referenced tokens to be classified as significant at the time of authorisation, applicant issuers of asset-referenced tokens shall demonstrate, through its programme of operations as referred to in Article 16(2), point (c) that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall within 20 working days from receipt of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer's home Member State, to the ECB and to central bank as referred to in Article 39(2).

The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall within 20 working days from receipt of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer's home Member State, to the ECB and to central bank as referred to in Article 39(2).

   The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within 60 working days after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. Where asset-referenced tokens have been classified as significant in accordance with a decision referred to in paragraph 4, the supervisory responsibilities shall be transferred to the EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 19(1).

Article 41

Specific additional obligations for issuers of significant asset-referenced tokens

1. Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

2. Issuers of significant asset-referenced tokens shall ensure that such tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1) point (10), including by crypto-asset service providers that do not belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council, on a fair, reasonable and non-discriminatory basis.

3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 35, by holders of asset-referenced tokens. For that purpose, issuers of significant asset-referenced tokens shall establish, maintain and implement a liquidity management policy and procedures. That policy and those procedures shall ensure that the reserve assets have a resilient liquidity profile that enable issuer of significant asset-referenced tokens to continue operating normally, including under liquidity stressed scenarios.

3a. Issuers of significant asset-referenced tokens shall conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements.

Where an issuer of significant asset-referenced tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner.

4. The percentage referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens.

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

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

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

(a) the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1;

(aa) liquidity requirements and the minimum contents of the liquidity management policy as set out in paragraph 3, including the minimum amount of deposits in each official currency referenced, which cannot be inferior than 60% of the amount referenced in each official currencies;

(b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 4.

In the case of credit institutions, the EBA shall calibrate the technical standards taking into consideration any possible interactions between the regulatory requirements established in this Regulation and the regulatory requirements established in the existing Union law.

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

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

6a. The EBA, in close cooperation with ESMA and the ESCB, shall issue guidelines with a view to establishing the common reference parameters of the stress test scenarios to be included in the stress tests in accordance with paragraph 3a. The guidelines shall be updated periodically taking into account the latest market developments.

Chapter 6: Recovery and orderly redemption

Article 41a

Recovery plan

1. An issuer of asset-referenced tokens shall draw up and maintain a recovery plan providing for measures to be taken by the issuer to restore the compliance with the requirements applicable to the reserve of assets when the issuer fails to comply with those requirements.

The plan shall also include the preservation of its services related to the asset-referenced tokens issued, the timely recovery of operations and the fulfilment of the issuer`s obligations in the case of events that pose a significant risk of disrupting operations.

The plan shall include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options, including

(a) liquidity fees on redemptions;

(b) limits to the amount of asset-referenced tokens to be redeemed on any working day;

(c) suspension of redemptions.

2. The issuer of asset-referenced tokens shall notify the recovery plan to the competent authority within 6 months after authorisation. The competent authority shall require amendments where necessary to ensure a proper implementation of the plan referred to in paragraph 1 and notify its decision to the issuer within 40 working days. Any such request of the competent authority has to be implemented by the issuer within 40 working days. The recovery plan shall be reviewed and updated regularly.

The issuer shall also notify the plan to its resolution and prudential supervisory authorities in parallel to the competent authority.

3. Where the issuer fails to comply with requirements applicable to the reserve of assets or, due to a rapidly deteriorating financial condition, is likely in the near future to not comply with requirements applicable to the reserve of assets, the competent authority shall have the power require the issuer to implement one or more of the arrangements or measures set out in the recovery plan or to update such a recovery plan when the circumstances are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure compliance with applicable requirements.

4. In the circumstances under paragraph 3, the competent authority shall temporarily suspend redemption of asset-referenced tokens, provided that the suspension is justified having regard to the interests of the holders of asset-referenced tokens and the financial stability.

4a. Where applicable, the competent authority shall notify the resolution and prudential supervisory authorities of the issuer of any measure taken according to paragraphs 3 and 4.

5. EBA, after consultation of the ESMA, shall issue guidelines to specify the format of the recovery plan and the information to be contained in the recovery plan.

Article 42

Redemption Plan

1. Issuers of asset-referenced tokens shall draw up and maintain an operational plan to support an orderly redemption of each asset-referenced tokens to be implemented upon a decision by the competent authority where the issuer is unable or likely to be unable to comply with its obligations, including in the case of insolvency or withdrawal of authorisation of the issuer without prejudice to the commencement of a crisis management procedure.

2. The plan referred to in paragraph 1 shall demonstrate the ability of the issuer of asset-referenced tokens to carry out the redemption of outstanding asset-referenced tokens issued without causing undue economic harm to their holders or to the stability of the markets of the reserve assets.

   The plan shall include contractual arrangements, procedures and systems, including the designation of a temporary administrator according to the applicable law, to ensure the equitable treatment between all holders of asset-referenced tokens and that the holders of asset-referenced tokens are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

   The plan shall ensure the continuity of any critical activity performed by issuers or by any third-party entities as referred to in Article 30(5), point (h), necessary for the orderly redemption.

3. The issuer of asset-referenced tokens shall notify the plan referred to in paragraph 1 to the competent authority within 6 months after authorisation. The competent authority shall require amendments where necessary to ensure a proper implementation of the plan referred to in paragraph 1 and notify its decision to the issuer within 40 working days. Any such request of the competent authority has to be implemented by the issuer within 40 working days. The plan shall be reviewed and updated regularly.

4. Where applicable, the competent authority shall consult the resolution and prudential supervisory authorities of the issuer before approving and implementing the plan referred to in paragraph 1.

   The competent authority shall notify the resolution authority and prudential supervisory authority of the issuer of the plan referred to in paragraph 1. The resolution authority may examine the redemption plan with a view to identifying any actions in the redemption plan which may adversely impact the resolvability of the issuer and make recommendations to the competent authority with regard to those matters.

5. EBA shall issue guidelines on

   (a) the content of the plan referred to in paragraph 1 and on the periodicity for review taking into account the size, complexity, nature and business model of the asset-referenced token;

   (b) the triggers for implementation of the plan referred to in paragraph 1.

TITLE IV: Electronic money tokens

Chapter 1: Requirements to be fulfilled by all issuers of electronic money tokens

Article 43

Authorisation

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

   (a) is a credit institution under Directive 2013/36/EU or as an 'electronic money institution' under Directive 2009/110/EC;

   (b)

   (c) publishes a crypto-asset white paper notified to the competent authority, in accordance with Article 46.

1a. E-money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC and shall be issued and redeemed in accordance with the rules laid down in Directive 2009/110/EC unless otherwise stated in this Title.

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

2. Paragraph 1 shall not apply:

(a)

(b) to issuers of e-money tokens exempted in accordance with Article 9(1) of Directive 2009/110/EC.

(c) to e-money tokens exempted in accordance with Articles 1(4) and 1(5) of Directive 2009/110/EC.

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

3. Upon a written consent from the issuer other persons may offer or seek admission to trading the asset-referenced tokens. Those entities shall comply with Articles 45 and 48.

Article 44

Issuance and redeemability of electronic money tokens

1. By derogation of Article 11 of Directive 2009/110/EC, only the following requirements regarding the issuance and redeemability of e-money tokens shall apply to issuers of e-money tokens.

2. Holders of e-money tokens shall be provided with a claim on the issuer of such e-money tokens. Any e-money token that does not provide all holders with a claim shall be prohibited.

3. Issuers of such e-money tokens shall issue e-money tokens at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366.

4. Upon request by the holder of e-money tokens, the respective issuer must redeem, at any moment and at par value, the monetary value of the e-money tokens held to the holders of e-money tokens in funds other than e-money.

5. Issuers of e-money tokens shall prominently state the conditions of redemption in the crypto-asset white paper as referred to in Article 46 paragraph 2 subparagraph (d).

6. Without prejudice to Article 41a, redemption shall not be subject to a fee.

7.

(a)

(b)

Article 45

Prohibition of interests

1. No issuer of e-money tokens shall grant interest in e-money tokens.

2. No crypto-asset service provider, when providing crypto-asset services related to e-money tokens, shall grant interest.

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

Article 46

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

1. Before offering e-money tokens to the public in the EU or seeking an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall publish a crypto-asset white paper on its website.

2. The crypto-asset white paper referred to in paragraph 1 shall contain all the following relevant information as specified in Annex III:

(a) a description of the issuer of e-money tokens;

(b) a detailed description of the issuer’s project, and a presentation of the main participants involved in the project's design and development;

(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;

(f) a detailed description of the risks relating to the issuer of e-money token, the e-money tokens and the implementation of the project, including the technology;

(g)

(h) where applicable, a detailed description of the crypto-asset trading platforms on which e-money tokens are to be admitted to trading, how investors can access such trading platforms and what costs are involved;

(i) whether and to what extent the crypto-asset is covered by an investor compensation scheme;

(j) information of rights during the implementation of the recovery plan and orderly redemption plan.

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

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

4. Every crypto-asset white paper shall also include a statement from the management body of the issuer of e-money, placed after the statement referred to in the previous paragraph, confirming that the crypto-asset white paper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in the crypto-asset white paper is correct and that there is no significant omission.

5. The crypto-asset white paper shall include a summary, placed after the statement referred to in the previous paragraph, which shall, in brief and non-technical language, provide key information in relation to the offer to the public of e-money tokens or admission of such e-money tokens to trading, and in particular about the essential elements of the e-money tokens. The summary shall be presented and laid out in easily understandable words and in a clear and comprehensible form, using characters of readable size. The summary shall indicate that:

(a) the holders of e-money tokens have a redemption right at any moment and at par value;

(b) the conditions of redemption.

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

6a. Every crypto-asset white paper shall contain an index of the information contained in the document, placed after the summary pursuant to paragraph 5.

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

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 to the relevant competent authority as referred to in Article 3(1) point (24)(b) its draft crypto-asset white paper at least 20 working days before its date of its publication and, where applicable, their marketing communications, at least 5 working days before its date of its publication.

Relevant competent authorities shall not require an ex ante approval of a crypto-asset white paper nor of any marketing communications relating to it.

The marketing communications shall be notified to the relevant competent authority upon request.

10. Any significant new factor, material mistake or material inaccuracy which is capable of affecting the assessment of the crypto-assets shall be described in a modified crypto-asset white paper prepared by the issuer and notified to the relevant competent authority, in accordance with paragraph 9.

10a. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA, within 5 working days after receiving the information from the issuer, the information referred to in Article 91a(4) and the starting date of the intended offer to the public or intended admission to trading and of any change thereof.

ESMA shall make such information available in the register referred to in Article 91a on the starting date of the offer to the public or admission to trading or in the case of a modified crypto-asset white paper as soon as it is published.

10b. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA the withdrawal of authorisation of the e-money issuer.

Article 47

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

1. Member States shall ensure that the issuer, or its administrative, management or supervisory bodies, as the case may be, are responsible for the information given in the crypto-asset white paper or in a modified crypto-asset white paper.

   Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a white paper.

2.

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;

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

2. The marketing communications shall contain a clear and unambiguous statement that all the holders of the e-money tokens have a redemption right at any time and at par value on the issuer.

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

Article 49

Investment of funds received in exchange of e-money token issuers

Funds received by issuers of e-money tokens in exchange of e-money tokens and safeguarded in accordance with Article 7(1) of Directive 2009/110/EC shall be:

(a) deposited in a separate account in a credit institution, at least 30% of the reserve, and

(b) invested in secure, low-risk assets denominated in the same currency as the one referenced by the e-money token.

Article 49a

Recovery and redemption plan

Articles 41a and 42 shall apply to issuers of e-money tokens.

Chapter 2: Significant e-money tokens

Article 50

Classification of e-money tokens as significant e-money tokens

1. The EBA shall classify e-money tokens as significant e-money tokens on the basis of the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least the same three of the following criteria are met in at least two consecutive reporting's from the competent authorities of the issuer's home Member State under paragraph 2 of this article.

2. Competent authorities of the issuer's home Member State shall provide the EBA and the ECB with information on the criteria referred to in Article 39(1) of this Article and specified in accordance with Article 39(6) on at least a biannual basis.

   Where the issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is referenced by the e-money token, competent authorities shall transmit the information referred to in the previous sub paragraph to the central bank of that Member State.

3. Where the EBA 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 competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2. The EBA shall give issuers of such e-money 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 e-money token is a significant e-money token within 60 working days after the notification referred to in paragraph 3 and immediately notify the issuers of such e-money tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant e-money tokens shall be transferred to the EBA in accordance with Article 98(4), 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. As a derogation of paragraph 5 the supervisory responsibilities of the issuers of significant e-money tokens denominated in an official currency of the EU other than the euro, where at least 80% of the number of holders and of the volume of transactions of the significant e-money tokens are concentrated in the home Member State shall not be transferred to the EBA.

The competent authority of the issuer home Member State shall provide the EBA with information on the application of the derogation criteria referred to in the first subparagraph, on a yearly basis.

For the purpose of the first sub-paragraph a transaction shall be considered to take place in the home Member State when the payer or the payee are established in the home Member State.

5b. EBA shall assess yearly the eligibility of the e-money token under its supervision on the basis of information provided by the issuers.

Where the EBA is of the opinion that e-money token no longer meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those e-money tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give issuers of such e-money token, their competent authorities, the ECB and the central bank referred in the second sub-paragraph 20 working days to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

5c. The EBA shall take its final decision on whether an e-money token is no longer a significant e-money token within 60 working days after receiving the information referred to in paragraph 5a and immediately notify the issuers of such e-money token and their competent authorities thereof.

5d. The supervisory responsibilities on issuers of significant e-money token shall be transferred to the competent authority of the home Member State 20 working days after the notification of the decision referred to in paragraph 5b.

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

Article 51

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

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

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

2. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer's home Member State, to the ECB and to the central bank as referred to in Article 50(2).

The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to competent authority of the issuer or applicant issuer's home Member State, to the ECB and to the central bank as referred to in Article 50(2).

The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within 60 days after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. The decision shall be immediately notified to the issuer or applicant issuer of e-money tokens and to the competent authority of its home Member State.

5. The supervisory responsibilities on issuers of e-money tokens shall be transferred to the EBA in accordance with Article 98(4), 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. As a derogation of paragraph 5 the supervisory responsibilities of the issuers of significant e-money tokens denominated in an official currency of the EU other than the euro, where at least 80% of the number of holders and of the volume of transactions of the significant e-money tokens are expected to be concentrated in the home Member State shall not be transferred to the EBA.

The competent authority of the issuer home Member State shall provide the EBA with information on the application of the derogation criteria referred to in the first subparagraph, on a yearly basis.

For the purpose of the first sub-paragraph a transaction shall be considered to take place in the home Member State when the payer or the payee are established in the home Member State.

Article 52

Specific additional obligations for issuers of e-money tokens

1. Issuers of significant e-money tokens, that are not credit institutions, shall apply the following requirements:

(a) Articles 32, 33, 34 and Article 41, paragraphs 1, 2, 3 and 3a of this Regulation, instead of Article 7 of Directive 2009/110/EC;

(b)

(c) Articles 31(3) and 41 paragraph 4 of this Regulation, instead of Article 5 of Directive 2009/110/EC;

(d) .

2. Competent authorities of the home Member States may require issuers of e-money tokens which are not significant to comply with any requirement foreseen in paragraph 1 where necessary to address risks identified.

3. Articles 19a, 19b and 20(1b) are applicable to e-money tokens denominated in a currency which is not an official currency of an EU Member State.

TITLE V: Authorisation and operating conditions for Crypto-Asset Service providers

Chapter 1: Authorisation of crypto-asset service providers

Article 53

Authorisation

1. Crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the Union where they carry out at least part of their crypto-assets services and that have been authorised as crypto-asset service providers in accordance with Article 55 or that are authorized credit institutions, investment firms, market operators, e-money institutions, and management companies of UCITS and alternative investment fund managers and comply with the requirements of Article 53a.

Crypto-asset service providers shall, at all times, meet the conditions for their authorisation. Member states may allow crypto-asset services to be provided by undertakings which are not legal persons, as long as that their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and that they are subject to equivalent prudential supervision appropriate to their legal form.

A person who is not an authorised crypto-asset service provider shall not use a name, or a corporate name, or issue marketing communications or use any other process suggesting that he or she is 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. The authorisation as a crypto-asset service provider referred to in Article 55 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.

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 53a

Provision of crypto-asset services by authorised credit institutions, investment firms, market operators, e-money institutions, management companies of UCITS and alternative investment fund managers

1. A credit institution may provide crypto-asset services if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

   The first subparagraph is without prejudice to the national provisions transposing Directive 2013/36/EU that set out procedures for authorisation of credit institutions to provide services listed in Annex I of Directive 2013/36/EU.

2. An investment firm may provide crypto-asset services in the EU equivalent to the investment services and activities for which it is specifically authorised under Directive 2014/65/EU if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of the above subparagraph:

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

(b) the crypto-asset services defined in Article 3(1), points (12) and (13), of this Regulation are deemed to be equivalent to the investment services referred to in point (3) of Section A of Annex I to Directive 2014/65/EU;

(c) the crypto-asset services defined in Article 3(1), point (14), of this Regulation are deemed to be equivalent to the investment services referred to in point (2) of Section A of Annex I to Directive 2014/65/EU;

(d) the crypto-asset services defined in Article 3(1), point (15), of this Regulation are deemed to be equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I to Directive 2014/65/EU;

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

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

(g) the crypto-asset services defined in Article 3(1), point (17a), of this Regulation are deemed to be equivalent to the investment services referred to in point (4) of Section A of Annex I to Directive 2014/65/EU.

3. An electronic money institution authorised under Directive 2009/110/EC may only provide the service of "custody and administration of crypto-assets on behalf of third parties" with regard to the e-money tokens it issues, if it notifies the respective competent authority, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

4. A management company of a UCITS or an alternative fund investment manager may provide crypto-asset services in the EU equivalent to the management of portfolios of investment and non-core services for which it is authorised under Directive 2009/65/EC or Directive 2011/61/EU to provide nom-core services and if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of the above subparagraph:

(a) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the non-core service referred in Article 6(4), point (b) sub-point (iii) of Directive 2011/61/EU;

(b) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the non-core service referred in Article 6(4), point (b) sub-point (i) of Directive 2011/61/EU and Article 6(3), point (b) sub-point (i) of Directive 2009/65/EC;

(c) the crypto-asset services defined in Article 3(1), point (17a), of this Regulation are deemed to be equivalent to the service referred in Article 6(4), point (a) of Directive 2011/61/EU and Article 6(3), point (a) of Directive 2009/65/EC.

5. A market operator authorised under Directive 2014/65/EU may operate a trading platform for crypto-assets defined in Article 3(1), point (11), if it notifies the competent authority of the home Member State, at least 40 working days before providing that service for the first time, with the information specified in paragraph 6.

6. For the purpose of paragraphs 1 to 5 the following information shall be notified:

(a) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

(b) a description of the internal control mechanism, procedure for risk assessment and business continuity plan;

(c) descriptions both in technical and non-technical language of the IT systems and security arrangements;

(d) a description of the procedure for the segregation of client's crypto-assets and funds;

(e) where there is the intention to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(f) where there is the intention to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform and of the procedures and system to detect market abuse;

(g) where there is the intention to exchange crypto-assets for funds or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets;

(h) where there is intention to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;

(i)

(j) where there is intention to provide advice or portfolio management, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset provider have the necessary knowledge and expertise to fulfil their obligations,;

(k) where there is intention to provide payment services related to crypto-assets service it offers, information on the manner in which such associated payment services are provided by the notifying entity or by a third party;

(l)

(m) the type of crypto-assets (asset-references tokens, e-money tokens and/or other crypto-assets) to which the crypto-asset service will relate.

Within 20 working days from receiving the notification, the competent authorities shall verify the completeness of the notification received under the previous paragraphs and inform the entities referred to in paragraphs 1 to 5 in the case they consider that all required information has been provided or when the notification is incomplete. Where the information is not complete, they shall set a deadline by which the credit institutions to provide any missing information.

When the information required was previously submitted to the competent authority the entities referred to in paragraphs 1 to 5 shall not be required to resubmit that information. In such cases the entities referred to in paragraphs 1 to 5 shall explicitly state that the information not resubmitted is still up to date.

7. Where providing crypto-asset services the credit institution, investment firm, market operator, electronic money institution, alternative investment funds manager and management company referred to in paragraphs 1 to 5 shall not be subject to Articles 54, 55, 56, 60, 74 and 75.

8. Following the 40 working days notification period foreseen in this article, and without prejudice of the notification of Article 58, the credit institution, investment firm, electronic money institution, alternative investment funds manager, management company and market operator shall be allowed to provide the notified services throughout the Union, either under the right of establishment, including through a branch, or under the freedom to provide services.

9. The right referred to in paragraph 8 shall be revoked upon the withdrawal of the authorisation which enabled the credit institution, investment firm, electronic money institution, alternative investment funds manager, management company and market operator to provide crypto-asset services without an authorisation pursuant to Article 53.

10. ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to specify the information that a notification shall contain, in accordance with paragraph 6.

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

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

11. The ESMA shall, in close cooperation with EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the notification from paragraph 6.

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

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

Article 53b

Provision of services at the exclusive initiative of the client

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

Without prejudice to intragroup 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, it shall not be deemed to be a service provided at the own exclusive initiative of the client.

2. An initiative by a client as referred to in paragraph 1 shall not entitle the third- country firm to market new categories of crypto-assets or crypto-asset services to that client otherwise than trough authorisation in accordance with Article 53.

3. ESMA shall develop by [18 months after date of entry into force] guidelines to specify when a third country firm is deemed to solicit clients established or situated in the Union.

Article 54

Application for authorisation

1. Legal persons and undertakings 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.

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, and its physical address;

(b) the legal form of the applicant crypto-asset service provider;

(c) the articles of association of the applicant crypto-asset service provider;

(d) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

(e) a description of the applicant crypto-asset service provider's governance arrangements;

(f) where applicable, proof that any natural or legal persons with a qualifying holding on the applicant crypto-asset service provider have good repute, ;

(g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider are of good repute and possess appropriate knowledge and experience to manage that provider;

(h) a description of the applicant crypto-asset service provider's internal control mechanism, procedure for risk assessment and business continuity plan;

(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) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform and of the procedure and system to detect market abuse;

(n) where the applicant crypto-asset service provider intends to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(o)

(p) where the applicant crypto-asset service provider intends to exchange crypto-assets for funds or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets;

(q) where the applicant crypto-asset service provider intends to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;

(r) where the applicant crypto-asset service provider intends to provide advice or portfolio management, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset provider have the necessary knowledge and expertise to fulfil their obligations;

(s)

(t) where the applicant crypto-asset service provider intends to provide payment services related to crypto-assets service it offers, information on the manner in which such associated payment services are provided by the applicant or by a third party;

(u)

(v) the type of crypto-assets to which the crypto-asset service will relate;

(y) a description of the applicant crypto-asset service provider's internal control mechanisms 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.

2a. For the purposes of paragraph 2, point (f) and (g), applicant crypto-asset service provider shall provide proof of all of the following:

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

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

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

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

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

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

5. The ESMA shall, in close cooperation with EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

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

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

Article 55

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

1. Competent authorities shall acknowledge receipt of the applications under Article 54(1), promptly and in any event within 5 working days following receipt in writing to the applicant.

1a. The competent authority shall, within 25 working days of receipt assess whether that application is complete by checking that the information listed in Article 54(2) has been submitted. Where the application is not complete, the authorities shall set a deadline by which the applicant crypto-asset service providers are to provide the missing information.

2. Competent authorities may refuse to review applications where such applications remain incomplete after the deadline referred to in paragraph 1.

3. Competent authorities shall immediately notify applicant crypto-asset service providers of the fact that an application is complete.

4. Before granting or refusing an authorisation as a crypto-asset service provider, competent authorities shall consult the competent authorities of another Member State in any of the following cases:

   (a) the applicant crypto-asset service provider is a subsidiary of a crypto-asset service provider, a credit institution, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State;

   (b) the applicant crypto-asset service provider is a subsidiary of the parent undertaking of a crypto-asset service provider, a credit institution, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State;

(c) the applicant crypto-asset service provider is controlled by the same natural or legal persons who control a crypto-asset service provider, a credit institution, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State.

5. Competent authorities shall, within 60 working days from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with the requirements of this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.

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

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;

(aa) the shareholders or members that have qualifying holdings are not deemed suitable, taking into account the need to ensure the sound and prudent management of the crypto-asset service provider;

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

5a. The assessment period under paragraphs 1 and 5 shall be suspended for the period between the date of request for information by the competent authorities and the receipt of a response thereto by the applicant crypto-asset service provider. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

6. Competent authorities shall inform ESMA of all authorisations granted under this Article and all refusals regarding authorisations including all the information referred to in Article 91a(5). ESMA shall make available in the register referred to in Article 91athe information on the successful applications.

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 have the power to withdraw the crypto-asset service provider's authorisation if it:

   (a) has not used its authorisation within 12 months of the date of granting of the authorisation;

   (b) has expressly renounced to its authorisation;

   (c) has not provided crypto-asset services for six 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;

   (f) has seriously infringed this Regulation.

   Member States may provide for authorisation to lapse in the cases of letters a) and c).

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, the shareholders or members that have qualifying holdings in the crypto-asset service provider have infringed national law implementing Directive (EU) 2015/849 in respect of money laundering or terrorist financing;

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

3. Where a competent authority withdraws an authorisation, the competent authority shall notify ESMA and the single contact points of the host Member States without undue delay. ESMA shall make such information available in the register referred to in Article 91a.

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

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

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

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

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

6. The EBA, ESMA and any competent authority of a host Member State may at any time request that the competent authority of the home Member State examines whether the crypto-asset service provider still complies with the conditions under which the authorisation was granted, when there are grounds to believe it may no longer be the case.

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

Article 57

Register of crypto-asset service providers

1.

2.

(a)

(b)

(c)

(d)

(e)

(f)

(g)

3.

Article 58

Cross-border provision of crypto-asset services

1. Crypto-asset service providers, and the entities referred in Article 53a that intend to provide crypto-asset services in more than one Member State, shall submit the following information to the competent authority of the home Member State.

   (a) a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services;

   (b) the starting date of the intended provision of the crypto-asset services;

   (c) a list of all other activities provided by the crypto-asset service provider not covered by this Regulation.

   (d) the crypto-asset services that it intends to provide on a cross-border basis.

2. The competent authority of the home Member State shall, within 10 working days of receipt of the information referred to in paragraph 1 communicate that information to the single point of contact of the host Member States, to ESMA and to the EBA. ESMA shall make such information available in the register referred to in Article 91a.

3. The competent authority of the Member State which granted authorisation shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.

4. Crypto-asset service providers may start to provide crypto-asset services in a Member State other than their home Member State from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after having submitted the information referred to in paragraph 1.

Chapter 2: Obligation for all crypto-asset service providers

Article 59

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

1. Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and potential clients.

2. Crypto-asset service providers shall provide their clients with fair, clear and not misleading information, including in marketing communications, which shall be identified as such. Crypto-asset service providers shall not, deliberately or negligently, mislead a client in relation to the real or perceived advantages of any crypto-assets.

3. Crypto-asset service providers shall warn clients of risks associated with transactions in crypto-assets.

When providing services in relation with to a crypto asset, crypto-asset servicers providers shall provide the client with a hyperlink to the respective white paper prepared in accordance with Title II, where applicable.

The crypto-asset service provider shall inform the competent authority when it becomes aware that a crypto asset is being offered to the public or admitted to trading in violation of this Regulation.

4. Crypto-asset service providers shall make their pricing, costs and fee policies publicly available, in a prominent place on their website.

Article 60

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

(a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;

(b) one quarter of the fixed overheads of the preceding year, reviewed annually;

2. The prudential safeguards referred to in paragraph 1 shall take any or a combination of the following forms:

(a) own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;

(b) an insurance policy covering the territories of the Union where crypto-asset services are provided or a comparable guarantee.

3. Crypto-asset service providers that have not been in business for one year from the date on which they started providing services shall use, for the calculation referred to in paragraph 1, point (b), the projected fixed overheads included in their projections for the first 12 months' of service provision, as submitted with their application for authorisation.

4. The insurance policy referred to in paragraph 2 shall be disclosed to the public through the crypto-asset service provider's website and shall have at least all of the following characteristics:

(a) it has an initial term of no less than one year;

(b) the notice period for its cancellation is at least 90 days;

(c) it is taken out from an undertaking authorised to provide insurance, in accordance with Union law or national law;

(d) it is provided by a third-party entity.

5. The insurance policy referred to in paragraph 2, point (b) shall include, coverage against the risk of:

(a) loss of documents;

(b) misrepresentations or misleading statements made;

(c) acts, errors or omissions resulting in a breach of:

(i) legal and regulatory obligations;

(ii) the duty to act honestly, fairly and professionally towards clients;

(iii) obligations of confidentiality;

(d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;

(e) losses arising from business disruption or system failures;

(f) where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds;

(g) liability of the CASP vis-à-vis clients under Art. 67(8).

6. For the purposes of paragraph 1 point (b), crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:

(a) staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the crypto-asset service providers in the relevant year;

(b) employees', directors' and partners' shares in profits;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) non-recurring expenses from non-ordinary activities.

Article 61

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. They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

2. Natural or legal persons with a qualifying holding shall have the necessary good repute.

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 offences that would question the person's good repute and competence as a member of the management body.

4. Crypto-asset service providers shall employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, the nature and range of crypto-asset services provided.

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

6. Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council aimed at ensuring, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

7. Crypto-asset service providers shall have mechanisms, systems and procedures in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council as well as effective procedures for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council. They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of those mechanisms, systems and procedures, taking into account the scale, the nature and range of crypto-asset services provided, and take appropriate measures to address any deficiencies.

Crypto-asset service providers shall have systems and procedures to safeguard the security, integrity and confidentiality of information in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to perform the enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

   The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority before the five years have elapsed, for a period of up to seven years.

9. Crypto-asset service providers shall have in place effective systems, procedures and arrangements to monitor and detect market abuse as referred to in Title VI. They shall without delay report to their competent authority any reasonable suspicion that an order or transaction, including any cancellation or modification thereof, whether placed or executed on or outside a trading platform, could constitute insider dealing or market manipulation or attempted insider dealing or market manipulation.

10. ESMA, in close cooperation with EBA, shall draft guidelines on the organisational requirements on:

(a) the measures ensuring continuity and regularity in the performance of the crypto-asset services referred to in paragraphs 6;

(c) the records to be kept of all crypto-asset services, orders and transactions undertaken referred to in paragraph 8.

Article 62

Information to competent authorities

Crypto-asset service providers shall notify without any delay their competent authority of any changes to their management body, before the new members exercise any kind of activity, and shall provide their competent authority with all the necessary information to assess compliance with Article 61.

Article 63

Safekeeping of clients' crypto-assets and funds

1. Crypto-asset service providers that hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and to prevent the use of a client's crypto-assets for their own account.

2. Where their business models or the crypto-asset services require holding clients' funds other than e-money tokens, crypto-asset service providers shall have adequate arrangements in place to safeguard the rights of clients and prevent the use of clients' funds for their own account.

3. Crypto-asset service providers shall, by the end of the business day following the day the funds other than e-money tokens have been received, place such client's funds with a credit institution or, where available, a central bank.

   Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds other than e-money tokens held with a central bank or a credit institution are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

4. Crypto-asset service providers may themselves, or through a third party, provide payment services related to the crypto-asset service they offer, provided that the crypto-asset service provider itself, or the third-party, is authorised to provide those services.

   Where payment services are provided crypto-asset service providers shall inform their clients of all of the following: a) the nature and terms and conditions of those services, including references to the applicable national law and to the clients' right; b) whether those services are provided by them directly or by a third party.

5. Paragraphs 2 and 3 of this Article shall not apply to crypto-asset service providers that are electronic money institutions as defined in Article 2, point 1 of Directive 2009/110/EC, payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366 or credit institutions.

Article 64

Complaint handling procedure

1. Crypto-asset service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and shall publish descriptions of those procedures.

2. Clients shall be able to file complaints with crypto-asset service providers free of charge.

3. Crypto-asset service providers shall make available to clients the template for complaints and shall keep a record of all complaints received and any measures taken in response thereof.

3a. Crypto-asset service providers shall inform clients of the possibility to file a complaint in relation to a transaction.

4. Crypto-assets service providers shall investigate all complaints in a timely and fair manner, and communicate the outcome of such investigations to their clients within a reasonable period of time.

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

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

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

Article 65

Identification, prevention, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall maintain and operate an effective policy to identify, prevent, manage and disclose conflicts of interest, taking into account the scale, the nature and range of crypto-asset services provided, between themselves and:

   (a) their shareholders or any person directly or indirectly linked to them by control;

   (b) their managers and employees;

   (c) their clients, or between one client and another client.

2. Crypto-asset service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.

   Crypto-asset service providers shall make such disclosures on their website in a prominent place.

3. The disclosure referred to in paragraph 2 shall be made on an electronic format and shall include sufficient detail, taking into account the nature of each client and to enable each client to take an informed decision about the service in the context of which the conflicts of interest arises.

4. Crypto-asset service providers shall assess and at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

5. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to specify:

   (a) the requirements for the maintenance or operation of internal rules referred to in paragraph 1, taking into account the scale, the nature and range of crypto-asset services provided;

   (b) the arrangements for the disclosure referred to in paragraph 3.

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

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

Article 66

Outsourcing

1. Crypto-asset service providers, that rely on third parties for the performance of operational functions, shall take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of their obligations under this Title and shall ensure at all times that all the following conditions are complied with:

   (a) outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;

   (b) outsourcing does not alter the relationship between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service providers towards their clients;

   (c) outsourcing does not change the conditions for the authorisation of the crypto-asset service providers;

   (d) third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions, including on-site access to acquire any relevant information needed to fulfil those functions;

(e) crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;

(f) crypto-asset service providers have direct access to the relevant information of the outsourced services;

(g) crypto-asset service providers ensure that third parties involved in the outsourcing meet the standards laid down in the relevant data protection law which would apply if the third parties were established in the Union.

For the purposes of point (g), crypto-asset service providers are responsible for ensuring that the standards laid down in the relevant data protection legislation are set out in the contract referred to in paragraph 3.

2. Crypto-asset service providers shall have a policy on their outsourcing, including on contingency plans and exit strategies taking into account the scale, the nature and range of crypto-asset services provided.

3. Crypto-asset service providers shall enter into a written agreement with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations of both the crypto-asset service providers and of the third parties concerned, and shall allow the crypto-asset service providers concerned to terminate that agreement.

4. Crypto-asset service providers and third parties shall, upon request, make available to the competent authorities and the relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.

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;

(da) a description of procedures and policies adopted when providing services related to the transfer of crypto-assets, including client's rights;

(e) fees, costs and charges applied by the crypto-asset service provider;

(f) the law applicable to the agreement;

(g) the custody policy.

2. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. Where relevant, crypto-asset service providers shall record as soon as possible, in that register any movements following instructions from their clients. In such case, their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.

3. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall establish a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets, such as cryptographic keys.

Those rules and procedures shall minimise the risk of a loss of clients' crypto-assets or the rights related to those assets or the means of access to the crypto-assets due to frauds, cyber threats or negligence.

A summary of the custody policy must be made available to clients on their request in an electronic format.

4. Where applicable, crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register immediately.

In case of changes to the underlying distributed ledger technology or any other event likely to create or modify the client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the event's occurrence by such change, except when a valid agreement signed with the custodian pursuant to paragraph 1 prior to the event explicitly provides otherwise.

5. Crypto-asset providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients, at least once every three months and at each request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in an electronic format. The statement of position shall mention the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

   Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients as soon as possible with any information about operations on crypto-assets that require a response from those clients.

6. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall ensure that 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.

7. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall segregate holdings of crypto-assets on behalf of their clients from their own holdings and ensure that the means of access to crypto-assets of their clients are clearly identified as such. They shall ensure that, on the DLT, their clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be held liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result of an incident that can be 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 capped at the market value of the crypto-asset lost at the time the crypto-asset service provider's liability is invoked.

   Events not attributable to the crypto-assets service provider include, in particular, any event for which it could demonstrate that it occurred independently of its operations, in particular a problem inherent in the operation of the distributed ledger that the crypto-asset service provider does not control.

9. If crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties make use of other providers for the custody and administration of the crypto-assets they hold on behalf of third parties, they shall only make use of crypto-asset service providers authorised in accordance with Article 53. Crypto-asset service providers that are authorised for the custody and administer crypto-assets on behalf of third parties and that make use of other providers for the custody and administration of crypto-assets shall inform their customers thereof.

10. Member States shall ensure that the crypto-assets held in custody are insulated in accordance with national law in the interest of the clients of the crypto-asset service provider against the claims of other creditors on the crypto-asset service provider, in particular in the event of insolvency.

11. EBA, in close coordination with ESMA, shall draft guidelines as regards procedures and policies, including clients' rights, for crypto-asset service providers in the context of services enabling the transfer of crypto-assets.

Article 68

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall lay down, maintain and implement clear and transparent operating rules for the trading platform. These operating rules shall at least:

   (a) set the 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, non-discriminatory rules and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;

(e) set non-discretionary rules and procedures to ensure fair and orderly trading and objective criteria for the efficient execution of orders;

(f) set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;

(g) set conditions under which trading of crypto-assets can be suspended;

(h) set procedures to ensure efficient settlement of both crypto-assets and funds.

For the purposes of point (a), the operating rules shall clearly state that a crypto-asset shall not be admitted to trading on the trading platform, where a crypto-asset white paper has not been published.

Before admitting a crypto-asset to trading, crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that the crypto-asset complies with the operating rules of the trading platform and assess the suitability of the crypto-asset concerned. When assessing the suitability of a crypto-asset, the trading platform shall evaluate in particular the reliability of the solutions used and the potential association to illicit or fraudulent activities, taking into account the experience, track record and reputation of the issuer and its development team. The trading platform shall also assess the suitability of the crypto-assets benefiting from the exemption set out in Articles 4(2).

The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of crypto-assets which have inbuilt anonymisation function unless the holders of the crypto-assets and their transaction history can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets.

2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States or in another language that is customary in the sphere of finance. Where services are provided in another Member State the operating rules shall also be drafted in a language that is customary in the sphere of finance. Those operating rules shall be made public on the website of the crypto-asset service provider concerned.

3. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall not deal on own account on the trading platform for crypto-assets they operate, even when they are authorised for the exchange of crypto-assets for funds or for the exchange of crypto-assets for other crypto-assets.

3a. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets are only allowed to engage in matched principal trading where the client has consented to the process. Crypto-asset service providers shall provide the competent authority with information explaining its use of matched principal trading. The competent authority shall monitor the crypto-asset service providers' engagement in matched principal trading, ensure that it continues to fall within the definition of such trading and that their engagement in matched principal trading does not give rise to conflicts of interest between the crypto-asset service providers and their clients.

4. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall have in place effective systems, procedures and arrangements to ensure that their trading systems:

(a) are resilient;

(b) have sufficient capacity to deal with peak order and message volumes;

(ba) are able to ensure orderly trading under conditions of severe market stress;

(c) are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

(d) are fully tested to ensure that conditions under points (a), (b) and (c) are met;

(e) are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system;

(f) prevent and detect market abuse.

4a. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall inform their competent authority when they identify cases of market abuse or attempted market abuse occurring on or through its systems.

5. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through the systems of the trading platform for crypto-assets. The crypto-asset service providers concerned shall make that information available to the public during the trading hours on a continuous basis.

6. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public the price, volume and time of the transactions executed in respect of crypto-assets traded on their trading platforms. They shall make details of all such transactions public as close to real-time as is technically possible.

7. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make the information published in accordance with paragraphs 5 and 6 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine readable format and remain published for at least 2 years.

8. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall initiate the settlement of a crypto-asset transaction within 24 hours after transactions has been executed on the trading platform.

9. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

10. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall maintain resources and have back-up facilities in place to be capable of reporting to their competent authority at all times.

10aa. Upon request by the competent authority of the home Member State crypto-asset service providers that are authorised for the operation of a trading platform shall make available to the competent authority data relating to the order book or give the competent authority access to the order book so that it is able to monitor trading.

10a. ESMA shall develop guidelines to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred in paragraphs 5 and 6.

ESMA shall issue those guidelines by [18 months after the entry into force of the Regulation].

10b. ESMA shall develop draft regulatory technical standards to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1. When preparing the draft regulatory technical standards ESMA shall take into account the experience acquired with the implementation of the guidelines from paragraph 10.

ESMA shall submit those draft regulatory technical standards to the Commission by [36 months after the date of application of the Regulation].

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

Article 69

Exchange of crypto-assets against funds or exchange of crypto-assets against other crypto-assets

1. Crypto-asset providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they accept to transact with and the conditions that shall be met by clients.

2. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets, and any applicable limit to the amount to be exchanged.

3. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall execute the clients' orders at the prices displayed at the time where the order is final. Crypto-asset service providers shall inform their clients of the conditions to consider their order as final.

4. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds of a country or other crypto-assets shall publish the details of the transactions concluded by them, including transaction volumes and prices.

Article 70

Execution of orders for crypto-assets on behalf of 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, conditions of custody of the crypto-assets or any other consideration relevant to the execution of the order, unless the crypto-asset service provider concerned executes orders for crypto-assets following specific instructions given by its clients.

2. To ensure compliance with paragraph 1, a crypto-asset service provider that is authorised to execute orders for crypto-assets on behalf of third parties shall establish and implement effective execution arrangements. In particular, they shall establish and implement an order execution policy to allow them to obtain, for their clients' orders, the best possible result. In particular, this order execution policy shall provide for the prompt, fair and expeditious execution of clients' orders and prevent the misuse by the crypto-asset service providers' employees of any information relating to clients' orders.

3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the crypto-asset service provider for the client. Crypto-asset service providers shall obtain prior consent from their clients regarding the order execution policy.

4. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with their execution policy and to demonstrate to the competent authority, at its request, their compliance with this Article.

5. Where the order execution policy provides for the possibility that clients orders may be executed outside a trading platform, the crypto-asset service provider shall inform its clients about that possibility and obtain the prior express consent of their clients before proceeding to execute such orders, either in the form of a general agreement or in respect to individual transactions.

6. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, taking account of, inter alia, the information published under paragraph 2. Crypto-asset service providers shall notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

Article 71

Placing of crypto-assets

1. Crypto-asset service providers that are authorised for placing crypto-assets shall communicate the following information to the offeror 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, obtain the agreement of the issuers or any third party acting on their behalf as regards points (a) to (d).

2. The rules on conflicts of interest referred to in Article 65 shall have specific and adequate procedures in place to prevent, monitor, manage and potentially disclose any conflicts of interest arising from the following situations:

(a) the crypto-asset service providers place the crypto-assets with their own clients;

(b) the proposed price for placing crypto-assets has been overestimated or underestimated;

(c) incentives, including non-monetary, paid or granted by the offeror to the crypto-asset service provider.

3. The crypto-asset service provider shall ensure that all requirements applicable to the offeror are complied with before placing the crypto-assets.

Article 72

Reception and transmission of orders on behalf of third parties

1. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall establish and implement procedures and arrangements which provide for the prompt and proper transmission of client's orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.

2. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not receive any remuneration, discount or non-monetary benefit for routing clients' orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.

3. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not misuse information relating to pending clients' orders, and shall take all reasonable steps to prevent the misuse of such information by any of their employees.

Article 73

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

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

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. Member States shall publish the criteria to be used for assessing such knowledge and experience.

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall obtain from the client or potential client the necessary information regarding his knowledge of, and experience in investing, including in crypto-assets, investment objectives, including its risk tolerance, financial situation including his ability to bear losses and his basic understanding of risks involved in purchasing crypto-assets so as to enable the crypto-asset service provider to recommend or the client or potential client whether or not the crypto-assets are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall warn clients that, due to their nature, the value of crypto-assets may fluctuate.

4. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall establish, maintain and implement policies and procedures to enable them to collect and assess all information necessary to conduct this assessment for each client. They shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable.

5. Where clients do not provide the information required pursuant to paragraph 3, or where crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets consider, on the basis of the information received under paragraph 4, that the crypto-asset services or crypto-assets are not suitable for the clients, the service providers shall not recommend such crypto-assets services or crypto-assets, nor begin the provision of portfolio management service.

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

7. Once the assessment referred to in paragraph 1 or its review under paragraph 6 has been performed, crypto-asset service providers that are authorised to provide advice on crypto-assets shall provide clients with a report on suitability specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the client. That report shall be made and communicated to the clients in an electronic format. That report shall, as a minimum:

(a) include an updated information on the assessment referred to in paragraph 1;

(b) provide an outline of the advice given.

The report should make clear that the advice is based on the client's knowledge and experience in investing, in crypto-assets, investment objectives, including his risk tolerance and financial situation, including his and ability to bear losses.

8. Crypto-asset service providers that are authorised to provide portfolio management of crypto-assets shall provide periodic statements to the clients in an electronic format of the portfolio management activities carried out on behalf of that client. The periodic statements shall contain a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period, an updated statement of how the activities undertaken meet the client's preferences, objectives and other characteristics of the client, as well as an updated information on the assessment referred to in paragraph 2.

The periodic statement referred to in the previous paragraph shall be provided every three months, except when the client has an access to an online system, which qualifies as an electronic format, where up-to-date valuations of the client's portfolio and an updated information on the assessment referred to in paragraph 2 can be accessed, and the service provider has evidence that the client has accessed a valuation at least once during the relevant quarter.

9. ESMA shall adopt by [18 months after the date of entry into force of the Regulation] guidelines specifying:

(a) the information to obtain when assessing the suitability of the services and crypto-asset for their clients under paragraphs 1 and 3;

(b) criteria for the assessment of knowledge and experience required under paragraph 2;

(c) the formats of the periodic statement required under paragraph 8.

Chapter 4: Acquisition of crypto-asset service providers

Article 74

Assessment of intended acquisitions of crypto-asset service providers

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a crypto-asset service provider or to further increase, directly or indirectly, such a qualifying holding in a crypto-asset service provider so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the crypto-asset service provider would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that crypto-asset service provider thereof in writing indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4).

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

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

4. Competent authorities shall assess the intended acquisition referred to in paragraph 1 and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4), within 60 working days from the date of the written acknowledgement of receipt referred to in paragraph 3.

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

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

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

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

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.

7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.

8. The competent authority may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 75

Content of the assessment of intended acquisitions of crypto-asset service providers

1. When performing the assessment referred to in Article 74(4), competent authorities shall appraise the suitability of the persons referred to in Article 74(1) and the financial soundness of intended acquisition against all of the following criteria:

(a) the reputation of the persons referred to in Article 74(1);

(b) the reputation and experience of any person who will direct the business of the crypto-asset service provider as a result of the intended acquisition or disposal;

(c) the financial soundness of the persons referred to in Article 74(1), in particular in relation to the type of business pursued and envisaged in the crypto-asset service provider in which the acquisition is intended;

(d) whether the crypto-asset service provider will be able to comply and continue to comply with the provisions of this Title;

(e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.

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.

TITLE VI: Prevention and Prohibition of Market Abuse involving crypto-assets

Article 76

Scope of the rules on market abuse

1. The prohibitions and requirements laid down in this Title shall apply to acts carried out by any person and that concern crypto-assets that are admitted to trading on a trading platform for crypto-assets operated by an authorised crypto-asset service provider, or for which a request for admission to trading on such a trading platform has been made.

2. The prohibitions and requirements laid down in this Title shall also apply to any transaction, order or behaviour concerning any crypto-asset as referred to in paragraph 1, irrespective of whether or not such transaction, order or behaviour takes place on a trading platform.

3. The prohibitions and requirements laid down in this Title shall apply to actions and omissions, in the Union and in a third country, concerning the crypto-assets referred to in paragraph 1.

Article 76a

Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

   (a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset;

   (b) for persons charged with the execution of orders concerning crypto-assets, it also means information conveyed by a client and relating to the client's pending orders in crypto-assets, which is of a precise nature, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset.

2. For the purpose of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the crypto-assets. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of crypto-assets shall mean information a reasonable holder of crypto-assets would be likely to use as part of the basis of his or her purchase decisions.

Article 77

Disclosure of inside information

1. Issuers or offerors of crypto-assets who have approved trading of their crypto-assets on a trading platform or have requested admission to trading of their crypto-assets on a trading platform in a Member State shall inform the public as soon as possible of inside information which directly concerns them, in a manner that enables fast access and complete, correct and timely assessment of the information by the public. The issuer or offeror shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer or offeror shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

2. Issuers or 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;

(b) delay of disclosure is not likely to mislead the public;

(c) the issuers or offerors are able to ensure the confidentiality of that information.

3. Where an issuer or offeror of crypto-assets has delayed the disclosure of inside information under paragraph 2, it shall inform the competent authority that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in paragraph 2 were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority.

Article 78

Prohibition of insider dealing

0. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates. The use of inside information by cancelling or amending an order concerning a crypto-asset to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. The use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

1. No person shall engage or attempt to engage in insider dealing or use inside information about crypto-assets to acquire those crypto-assets, or to dispose of those crypto-assets, either directly or indirectly and either for his or her own account or for the account of a third party.

   No person shall recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

2. No person that possesses inside information about crypto-assets shall:

(a) recommend, on the basis of that inside information, that another person acquires those crypto-assets or disposes of those crypto-assets to which that information relates, or induce that person to make such an acquisition or disposal; or

(b) recommend, on the basis of that inside information, that another person cancels or amends an order concerning those crypto-assets, or induce that person make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies in particular to any person who possesses inside information as a result of:

a) being a member of the administrative, management or supervisory bodies of the issuer or offeror;

b) having a holding in the capital of the issuer or offeror;

c) having access to the information through the exercise of an employment, profession duties or in relation to its role in the DLT or similar technology; or

d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 79

Prohibition of unlawful disclosure of inside information

1. No person that possesses inside information shall unlawfully disclose such information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

   This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 78 (5).

2. The onward disclosure of recommendations or inducements referred to in Article 78 (3) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 80

Prohibition of market manipulation

1. No person shall engage in or attempt to engage in market manipulation which shall comprise any of the following activities:

   (a) unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, entering into a transaction, placing an order to trade or any other behaviour which:

      i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a crypto-asset;

      ii) secures, or is likely to secure, the price of one or several crypto-assets at an abnormal or artificial level.

   (b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several crypto-assets, while employing a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a crypto-asset, or secures or is likely to secure, the price of one or several crypto-assets, at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

2. The following behaviour shall, inter alia, be considered as market manipulation:

(a) securing a dominant position over the supply of or demand for a crypto-asset, which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the placing of orders to a trading platform for crypto-assets, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 1(a), by:

(i) disrupting or delaying the functioning of the trading platform for crypto-assets or engaging into any activities that are likely to have that effect;

(ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or engaging into any activities that are likely to have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

(iii) creating a false or misleading signal about the supply of, or demand for, or price of, a crypto-asset, in particular by entering orders to initiate or exacerbate a trend, or engaging into any activities that are likely to have that effect;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a crypto-asset, while having previously taken positions on that crypto-asset, and profiting subsequently from the impact of the opinions voiced on the price of that crypto-asset, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Title VII: competent Authorities, the EBA and ESMA

Chapter 1: Powers of competent authorities and cooperation between competent authorities, the EBA and ESMA

Article 81

Competent authorities

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation and shall inform the EBA and ESMA thereof.

2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one or more competent authorities as a single point of contact for cross-border administrative cooperation between competent authorities as well as with the EBA and ESMA.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1 and 2.

Article 82

Powers of competent authorities

1. In order to fulfil their duties under Titles II, III, IV, V and VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

(a) to require any natural or legal person to provide information and documents which the competent authority considers could be relevant for the performance of its duties;

(b)

(c) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(d) to prohibit the provision of crypto-asset services where they find that this Regulation has been infringed;

(e) to disclose, or to require a crypto-asset servicer provider to disclose, all material information which may have an effect on the provision of the crypto-asset services in order to ensure the protection of the interests of the clients, in particular retail holders, or the smooth operation of the market;

(f) to make public the fact that a crypto-asset service provider is failing to comply with its obligations;

(g) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services where the competent authorities consider that the crypto-asset service provider's situation is such that the provision of the crypto-asset service would be detrimental to clients' interests, in particular retail holders;

(h) to require the transfer of existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 56, subject to the agreement of the clients and the receiving crypto-asset service provider;

(i)

(j)

(k) where there is a reason to assume that a person is providing crypto-asset services without authorisation, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(l) to require, offerors or persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens and e-money tokens, and the persons that control them or are controlled by them, to provide information and documents;

(m)

(n) to require offerors or persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens and e-money tokens, to include additional information in their crypto-asset white papers, where necessary for financial stability or the protection of the interests of the holders of crypto-assets, in particular retail holders;

(o) to suspend an offer to the public or an admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(p) to prohibit an offer to the public or an admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(q) to suspend, or require a trading platform for crypto-assets to suspend, trading of the crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(r) to prohibit trading of crypto-assets, including asset-referenced tokens or e-money tokens, on a trading platform for crypto-assets where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(ra) to suspend or prohibit marketing communications or require offerors or persons asking for admission to trading on a trading platform for crypto-assets, including asset-referenced tokens and e-money tokens, or relevant crypto-asset service providers to cease or suspend advertisements for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(s) to make public the fact that an offeror or person seeking admission to trading of crypto-assets or an issuer of asset-referenced tokens or e-money tokens, is failing to comply with its obligations;

(t) to disclose, or to require the offeror or person seeking admission to trading of crypto-assets or an issuer of asset-referenced tokens or e-money tokens, to disclose all material information which may have an effect on the assessment of the crypto-assets offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure the protection of the interests of the holders of crypto-assets, in particular retail holders, or the smooth operation of the market;

(u) to suspend, or require the relevant trading platform for crypto-assets to suspend, the crypto-assets, including asset-referenced tokens or e-money tokens, from trading where it considers that the situation of the issuer, offeror or person seeking admission to trading is such that trading would be detrimental to the interests of the holders of crypto-assets, in particular retail holders;

(v) where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation or a person is offering or seeking admission to trading on a trading platform for crypto-assets of crypto-assets other than asset-referenced tokens or e-money tokens without a crypto-asset white paper notified in accordance with Article 7, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(w) to take any type of measure to ensure that a crypto-assets service provider an issuer, an offeror or a person seeking admission to trading of crypto-assets comply with this Regulation including to require the cessation of any practice or conduct that the competent authority considers contrary to this Regulation;

(x) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form;

(y)

(z) to allow auditors or experts to carry out verifications or investigations;

(aa) to require the removal of a natural person from the management body of a crypto-asset service provider or of an issuer of asset-referenced tokens;

(ab) to request any person to take steps to reduce the size of its position or exposure to crypto-assets;

(ac) where no other effective means are available to bring about the cessation of the infringement to this Regulation and in order to avoid the risk of serious harm to the interests of clients and holders of crypto-assets:

(i) to remove content or to restrict access to an online interface or to order the explicit display of a warning to clients and holders of crypto-assets when they access an online interface;

(ii) to order a hosting service provider to remove, disable or restrict access to an online interface; or

(iii) to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it, including by requesting a third party or other public authority to implement such measures;

(ad) to require an issuer of asset-referenced tokens or e-money tokens, of an e-money token denominated in a non EU currency, to introduce a minimum denomination or to limit the amount issued.

Supervisory and investigative powers exercised in relation to crypto-assets issuers, offerors, persons seeking admission to trading of crypto-assets and crypto-assets service providers are without prejudice to powers granted to the same or other supervisory authorities as regards those entities, including powers granted to relevant competent authorities under national laws transposing Directive 2009/110/EC and prudential supervisory powers granted to the ECB under Council Regulation (EU) 1024/2013.

2. In order to fulfil their duties under Title VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers in addition to powers referred to in paragraph 1:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;

(d) to refer matters for criminal prosecution;

(e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 77, 78, 79 and 80;

(f) to request the freezing or sequestration of assets, or both;

(g) to impose a temporary prohibition on the exercise of professional activity;

(h) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer, an offeror or a person seeking admission to trading of crypto-assets or other person who has published or disseminated false or misleading information to publish a corrective statement.

3. Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in paragraphs 1 and 2.

4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(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), second subparagraph, to lay down criminal penalties for an infringement of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for infringements of this Regulation and to provide the same information to other competent authorities as well as to the EBA and ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.

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

   (a) 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 judgement has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

3. Competent authorities shall, on request, without undue delay supply any information required for the purposes of this Regulation.

4. A competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may take any of the following actions:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) share specific tasks related to supervisory activities with the other competent authorities.

A requesting competent authority shall inform the EBA and ESMA of any request.

4a. In the case of an on-site inspection or investigation referred to in paragraph 4, ESMA shall coordinate the inspection or investigation, where requested to do so by one of the competent authorities.

Where the on-site inspection or investigation referred to in paragraph 4 concerns an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, the EBA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

5. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, ESMA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. By derogation to paragraph 5, the competent authorities may refer to the EBA in situations where a request for cooperation, in particular to exchange information, concerning an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, the EBA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1093/2010.

7. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation, and provide cross-jurisdictional assessments in the event of any disagreements.

For the purpose of the first sub-paragraph, the EBA and ESMA shall fulfil a coordination role between competent authorities and across colleges as referred to in Article 99 with a view of building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes.

8. Where a competent authority finds that any of the requirements under this Regulation has not been met or has reason to believe that to be the case, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner.

9. ESMA, 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.

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

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

Article 84

Cooperation with the EBA and ESMA

1. For the purpose of this Regulation, the competent authorities shall cooperate closely with ESMA in accordance with Regulation (EU) No 1095/2010 and with the EBA in accordance with Regulation (EU) No 1093/2010. They shall exchange information in order to carry out their duties under this Chapter and Chapters 1a and 2 of this Title.

2.

3. The competent authorities shall without delay provide the EBA and ESMA with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 35 of Regulation (EU) No 1095/2010 respectively.

4. In order to ensure uniform conditions of application of this Article and Article 83, ESMA, in close cooperation with the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and the EBA and ESMA.

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

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

Article 84a

Promotion of convergence on the classification of crypto-assets

1. ESMA, EIOPA and EBA shall jointly develop by [18 months after date of entry into force] guidelines to specify the content and form of the explanation referred to in Article 7(3) and of the legal opinions referred to in Articles 15a(1)(b)(b) and 16(2)(d), which shall include a template for the explanation or opinion and a standardised test for the classification of crypto-assets.

2. ESMA, EIOPA and EBA shall, in accordance with Article 29 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, where relevant, promote the discussion among competent authorities on the classification of the crypto-assets notified under Article 91a(2) and (3), identify sources of potential divergences in the approaches of the competent authorities and, to the extent possible, promote a common approach.

3. National competent authorities of the home or the host Member States may request an opinion from ESMA, EIOPA or EBA, as appropriate, on the classification of crypto-assets. ESMA, EIOPA and EBA shall provide such opinion, in accordance with Article 29 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, within 15 working days following the receipt of the request by the national competent authorities.

4. ESMA, EIOPA and EBA shall jointly draw up an annual report based on the notifications received under Article 91a and on their work referred to in paragraphs 2 and 3 identifying difficulties in the classification of crypto-assets and divergences in the approaches from national competent authorities.

Article 85

Cooperation with other authorities

Where an offeror or person seeking admission to trading of crypto-assets or an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service provider engages in activities other than those covered by this Regulation, the competent authorities shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities from third countries.

Article 86

Notification duties

1. Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission by… [please insert date 24 months after the date of entry into force]. Member States shall notify the Commission without undue delay of any subsequent amendments thereto.

2. The Commission shall communicate the information received from Member States pursuant to the previous paragraph to EBA and ESMA.

Article 87

Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information is permitted to be disclosed or such disclosure is necessary for legal proceedings or cases covered by national taxation or criminal law.

2. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authorities. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of provisions laid down by Union or national law.

Article 88

Data protection

With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679.

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[34].

Article 89

Precautionary measures

1. Where the competent authority of a host Member State has clear and demonstrable grounds for believing that irregularities have been committed by a crypto-asset service provider, by an offeror or person seeking admission to trading of crypto-assets or by an issuer of asset-referenced tokens or e-money tokens it shall notify the competent authority of the home Member State and ESMA thereof.

[34] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Where the irregularities concern an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authorities of the host Member States shall notify the EBA.

2. Where, despite the measures taken by the competent authority of the home Member State, the crypto-asset service provider or the issuer, offeror or person seeking admission to trading of crypto-assets persists in infringing this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State, ESMA and where appropriate the EBA, shall take all appropriate measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders. This includes preventing the crypto-asset service provider, offeror or person seeking admission to trading from conducting further activities in the host Member State. The competent authority shall inform ESMA and where appropriate the EBA thereof without undue delay. ESMA, and where relevant the EBA, shall inform the Commission accordingly without undue delay.

3. Where a competent authority disagrees with any of the measures taken by another competent authority pursuant to paragraph 2 of this Article, it may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

By derogation to the first subparagraph, where the measures concern an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority may bring the matter to the attention of the EBA. The EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

4. This Regulation does not prejudice the ability of authorities of the host Member State to take action against an entity referred in the paragraph 1 if it infringes the laws, regulations and administrative provisions in force in that Member State that fall outside the scope of this Regulation and that are in scope of its competencies.

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.

ESMA shall prioritise the cooperation arrangements with the relevant supervisory authorities of those third countries where more offerors from are established.

2a. ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

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

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

3. ESMA, in close cooperation with EBA, shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Chapter 2.

4. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 87. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article 91

Complaint handling by competent authorities

1. Competent authorities shall set up procedures which allow clients and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to offerors and persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens or e-money tokens, and crypto-asset service providers' alleged infringements of this Regulation. In all cases, complaints should be accepted in written or electronic form and in an official language of the Member State in which the complaint is submitted or in a language accepted by the competent authorities of that Member State.

2. Information on the complaints' handling procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to the EBA and ESMA. ESMA shall publish the references to the complaints' handling procedures related sections of the websites of the competent authorities in its crypto-asset register referred to in Article 91a.

Chapter 1a: ESMA register

Article 91a

Register of crypto-asset white papers of crypto-assets other than asset-referenced tokens and e-money tokens, issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers

1. ESMA shall establish a register of:

   a) notified crypto-asset white papers with respect to crypto-assets other than asset-referenced tokens and e-money tokens;

b) issuers of asset-referenced tokens;

c) issuers of e-money tokens;

d) crypto-asset service providers.

That register shall be publicly available on its website and shall be updated on a regular basis.

2. As regards crypto-asset white papers of crypto-assets other than asset-referenced tokens or e-money tokens, the register referred to in paragraph 1 shall contain the following information:

(a) the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white paper kept in a separate archive from the up to date crypto-asset white paper and be clearly marked as old versions;

3. As regards issuers of asset-referenced tokens, the register referred to in paragraph 1 shall contain the following information:

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

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

(c) the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white paper kept in a separate archive from the up to date crypto-asset white paper and be clearly marked as old versions;

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

4. As regards issuers of e-money tokens, the register referred to in paragraph 1 shall contain the following information:

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

(b) the commercial name, physical address, e-mail and website of the issuer of the e-money tokens;

(c) the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white paper kept in a separate archive from the up to date crypto-asset white paper and be clearly marked as old versions;

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

5. As regards crypto-assets service providers, the register referred to in paragraph 1 shall contain the following information:

(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, e-mail and website of the crypto-asset service provider and the trading platform for crypto-assets operated by the crypto-asset service provider, where applicable;

(c) the name and address of the competent authority which granted authorisation and its contact details;

(d) the list of crypto-asset services for which the crypto-asset service provider is authorised;

(e) the list of Member States in which the crypto-asset service provider has notified its intention to provide crypto-asset services in accordance with Article 58;

(f) any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the relevant Union or national law;

(g) the date of authorisation and, where applicable, of withdrawal of authorisation.

(h)

6. Competent authorities shall notify without delay ESMA of measures taken pursuant to Article 82(1)(c), (d), (g), (o), (p), (q), (r) or (u) and public precautionary measures taken pursuant to Article 89 affecting the provision of crypto-asset services or the issuance, the offering or the use of crypto-assets. ESMA shall include such information in the register.

7. Any withdrawal of an authorisation of an issuer of asset-referenced tokens in accordance with Article 20, of an issuer of e-money tokens or of a crypto-asset service provider in accordance with Article 56, and any measure notified in accordance with paragraph 6, shall remain published in the register for five years.

8. ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of crypto-asset white papers in the register and the practical arrangements to ensure that such data, including the LEIs of the issuer, is machine readable.

ESMA shall submit those draft regulatory technical standards to the Commission by XXX.

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

Chapter 2: administrative measures and penalties by competent authorities

Article 92

Administrative penalties and other administrative measures

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory and investigative powers of competent authorities under Article 82, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative penalties and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 4 to 13;

(b) infringements of Articles 15, 15a, 17, 19a, 19b and 21, Articles 23 to 37 and Articles 41a and 42;

(c) infringements of Articles 43 to 49, except Article 47;

(d) infringements of Article 53, 53a, 56 and Articles 58 to 74, except paragraph 9 of Article 61;

(e) infringements of paragraph 9 of Article 61 and Articles 77 to 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 penalties as referred to in the first subparagraph where the infringements referred to in points (a), (b), (c), (d) or (e) of that subparagraph are already subject to criminal sanctions in their national law. Where they so decide, Member States shall notify, in detail, to the Commission the relevant parts of their criminal law.

Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission by [please insert date 24 months after entry into force]. They shall notify the Commission without delay of any subsequent amendment thereto.

The Commission shall communicate the information received from MS pursuant the previous sub-paragraphs to EBA and ESMA.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative penalties and other administrative measures in relation to the infringements listed in points (a) to (d) of paragraph 1:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;

(b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;

(c) maximum administrative fines of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined, even if it exceeds the maximum amounts set out in point (e) and in paragraph 3;

(d)

(e) in the case of a natural person, maximum administrative fines of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation].

3. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose maximum administrative fines of at least:

(i) EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation], in relation to the infringements listed in points (a) to (d) of paragraph 1 committed by a legal person, or

(ii) 3 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in points (a) of paragraph 1 committed by a legal person, or

(iii) 5 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in point (d) of paragraph 1 committed by a legal person or.

(iv) 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in points (b) to (c) of paragraph 1 committed by a legal person.

Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(a)

(b)

(c)

(d) .

4.

(a)

(b)

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5.

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(f)

In addition to the administrative penalties and other administrative measures in relation to the infringements listed in paragraph 2 and 3, Member States shall, in accordance with national law, ensure that competent authorities have the power to impose, in the event of the infringements referred to in point (d) of the first subparagraph of paragraph 1, a temporary ban preventing any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in crypto-asset service providers.

6. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative penalties and to take at least the following administrative measures in the event of the infringements referred to in point (e) of the first subparagraph of paragraph 1:

(a) an order requiring the natural or legal person to cease the infringing conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(c) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of a crypto-asset service provider;

(e) a temporary ban of any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(f) in the event of repeated infringements of Articles 78, 79 or 80, a ban of at least 10 years of any member of the management body of a crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(g) a temporary ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative fines of at least 3 times the amount of the profits gained or losses avoided because of the infringement, where those can be determined, even if it exceeds the maximum amounts set out in points (i) and (j);

(i) in respect of a natural person, maximum administrative fines of at least EUR 1 000 000 for infringements of Article77 and EUR 5 000 000 for infringements of Articles 78 to 80 or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation];

(j) in respect of legal persons, maximum administrative fines of at least EUR 2 500 000 for infringements of Article 77 and EUR 15 000 000 for infringements of Articles 78 to 80, or 2% for infringements of Article 77 and 15 % for infringements of Articles 78 to 80 of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation]. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

7. Member States may provide that competent authorities have powers in addition to those referred to in paragraphs 2 to 6 and may provide for higher levels of penalties than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

Article 93

Exercise of supervisory powers and powers to impose penalties

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed in accordance with Article 92, shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the infringement;

(aa) whether the infringement has been committed intentionally or negligently;

(b) the degree of responsibility of the natural or legal person responsible for the infringement;

(c) the financial strength of the natural or legal person responsible for the infringement, as indicated, by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as those can be determined;

(e) the losses for third parties caused by the infringement, insofar as those can be determined;

(f) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the natural or legal person responsible for the infringement;

(h) measures taken by the person responsible for the infringement to prevent its repetition;

(i) the impact of the infringement on the interests of holders of crypto-assets and clients of crypto-assets service providers, in particular retail holders.

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 92, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative penalties and other administrative measures that they impose, are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

Article 94

Right of appeal

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

Article 95

Publication of decisions

1. A decision imposing administrative penalties and other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites without undue delay after the natural or legal person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation, competent authorities shall take one of the following actions:

   (a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;

(b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;

(c) not publish the decision to impose a penalty or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:

i) that the stability of financial markets is not jeopardised;

ii) the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a penalty or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article remains on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 96

Reporting of penalties and administrative measures to ESMA and EBA

1. The competent authority shall, on an annual basis, provide ESMA and EBA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 92. ESMA shall publish that information in an annual report.

   Where Member States have chosen, in accordance with Article 92(1), second subparagraph, to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide the EBA and ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.

2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.

3. Competent authorities shall inform the EBA and ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to the EBA and ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to the EBA, ESMA and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

Article 97

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

Chapter 3: Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

Article 98

Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

1. Where an asset-referenced token has been classified as significant in accordance with Article 39 or Article 40, the issuer of such asset-referenced tokens shall carry out their activities under the supervision of the EBA.

   Without prejudice of the powers of national competent authorities as regards issuers of non-significant asset-referenced tokens which also issue significant asset-referenced tokens, the EBA shall exercise the powers of competent authorities conferred by Articles 19b, 20, 21, 37 and 38 as regards issuers of significant asset-referenced tokens.

2. Where an issuer of significant asset-referenced tokens provides crypto-asset services or issues crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State.

3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that its issuer complies 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 significant e-money tokens with the requirements laid down in Article 52.

5. EBA shall exercise its supervisory powers provided in paragraphs 1 to 4 in close cooperation with other supervisory authorities responsible for supervising the issuer of crypto-assets, in particular:

   a) the prudential supervisory authority, including the ECB under Council Regulation (EU) 1024/2013;

   b) the competent authority which supervises non-significant asset-referenced tokens;

   c) relevant competent authorities under national laws transposing Directive 2009/110/EC;

   d) those authorities mentioned in article 18(1).

Article 98a

EBA crypto-assets committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing EBA decisions to be taken in accordance with Article 44 thereof, including decisions to be taken under Article 98 of this Regulation and decisions relating to draft regulatory technical standards and draft implementing technical standards, relating to tasks that have been conferred on EBA as provided for in this Regulation. That internal committee shall be composed of all the competent authorities referred to in Article 81 of this Regulation responsible for the supervision of issuers of asset-referenced tokens and of issuers of e-money tokens.

Article 99

Colleges for issuers of significant asset-referenced tokens and significant e-money tokens

1. Within 30 calendar days of a decision to classify an asset-referenced token or e-money token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced tokens or of significant e-money tokens to facilitate the exercise of its supervisory tasks under this Regulation.

2. The college shall consist of:

   (a) the EBA, as the chair of the college;

(b) ESMA;

(c) the competent authorities of the home Member State where the issuer of significant asset-referenced tokens or of significant e-money tokens is established;

(d) the competent authorities of the most relevant credit institutions, investment firms or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33 or of the funds received in exchange of the significant e-money tokens;

(e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens or the significant e-money tokens are admitted to trading;

(ea) the competent authorities of the most relevant payment 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 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 or with the significant e-money tokens;

(i) the ECB;

(ia) where the issuer of significant e-money tokens is established in a Member State the currency of which is not euro, or where the significant e-money token is referencing a currency which is not the euro, the national central bank of that Member State;

(j) where the issuer of significant asset-referenced tokens is established in a Member State the currency of which is not euro, or where a currency that is not euro is included in the reserve assets, or when the asset-referenced tokens are used as a means of payment in a Member State the currency of which is not euro, the national central bank of that Member State;

(k) relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108;

(ka) competent authorities of Member States where the asset-referenced token or the e-money token is used, upon their request.

2a. EBA may invite other authorities to be members of the college where the entities they supervise are relevant to the work of the college.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 100;

(b) the exchange of information in accordance with this Regulation;

(c) agreement on the voluntary entrustment of tasks among its members, 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);

(da) 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;

(g) the creation of sub-groups to discuss specific topics;

(h) the creation of several formations of the college, one for each specific crypto-asset or group of crypto-assets.

The agreement may also determine tasks to be entrusted to the EBA, 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 (f) and (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 and significant e-money tokens

1. The college for issuers of significant asset-referenced tokens and significant e-money tokens may issue a non-binding opinion on the following:

   (a) the supervisory reassessment as referred to in Article 98(3);

   (b) any decision to require an issuer of significant asset-referenced tokens to hold a higher amount of own funds in accordance with Article 31(3);

   (c) any update of the orderly redemption plan of an issuer of significant asset-referenced tokens or an issuer of significant e-money 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 in accordance with Article 108;

(i) any delegation of supervisory tasks from the EBA to a competent authority pursuant to Article 120;

(j) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in Article 99(2), points (d) to (h);

(k) any decision to require an issuer of significant e-money tokens to hold a higher amount of own funds in accordance with Articles 31(3)and 52;

(l) a draft amended crypto-asset white paper in accordance with Article 46(10);

(n)

(m) any delegation of supervisory tasks from the EBA to the competent authority of the issuer of significant e-money tokens in accordance with Article 120.

2. Where the college issues an opinion accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the EBA or the competent authorities.

3.

4. A majority opinion of the college shall be based on the basis of a simple majority of its members.

Where there are several college members per Member State, only one shall have a vote.

Where the ECB is a member of the college in several capacities, it shall have only one vote.

Supervisory authorities of third countries referred to in Article 99(2), point (k), shall have no voting right on the opinion of the college.

5. The EBA and competent authorities shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of the action or supervisory measure envisaged on an issuer of significant asset-referenced tokens, on an issuer of significant e-money tokens or on the entities and crypto-asset service providers referred to in points (d) to (h) of Article 99(2). Where the EBA or a competent authority does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the action or supervisory measure envisaged, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

Article 101

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Article 102

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Chapter 4: the EBA's powers and competences on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

Article 103

Legal Privilege

The powers conferred on the EBA by Articles 104 to 107, or on any official or other person authorised by the EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 104

Request for information

1. In order to carry out its duties under Article 98, the EBA may by simple request or by decision require the following persons to provide all information necessary to enable the EBA to carry out its duties under this Regulation:

   (a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;

   (b) any third parties as referred to in Article 30(5), point (h) with which the issuer of significant asset-referenced tokens has a contractual arrangement;

   (c)

(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 service provider as defined in Article 4(11) of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

(g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1) point (10) in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any operator of a trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in points (a) to (i).

2. Any simple 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;

(da) inform the person from whom the information is requested that it is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must be correct and not misleading; and

(e) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, the EBA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 114 where the production of information is required.

(f) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before the EBA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1093/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested.

5. The EBA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 105

General investigative powers

1. In order to carry out its duties under Article 98 of this Regulation, EBA may conduct investigations on issuers of significant asset-referenced tokens and issuers of significant e-money tokens. To that end, the officials and other persons authorised by the EBA shall be empowered to:

   (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any issuer of significant asset-referenced tokens or issuer of significant of e-money tokens, or their management body or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

The college for issuers of significant asset-referenced tokens and for issuers of significant e-money tokens as referred to in Article 99 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 114 where the production of the required records, data, procedures or any other material, or the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are not provided or are incomplete, and the fines provided for in Article 113, where the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are incorrect or misleading.

3. The issuers of significant asset-referenced tokens and issuers of significant e-money tokens are required to submit to investigations launched on the basis of a decision of the EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 and the right to have the decision reviewed by the Court of Justice.

4. In due time before an investigation referred to in paragraph 1, the EBA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of the EBA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify whether:

   (a) the decision adopted by the EBA referred to in paragraph 3 is authentic;

   (b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of point (b) paragraph 6, the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 106

On-site inspections

1. In order to carry out its duties under Article 98 of this Regulation, the EBA may conduct all necessary on-site inspections at any business premises of the issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

   The college for issuers of significant asset-referenced tokens and for issuers of significant e-money tokens as referred to in Article 99 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by the EBA and shall have all the powers stipulated in Article 105(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In due time before the inspection, the EBA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, the EBA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens.

4. The officials and other persons authorised by the EBA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 114 where the persons concerned do not submit to the inspection.

5. The issuer of significant asset-referenced tokens or the issuer of significant e-money tokens shall submit to on-site inspections ordered by decision of 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 whether:

    (a) the decision adopted by the EBA referred to in paragraph 4 is authentic;

    (b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of paragraph 10, point (b), the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 107

Exchange of information

1. In the exercise of EBA supervisory responsibilities under Article 98 and without prejudice to Article 84, the EBA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, competent authorities and the EBA shall exchange any information related to:

   (a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;

(b) any third parties as referred to in Article 30(5), point (h) with which the issuers of significant asset-referenced tokens has a contractual arrangement;

(c) 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 service provider as defined in Article 4(11) of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

(g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1), point (10), in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in point (a) to (i).

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

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

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of the Member State addressed;

(c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

Article 108

Administrative agreements on exchange of information between the EBA and third countries

1. In order to carry out its duties under Article 98, the EBA may conclude administrative agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 111.

2. The exchange of information referred to in paragraph 1 shall be intended for the performance of the tasks of the EBA or those supervisory authorities.

3. With regard to transfer of personal data to a third country, the EBA shall apply Regulation (EU) No 2018/1725.

Article 109

Disclosure of information from third countries

The EBA may disclose the information received from supervisory authorities of third countries only where the EBA or the competent authority which provided the information to the EBA has obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings. These requirements shall not apply with respect to other EU supervisory authorities for the fulfilment of their tasks and with respect to judicial authorities when the information requested is needed for investigations or proceedings involving violations subject to criminal sanctions.

Article 110

Cooperation with other authorities

Where an issuer of significant asset-referenced tokens or an issuer of significant e-money tokens engages in activities other than those covered by this Regulation, the EBA shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities from third countries that are not members of the college in accordance with Article 99(2)(k).

Article 111

Professional secrecy

The obligation of professional secrecy shall apply to the EBA and all persons who work or who have worked for the EBA or for any other person to whom the EBA has delegated tasks, including auditors and experts contracted by the EBA.

Article 112

Supervisory measures by the EBA

1. Where the EBA finds that an issuer of a significant asset-referenced tokens has committed one of the infringements listed in Annex V, it may take one or more of the following actions:

   (a) adopt a decision requiring the issuer of significant asset-referenced tokens to bring the infringement to an end;

   (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;

(c) adopt a decision requiring the issuer of significant asset-referenced tokens to transmit supplementary information, where necessary for the protection of holders of asset-referenced tokens, in particular consumers;

(d) adopt a decision requiring the issuer of significant asset-referenced tokens to suspend an offer to the public of crypto-assets for a maximum period of 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 it finds that this Regulation has been infringed;

(h) adopt a decision requiring the issuer of significant asset-referenced tokens to disclose all material information which may have an effect on the assessment of the significant asset-referenced tokens offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure consumer protection or the smooth operation of the market;

(i) issue warnings on the fact that an issuer of significant asset-referenced tokens is failing to comply with its obligations;

(j) withdraw the authorisation of the issuer of significant asset-referenced tokens.

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 is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens or of the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

4. Before taking the actions referred in points (d) to (g) and point (j) of paragraph 1, the EBA shall inform ESMA and, where the significant asset-referenced tokens refer Union currencies, the central banks of issue of those currencies.

5. Before taking the actions referred in paragraph 2, the EBA shall inform the competent authority of the issuer of significant e-money tokens and the central bank of issue of the currency that the significant e-money token is referencing.

6. The EBA shall notify any action taken pursuant to paragraph 1 or 2 to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement without undue delay and shall communicate that action to the competent authorities concerned and the Commission. The EBA shall publicly disclose any such decision on its website within 10 working days from the date when that decision was adopted, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679.

7. The disclosure to the public referred to in paragraph 6 shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision before the Court of Justice;

(b) where relevant, a statement affirming that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for EBA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1093/2010.

Article 113

Fines

1. The EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with Article 116(8), it finds that:

(a) an issuer of significant asset-referenced tokens or a member of the management body has, intentionally or negligently, committed one of the infringements listed in Annex V;

(b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements listed in Annex VI.

An infringement shall be considered to have been committed intentionally if the EBA finds objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.

2. When taking the actions referred to in paragraph 1, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person;

(fa) the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens or of the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

3. For issuers of significant asset-referenced tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 10% of the annual turnover, as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

4. For issuers of significant e-money tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 5% of the annual turnover, as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

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. The periodic penalty payment shall be imposed for each day of delay.

3. The amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of the EBA's decision. Following the end of the period, the EBA shall review the measure.

Article 115

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. The EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 113 and 114, unless such disclosure to the public would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679.

2. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be of administrative nature.

3. Where the EBA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be enforceable.

5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 116

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under Article 98, the EBA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annexes V or VI, the EBA shall appoint an independent investigation officer within the EBA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the issuers of significant asset-referenced tokens or issuers of significant e-money tokens and shall perform its functions independently from the EBA.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to EBA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Articles 105 and 106. When using those powers, the investigation officer shall comply with Article 103.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by the EBA in its supervisory activities.

5. Upon completion of his or her investigation and before submitting the file with his findings to the EBA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with his findings to the EBA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties or the EBA's internal preparatory documents.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 117, the EBA shall decide if one or more of the infringements of provisions listed in Annex V or VI have been committed by the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 112 and/or impose a fine in accordance with Article 113.

9. The investigation officer shall not participate in EBA's deliberations or in any other way intervene in EBA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 121 by [please insert date 12 months after entry into force] specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The EBA shall refer matters to the appropriate national authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the EBA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 117

Hearing of persons concerned

1. Before taking any decision pursuant to Articles 112, 113 and 114, the EBA shall give the persons subject to the proceedings the opportunity to be heard on its findings. The EBA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. Paragraph 1 shall not apply if urgent action is needed in order to prevent significant and imminent damage to financial stability or to the holders of crypto-assets, in particular consumers. In such a case the EBA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to the EBA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or the EBA's internal preparatory documents.

Article 118

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the EBA has imposed a fine, a periodic penalty payment or any other penalty or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 119

Supervisory fees

1. The EBA shall charge fees to the issuers of significant asset-referenced tokens and the issuers of significant e-money tokens in accordance with this Regulation and the delegated acts adopted pursuant to paragraph 3. Those fees shall cover the EBA's expenditure relating to the supervision of issuers of significant asset-referenced tokens and of issuers of significant e-money tokens in accordance with Article 98, as well as the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 120.

2. The amount of the fee charged to an individual issuer of significant asset-referenced tokens shall be proportionate to the size of its reserve assets and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

The amount of the fee charged to an individual issuer of significant e-money tokens shall be proportionate to the size of the e-money issued in exchanged of funds and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

3. The Commission shall adopt a delegated act in accordance with Article 121 by [please insert date 12 months after entry into force] to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by the EBA.

Article 120

Delegation of tasks by the EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task as regards issuers of significant asset-referenced tokens or significant e-money tokens, the EBA may delegate specific supervisory tasks to the competent authority of a Member State. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Article 105 and Article 106.

2. Prior to the delegation of a task, the EBA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to the EBA.

3. In accordance with the delegated act on fees adopted by the Commission pursuant to Article 119(3), the EBA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4. The EBA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

Title VIII: Delegated acts and implementing acts

Article 121

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 39(6), 116(10) and 119(3) shall be conferred on the Commission for a period of 36 months from … [please insert date of entry into force of this Regulation].

3. The delegation of powers referred to in Articles 3(2), 39(6), 116(10) and 119(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 39(6), 116(10) and 119(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Title IX Transitional and final provisions

Article 122

Report on the application of the Regulation

1. By … [48 months after the date of entry into force of this Regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, where appropriate accompanied by a legislative proposal. An interim report shall be presented by [24 months after the date of entry into force of this Regulation], where appropriate accompanied by a legislative proposal.

2. The report shall contain the following:

   (a) the number of issuances of crypto-assets in the EU, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-assets issued and their market capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;

(aa) experience with the classification of crypto-assets including possible divergences in approaches by national competent authorities;

(ab) an assessment of the necessity of introduction an approval mechanism for white papers of crypto-assets other than asset-referenced tokens and e-money tokens;

(b) an estimation of the number of EU residents using or investing in crypto-assets issued in the EU;

(c) the number and value of fraud, hacks 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;

(i) an assessment of the level of protection of holders of crypto-assets and clients of crypto-assets service providers, in particular retail holders;

(ia) an assessment of the requirements applicable to issuers of crypto-assets and crypto-asset service providers and its impact on operational resilience, market integrity, the protection of clients and holders of crypto-assets, and financial stability;

(ib) an evaluation of the application of Article 73 and of the possibility of introducing appropriateness tests in Articles 70 to 72 in order to better protect clients of crypto-assets service providers, especially retail holders;

(j) an assessment of whether the scope of crypto-asset services covered by this Regulation is appropriate and whether any adjustment to the definitions set out in this Regulation is needed;

(k) an assessment of whether an equivalence regime should be established for third-country crypto-asset service providers, issuers of asset-referenced tokens or issuers of e-money tokens under this Regulation;

(l) an assessment of whether the exemptions under Articles 4 and 15 are appropriate;

(m) an assessment of the impact of this Regulation on the proper functioning of the internal market for crypto-assets, including any impact on the access to finance for small and medium-sized enterprises and on the development of new means of payment, including payment instruments;

(n) a description of developments in business models and technologies in the crypto-asset market;

(o) an appraisal of whether any changes are needed to the measures set out in this Regulation to ensure protection of clients and holders of crypto-assets, market integrity and financial stability;

(p) the application of administrative penalties and other administrative measures;

(q) an evaluation of the cooperation between the competent authorities, the EBA and ESMA, central banks, as well as other relevant authorities, including with regards to the interaction between their responsibilities or tasks, and an assessment of advantages and disadvantages of the competent authorities and the EBA being responsible for supervision under this Regulation;

(qa) an evaluation of the criteria to classify an asset-referenced token and e-money token as significant including thresholds set out in Article 39(1);

(r) the costs of complying with this Regulation for issuers of crypto-assets, other than asset-referenced tokens and e-money tokens as a percentage of the amount raised through crypto-asset issuances;

(s) the costs for crypto-asset service providers to comply with this Regulation as a percentage of their operational costs;

(t) the costs for issuers of issuers of asset-referenced tokens and issuers of e-money tokens to comply with this Regulation as a percentage of their operational costs;

(u) the number and amount of administrative fines and criminal penalties imposed for infringements of this Regulation by competent authorities and the EBA.

3. Where applicable, the report shall also follow up on the topics addressed in the Report from Article 122a.

Article 122a

Report on latest developments on crypto-assets

1. By … [18 months after the date of entry into force of this regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the latest developments on crypto-assets, in particular on areas which were not addressed in this Regulation, where appropriate accompanied by a legislative proposal.

2. The report shall contain at least the following:

(a) an assessment of the development of decentralised-finance in the crypto-assets markets and of the adequate regulatory treatment of decentralised crypto-asset systems without an issuer or crypto-asset service provider;

(b) an assessment of the necessity and feasibility of regulating, lending and borrowing of crypto-assets;

(c) an assessment of the necessity and feasibility of regulating services similar to payment services associated to crypto-assets;

(d) an assessment of the treatment of services associated to the transfer of e-money tokens, if not addressed in the context of the review of the Directive (EU) 2015/2366 on payment services.

Article 123

Transitional measures

1. Articles 4 to 14 shall not apply to offers to the public which ended before [please insert date of entry into application].

1a. By way of derogation from Title II, only the following requirements apply to crypto-assets, other than asset-referenced tokens and e-money tokens, which were admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application]:

(a) articles 6 and 8 applies to marketing communications published after the date of entry into application;

(b) operators of trading platforms shall prepare a crypto-assets white paper in accordance with Article 4a and 5 until [please insert the date 36 months after the date of application] and notify, publish and modify it in accordance with Articles 7, 8 and 11.

2. By way of derogation from this Regulation, crypto-asset service providers which provided their services in accordance with applicable law before [please insert the date of entry into application], may continue to do so until [please insert the date 24 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, issuers of asset-referenced tokens which issued asset-referenced tokens in accordance with applicable law before [please insert the date of entry into application of Title III], may continue to do so until they are granted an authorisation pursuant to Article 19, provided that they applied for an authorisation until [please insert the date of entry into application of Title III + 1 month].

2b. By way of derogation from this Regulation, credit institutions which issued asset-referenced tokens in accordance with applicable law before [please insert the date of entry into application of Title III], may continue to do so provided that they notified the competent authority until [please insert the date of entry into application of Title III + 1 month].

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 24 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 V are complied with before granting authorisation pursuant to such simplified procedures.

4. The EBA shall exercise its supervisory responsibilities pursuant to Article 98 from the date of the entry into application of the delegated acts referred to in Article 39(6).

Article 123a

Amendments to Directive 2013/36/EU

1. In Annex I of Directive 2013/36/EU the point 15 is replaced by the following:

   15. Issuing electronic money including electronic-money tokens as defined in point (4) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council.

2. In Annex I of Directive 2013/36/EU the following activities are added:

   16. Issuance of asset-referenced tokens as defined in point (3) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council.

   17. Crypto-asset services as defined in point (9) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council.

Article 124

Amendment of Directive (EU) 2019/1937

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

"(xxi) Regulation (EU) …./… of the European Parliament and of the Council of … on Markets in Crypto-Assets (EU) 2021/XXX, and amending Directive (EU) 2019/37 (OJ L …)."

Article 125

Transposition of amendments of Directive 2013/36/EU and Directive (EU) 2019/1937

1. Member States shall adopt, publish and apply, by … [24 months after the date of entry into force of this Regulation], the laws, regulations and administrative provisions necessary to comply with Articles 123a and 124.

2. Member States shall communicate to the Commission, the EBA and ESMA the text of the main provisions of national law which they adopt in the field covered by Article 97.

Article 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 date24 months after the date of entry into force].

3. However, the provisions laid down in Title III and Title IV shall apply from [please insert date 12 month of the entry into force].

4. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament For the Council

The President The President