

EBA/CP/2023/13

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12 July 2023

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# Draft Consultation Paper

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EBA Draft Regulatory Technical Standards

to specify the requirements, templates and procedures for handling complaints under Article 31 of the Regulation (EU) 2023/1114 on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MICAR)

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in XX

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 12.07.2023. Please note that comments submitted after this deadline or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Abbreviations

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<b>ART</b>	Asset-referenced tokens
<b>CASP</b>	Crypto-Asset Services providers
<b>EBA</b>	European Banking Authority
<b>ECSPR</b>	Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>ESMA</b>	European Securities and Markets Authority
<b>ESFS</b>	European System of Financial Supervision
<b>EU</b>	European Union
<b>IART</b>	Issuers of asset-referenced tokens
<b>JC</b>	Joint Committee
<b>MiCAR</b>	Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937
<b>MS</b>	Member States
<b>NCA</b>	National Competent Authority
<b>RTS</b>	Regulatory Technical Standards

## 3. Executive Summary

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On 29 June 2023, the Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR) entered into force in the European Union (EU), and the provisions relating to Asset-Referenced Tokens (ART) will apply from 30 June 2024.

The MiCAR aims in particular at building a dedicated and harmonised framework for markets in crypto-assets at Union level in order to provide specific rules for crypto-assets and related services and activities that are not yet covered by Union legislative acts on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of protection of retail holders and the integrity of markets in crypto-assets.

To that end, Article 31 MiCAR requires the EBA, in close cooperation with the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards (RTS) on complaints handling procedures of Issuers of Assets Referenced Tokens (IART). The RTS must further specify the requirements, templates and procedures for handling complaints received from holders of ART and other interested parties, including consumer associations that represent holders of ART, and procedures to facilitate the handling of complaints between holders of ART and third-party entities, where applicable.

The draft RTS proposed in this consultation paper, together with the provisions already stated in the MiCAR itself, set out effective and transparent procedures for the prompt, fair and consistent handling of complaints by holders of ARTs.

The draft RTS set out definitions of complaints and complainants, then proceed to requirements related to the complaints management policy and function, the provision of information to holders of ARTs and other interested parties. The draft RTS continue with templates and recording, the procedure to investigate complaints and to communicate the outcome of the investigations to complainants, and specific provisions for complaints handling involving third-party entities.

### Next steps

The draft RTS will be submitted to the Commission for endorsement following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

## 4. Background and rationale

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### 4.1 Background

1. In September 2020, the European Commission published its legislative proposal for a regulation on markets in crypto-assets (MiCAR), with a view to create a holistic approach to the regulation and supervision of crypto-asset activities that are not already covered by EU law. Following the endorsement of the European Parliament and the Council of the EU, the publication in the Official Journal of the EU took place on 9 June 2023.
2. One of the mandates that MiCAR confers on the EBA is set out in Article 31 which requires the EBA, in close cooperation with ESMA, to develop RTS addressed to IART to further specify the requirements, templates and procedures for handling complaints received from holders of ART and other interested parties, including consumer associations that represent those holders.
3. Article 31 further provides that:
  - “Issuers of asset-referenced tokens shall **establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints** [...] and shall **publish descriptions** of those procedures”.
  - “Where the asset-referenced tokens are distributed, totally or partially, by third-party entities [...], issuers of asset-referenced tokens shall **establish procedures to also facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities**”.
  - “Holders of asset-referenced tokens shall be able to **file complaints free of charge** with the issuers of their asset-referenced tokens or, where applicable, with the third-party entities [...]”.
  - “Issuers of asset-referenced tokens and, where applicable, the third-party entities [...], shall **develop and make available** to holders of asset-referenced tokens a **template for filing complaints** and shall **keep a record** of all complaints received and any measures taken in response thereto.”
  - “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**.”
4. Recitals 40, 49, 79, 110 and 111 of MiCAR provide further context for and reasoning behind the mandates stating for example that the aim of the Regulation is to ensure high level of consumer protection, market integrity and financial stability across the EU.

5. In what follows in the rationale section below, this Consultation Paper (CP) sets out how the EBA proposes to fulfill the mandate, which includes the assessments of various policy options that have been considered in the process.

## 4.2 Rationale

6. The subject matter of the RTS on hand relates to complaints handling procedures which is not specific to markets in crypto assets. Rather, it is decidedly unspecific as to the type of market, type of sector (banking, insurance, investments), type of product or service, type of financial institutions, and geographical location (of the financial institution and the complainant).
7. It is for this reason that the three European Supervisory Authorities (ESMA, EIOPA and EBA, in short: ESAs) have developed over the years joint Guidelines on complaints handling procedures that apply uniformly to all financial institutions across the three sectors. It started in June 2012, when EIOPA published its 'Guidelines on Complaints-Handling by Insurance Undertakings'<sup>1</sup> and continued in 2014, when ESMA and the EBA read across these Guidelines to the investment and banking sectors respectively and adopted them as Joint Committee (JC) Guidelines for complaints-handling for the securities and banking sectors<sup>2</sup>. Several years later, in 2018, the EBA extended the legal entity scope of these Guidelines<sup>3</sup>, to also include the new institutions established under the revised Payment Service Directive (PSD2)<sup>4</sup> and the Mortgage Credit Directive (MCD)<sup>5</sup>, i.e. mortgage credit intermediaries, account information service providers, and payment initiation service providers. The content of the Guidelines remained unchanged.
8. This was further confirmed in 2021, when the JC published a Report on the application of the JC Guidelines on complaints-handling across the three sectors<sup>6</sup>, which concluded that the Guidelines have contributed to a consistent approach to complaints-handling across the banking, insurance and securities sectors, have resulted in better outcomes for consumers and, crucially, were assessed as still fit for purpose and, thus, did not require any revision.
9. The Guidelines are also considered to have incurred reduced compliance costs for financial institutions, compared to an alternative scenario where complaints handling procedures would have deviated across markets, sectors, or financial institutions. This is particularly the case in the banking sector, where a key set of financial institutions – 4,500 credit institutions -- often

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<sup>1</sup> [EIOPA Guidelines on Complaints-Handling by Insurance Undertakings, EIOPA-BoS-12/069, 14 June 2012](#)

<sup>2</sup> [Joint Committee Final Report on guidelines for complaints-handling for the securities \(ESMA\) and banking \(EBA\) sectors, JC 2014 43, 13 June 2014](#)

<sup>3</sup> [Final report on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under PSD2 and/or the MCD, JC 2018 35, 31 July 2018](#)

<sup>4</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), OJ L 337, 23.12.2015, p. 35–127

<sup>5</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, OJ L 60, 28.2.2014, p. 34–85

<sup>6</sup> [Joint Committee Report on the assessment of the application of the Guidelines on complaints-handling, JC 2021 24, 18 February 2021](#)

sell, i.e. operate as intermediaries of, banking, insurance and investment products and possibly also in the future crypto assets. The Guidelines are also considered to have resulted in efficiency gains for supervisory authorities, given that they have had to supervise only one set of guidelines in their respective jurisdiction, across all three sectors.

### General approach to fulfil the mandate

10. In developing these standards, the EBA therefore considered two options how to proceed:

- i. reading across the aforementioned JC Guidelines and only deviate by inserting additional requirements that are needed to fulfill elements that are explicitly required in the MiCAR mandate, such as the development of templates, requiring complaints to be filed free of charge, and the requirement related to third party entities or procedure to investigate complaints and to communicate the outcome to complainants ; but that do not exist in the JC Guidelines, or
- ii. using as a basis a set of Technical Standards that ESMA had previously developed on complaints handling procedure under the European crowdfunding service providers for business Regulation (ECSPR) of 2020<sup>7</sup>, which imposed additional and more prescriptive requirements on crowdfunding platforms than the ones set in the JC Guidelines for the remainder of the financial services industry in the EU, and that ESMA was considering to use also for its emerging RTS on complaints handling procedures for CASPs under MiCAR.

11. Having assessed these two options, the EBA has arrived at the view that pursuing either one of them exclusively would result in pros and cons that would expectedly differ between them, but that would also result in neither option in its 'pure' form to be desirable for IARTs. For example, the option of reading across the JC Guidelines on complaints handling would contribute to a consistent approach to complaints handling with the same regulatory burden for IART than what has successfully been applied to the remainder of the industry for many years, and with all the benefits articulated above. But it would create some deviation compared to the emerging RTS on complaints handling developed by ESMA under MiCAR for CASPs.

12. By contrast, going beyond the existing JC Guidelines on complaints handling by using mainly the ESMA RTS on complaints handling under the ECSPR, and as being used as a basis by ESMA for the RTS under MiCAR would be achieving consistency between two related RTSs under the same EU Regulation. However, it would also impose additional and stricter requirements than what the JC Guidelines have imposed, for the past decade, on tens of thousands of financial

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<sup>7</sup> [Commission Delegated Regulation \(EU\) 2022/2117 Of 13 July 2022 supplementing Regulation \(EU\) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling, L 287/42, OJEU 8.11.2022](#)



institutions across the banking, investment and insurance sectors, and that have recently been reviewed and found to be still suitable<sup>8</sup>.

13. The EBA has therefore arrived at the view that the draft RTS proposed in this CP should seize on the advantages of both option and propose a combination of them , by being drafted such that:

- the 'established' content of the RTS will follow the JC Guidelines given the reduced compliance costs of this approach for those entities already providing other financial services, the reduced supervisory complexity, and the results of the JC SC CPFI report of 2021, which concluded that the JC Guidelines are still fit for purpose and do not require any revision;
- however, where the RTS mandate under MiCAR requires the EBA to develop something additionally that is not covered in the JC Guidelines anyway, such as the development of templates, requiring complaints to be filed free of charge, and the requirement related to third party entities or procedure to investigate complaints and to communicate the outcome to holders of ART , then this additional content should be read across from ESMA's Crowdfunding and emerging MiCAR RTS to bring about a desired degree of consistency.

**Consultation Question 1:** Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.

### **Additional requirements explicitly mentioned in the MiCAR mandate but not included in the JC Guidelines**

14. In addition to the requirements that the CP proposes to read across verbatim from the JC Guidelines, the draft RTS will need to articulate additional requirements that are imposed by the mandate under MiCAR but not contained in the JC Guidelines. The additional requirements relate to definitions of the JC Guidelines being adapted to IART and holders of ART and including a definition of 'third-party entity'; the provision of information to the holder of asset-referenced tokens and other interested parties requiring complaints to be filed free of charge; the templates; the procedure to investigate complaints and to communicate the outcome to holders of ART; and specific provisions for complaints handlings involving third-party entities. The remainder of the rationale section explains the reasoning of the proposals for each of these requirements.

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<sup>8</sup> [Joint Committee Report on the assessment of the application of the Guidelines on complaints-handling, 18 February 2021 JC 2021 24](#)

15. With regard to definitions, Article 1 of the draft RTS contains an additional definition for ‘third-party entity’ as Article 31(1) sets specific provisions for IART to establish procedures to [also] facilitate the handling of complaints between holders of asset-referenced tokens and such third-party entities “where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 34(5) first subparagraph, point (h)”. With the aim to ensure that all possible types of activities are covered by MiCAR, EBA is of the view that third-party entities could be treated as outsourcers: in that sense, the IART should bear the responsibility of ensuring that such entities have in place arrangements for complaint-handling, in order to also facilitate the dialogue between the complainant and the third party, where relevant. This would ensure clarity on the addressees of the rules, which would be the IART.
16. With regard to Article 3 of the draft RTS related to the provision of information, in line with article 31 (2) stating that “holders of asset-referenced tokens shall be able to file complaints free of charge with the issuers of their asset-referenced tokens [...]”, a new requirement has been added. The wording which reads across the Guidelines 6 of the JC Guidelines on complaints handling now includes for the IART to provide information to the holder and other interested parties that complaints shall be filed and handled free of charge.
17. With regard to requirements on templates, recordings and reporting, Article 4 proposes additional requirements on the provision of a template in line with the requirements of article 31 (3) stating that ‘Issuers of asset-referenced tokens and, where applicable, the third-party entities, shall develop and make available to holders of asset-referenced tokens a template for filing complaints and shall keep a record of all complaints received and any measures taken in response thereto.’ The draft RTS proposes that IART must ensure that holders of ART and other interested parties representing holders of ART are able to submit complaints by electronic means or in paper form and free of charge using the standard template set out in the Annex of the draft RTS.
18. This approach will allow holders of ART to lodge a complaint more easily and will contribute to ensuring convergence and equal treatment of complainants within the EU. To bring about a desired degree of consistency between EBA and ESMA related MiCAR mandates, the content of the template is based on the template of ESMA’s emerging RTS under MiCAR, which in itself is based on the existing ESMA RTS template on complaints handling under ECSPR. In order to preserve holders of ART’s right to complaints, Article 4 also contains a requirement that issuers shall accept and process a complaint even if the holder of ARTs or other interested parties has not used this template to file it.

**Consultation Question 2:** Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?

19. With regard to the additional requirement on procedure to investigate complaints and to communicate the outcome to holders of ART, the draft RTS proposes additional requirements in Article 5 in line with article 31 (4) stating that “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”. To ensure consistency with existing European requirements similar wording has been used than the RTS on complaints handling under ECSPR for article 5 (1) of the draft RTS.
20. Finally, with regard to complaints regarding the distribution of ART by third-party entities, the draft RTS proposes an additional requirement in Article 6 to specify the requirements defined in article 31 (1) stating that “where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 34(5) first subparagraph, point (h), issuers of asset-referenced tokens shall establish procedures to also facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities”, as well as the provisions under article 31(2) and (3) which respectively refer to the requirements to provide information about complaints filed free of charge and the template.

**Consultation Question 3:** Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?

## Consultation questions

**Question 1:** Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.

**Question 2:** Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?

**Question 3:** Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?

## 5. Draft Regulatory Technical Standards

EBA Draft Regulatory Technical Standards specifying the requirements, templates and procedures for handling complaints under article 31 of Regulation (EU) 2023/1114 on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

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## COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

### **supplementing MiCA Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards to further specify the requirements, templates and procedures for handling complaints**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 on Markets in Crypto-assets amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and 2019/1937<sup>9</sup>, and in particular the third subparagraph of Article 31(5) thereof,

Whereas:

- (1) Issuers of asset-referenced tokens are required to put in place effective and transparent complaints handling procedures for holders of assets-referenced tokens and other interested parties including consumer associations representing such holders. The requirements of those procedures and templates to facilitate access to the procedures by holders of asset-referenced tokens and other interested parties should be further specified in this Regulation.
- (2) The issuer of asset-referenced tokens should provide to the holders of the asset-referenced tokens and other interested parties the information about complaints procedure, including the information that complaints are filed and handled free of charge.
- (3) Holders of asset-referenced tokens and other interested parties should be able to file their complaints, free of charge, in any of the Member States. To guarantee a level playing field this Regulation should introduce harmonised templates valid for complaints handling procedures with issuers of asset-referenced tokens irrespective of where the issuer is established or where the token was distributed.
- (4) To ensure effective and transparent procedures for the prompt, fair and consistent handling of complaints by holders of asset-referenced tokens and other interested parties, as required by Article 31 of Regulation 2023/1114, this regulation should further specify the requirements to which issuers of asset-referenced tokens are subject, and in particular: the issuer should record all complaints; the issuer, upon receipt of a complaint, should assess whether the complaint is admissible and contains all relevant information necessary for the investigation and request immediately to the holders of asset-referenced tokens and other interested parties any additional information needed; the issuer, following the investigation on the complaint and taking into account the evidence provided by the holder of asset-

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<sup>9</sup> OJ L 150, 9.6.2023, p. 40–205

referenced tokens or other interested parties, should keep the complainant informed about the progress of the complaints handling procedure and provide a response without any undue delay or at least within the time limits set at national level to address complaints filed by complainants, where applicable; the issuer should also assess all complaints, identifying possible recurring shortcomings.

- (5) Asset-referenced tokens can be distributed, totally or partially, by third party entities as referred to in Article 34(5) first subparagraph, point (h), of Regulation (EU) 2023/1114. In such cases, the issuer should ensure that procedures are in place to also facilitate the handling of complaints between holders of the asset-referenced tokens and other interested parties, and such third-party entities. In those cases, where applicable, the third-party entities should allow holders of asset-referenced tokens and other interested parties to file a complaint free of charge and should make available to holders of asset-referenced tokens and other interested parties a template to file complaints which is the same as the one provided by the issuers, keeping a record of all complaints and of any measures taken in response to it.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA).
- (7) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the European Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council .
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council (10) and delivered an opinion on [XX XX 2023],

HAS ADOPTED THIS REGULATION:

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<sup>10</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies 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).

## *Article 1*

### **Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘complaint’ means a statement of dissatisfaction addressed to an issuer of asset-referenced tokens or a third-party entity that distributed, partially or totally, tokens, by a natural or legal person or any other interested party, including consumer associations that represent holders of asset-referenced tokens relating to the issuance, offer or seeking of admission to trading of an asset-referenced tokens under the Regulation (EU) 2023/1114;
- (b) ‘complainant’ means a natural or legal person or any other interested party, including consumer associations that represent holders of asset-referenced tokens who is presumed to be eligible to have a complaint considered by an issuer of asset-referenced tokens or a third-party entity that distributed, partially or totally, the token and who has already lodged a complaint.
- (c) ‘third-party entity’ means an entity that, based on the arrangements as referred to in Article 34(5) first subparagraph, point (h), of the Regulation (EU) 2023/1114, distributes totally or partially the asset-referenced tokens to the public.

## *Article 2*

### **Complaints management policy and function**

Issuer of asset-referenced tokens shall establish and maintain complaints handling procedures that include each of the following:

- (a) a ‘complaints management policy’, which shall be:
  - (i) defined and endorsed by the issuer of asset-referenced tokens’ senior management, who shall also be responsible for its implementation and for monitoring compliance with it.
  - (ii) set out in a written or electronic document as part of a ‘general fair treatment policy’.
  - (iii) made available to all relevant staff of the issuer of asset-referenced tokens through an adequate internal channel.
- (b) a ‘complaints management function’, which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

### *Article 3*

#### **Provision of information to the holder of asset-referenced tokens and other interested parties**

1. The issuer of asset-referenced tokens shall provide, on request or when acknowledging receipt of a complaint, clear, accurate and up-to-date written information about the complaints-handling procedure to the complainants. The information provided by the issuer shall include, in particular:
  - (a) the conditions for the admissibility of complaints as stated in Article 5 (1)(a);
  - (b) details of how to complain including the type of information to be provided by the complainant and the identity and contact details of the person or department to whom the complaint should be directed;
  - (c) the procedure that will be followed when handling a complaint including when the complaint will be acknowledged, indicative handling timelines and the availability of a competent authority, an ombudsman or alternative dispute resolution mechanism;
  - (d) information that complaints are filed and handled free of charge in accordance with Article 31 of Regulation (EU) 2023/1114 for holders of asset-referenced tokens and where applicable, even when the asset-referenced tokens were distributed by third-party entities; and
  - (e) communication to the complainant to be kept informed about further handling of the complaint.
  
2. The issuer of asset-referenced tokens shall publish an up-to-date description of the complaints-handling procedures as well as the template set out in the Annex to this Regulation, in an easily accessible manner, including via brochures, pamphlets, contractual documents or via its website.

### *Article 4*

#### **Templates and recording**

The issuer of asset-referenced tokens shall:

- (a) develop and make available to holders of asset-referenced tokens and other interested parties, including consumer associations that represent holders of asset-referenced tokens, a template for filing complaints as set out in the Annex to this Regulation;
- (b) ensure that holders of asset-referenced tokens and any other interested parties are able to:
  - i. submit complaints by electronic means or in paper form.
  - ii. file complaints free of charge;



- (c) record, internally, in an appropriate manner through a secure electronic register, complaints and measures taken in response thereto within a reasonable period of time or in accordance with national timing requirements when applicable; and
- (d) accept and process a complaint even if the complainant has not used the template provided in the Annex to this Regulation to file the complaint.

### *Article 5*

#### **Procedure to investigate complaints and communicate the outcome of the investigations to complainants**

1. The issuer of asset-referenced tokens shall assess all complaints in a timely and fair manner:
  - (a) upon receipt of a complaint, the issuer of asset-referenced tokens shall, without undue delay, assess whether the complaint is clear and complete. In particular, it shall assess whether the complaint contains all relevant information and evidence and inform the complainant about whether the complaint is admissible. The conditions a complaint shall meet to be considered admissible and complete by the issuer of asset-referenced tokens shall be fair, reasonable and shall not unduly restrict the rights of natural or legal persons to file a complaint;
  - (b) where the issuer of assets referenced token conclude that a complaint is unclear or incomplete, it shall promptly request to the complainant any additional information or evidence necessary for the proper handling of the complaint.
  - (c) where a complaint does not fulfil the conditions of admissibility referred to in Article 3 (1) (a) the issuer of assets-referenced tokens shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.
  - (d) the issuer of asset-referenced tokens shall seek to gather and investigate all relevant information and evidence regarding a complaint.
  - (e) in case the issuer of asset-referenced tokens is not competent in relation to the subject matter contained in the complaint, it should inform the complainant about it and give the contact details of the entity responsible for handling the complaint, if known; and
  - (f) The issuer of asset-referenced tokens shall keep the complainant duly informed about any additional steps taken to handle the complaint and reply to information requests made by the complainant without any undue delay.
2. Issuer of asset-referenced tokens shall analyse, on an on-going basis, complaints handling data, to ensure that it identifies and addresses any recurring or systemic problems, and potential legal and operational risks. In particular the issuer shall carry out each of the following:
  - (a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;

- (b) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
  - (c) correcting, such root causes.
3. The issuer of asset-referenced tokens shall communicate the outcome of investigations on filed complaints to the complainants :
- (a) in plain language that can be clearly understood,
  - (b) by providing a response without any undue delay or at least within the time limits set at national level to address complaints filed by complainants, where applicable. When an answer cannot be provided within the expected time limits, the issuer of asset-referenced tokens shall inform the complainant about the causes of the delay and indicate when its investigation is likely to be completed; and
  - (c) by including a thorough explanation of its position on the complaint if the final decision does not fully satisfy the complainant's demand (or any final decision, where national rules require it), and by setting out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute resolution mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.

#### *Article 6*

#### **Specific provisions for complaints handling involving third-party entities**

Where the tokens have been distributed, partially or totally, through third-party entities, the issuer shall ensure that:

- (a) the third-party entities notify the issuer of asset-referenced tokens in a timely manner of any complaints received regarding the distribution of such tokens and transfer them to the issuer of asset-referenced tokens ;
- (b) the issuer of asset-referenced tokens notifies the third party entity distributing such tokens in a timely manner of any complaints received by the issuer of asset-referenced tokens regarding the distribution of said tokens;
- (c) The third-party entities shall:
  - (i) allow complainants to:
    - a. submit complaints by electronic means or in paper form; and
    - b. file complaints free of charge;
  - (ii) provide the contact details of the issuer of asset-referenced tokens to the complainant, to allow the complainant to file complaints directly before the issuer of asset-referenced tokens.
  - (iii) develop and make available to holders of asset-referenced tokens the same template for filing complaints as the issuer of asset-referenced tokens, using the standard form set out in the Annex to this Regulation; and
  - (iv) record internally, in an appropriate manner through a secure electronic register, all complaints received and any measures taken in response thereto

within a reasonable period of time or in accordance with national timing requirements when applicable;

*Article 7*

**Entry into force [and application]**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

*[For the Commission*  
*On behalf of the President*

*[Position]*

**ANNEX**

**Template that issuers of assets references tokens and, where applicable third-party entities, shall make available to holders of asset referenced tokens s for the submission of complaints**

<b>SUBMISSION OF A COMPLAINT</b>
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*1.a. Personal data of the complainant*

LAST NAME/LEGAL ENTITY	FIRST NAME	REGISTRATION NUMBER	LEI (IF AVAILABLE)	CUSTOMER REFERENCE (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

*1.b Contact details (if different from 1.a)*

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	
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*2.a Personal data of the legal representative (if applicable) (a power of attorney or other official document as proof of the appointment of the representative)*

LAST NAME	FIRST NAME/LEGAL ENTITY NAME	REGISTRATION NUMBER	LEI (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	
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*2.b Contact details (if different from 2.a)*

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

**3. Information about the complaint**

*3.a Full reference of the issuance, offer or seeking of admission to trading of an asset-referenced tokens or agreement to which the complaint relates (i.e. name of the Issuers of Asset-Referenced Tokens, Asset-Referenced Tokens reference number, or other references of the relevant transactions...)*

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*3.b Description of the complaint's subject-matter*

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Please provide documentation supporting the facts mentioned.

*3.c Date(s) of the facts that have led to the complaint*

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*3.d Description of damage, loss or detriment caused (where relevant)*

*3.e Other comments or relevant information (where relevant)*

In \_\_\_\_\_ (place) on \_\_\_\_\_ (date)

*SIGNATURE*

## 6. Accompanying documents

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### 6.1 Draft cost-benefit analysis / impact assessment

As per Article 10(1) and Article 15(1) of Regulation (EU) No 1093/2010 (EBA Regulation), regulatory technical standards and implementing technical standards shall be accompanied by an Impact Assessment (IA) which analyses “the potential related costs and benefits” This section presents the IA of the main policy options included in this CP on to further specify the requirements, templates and procedures for complaint handling” applicable to issuers of asset reference tokens under Article 31 of MICAR.

MiCAR sets out a new legal framework for issuers of ART, requiring such issuers establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of ART and other interested parties, including consumer associations that represent holders of ART. To ensure consistency across the EU and sector, the issuers should follow consistent requirements, templates and procedures for handling complaints of holders of ART.

#### **A. Problem identification and background**

Complaints are an important way for the management of an organisation to be accountable to the public, as well as providing valuable prompts to review organisational performance and the conduct of people that work within and for it. Inconsistent regulatory treatment of consumer-handling practices in the banking, investment and insurance sectors may be detrimental to the EU internal market. Consumers and the services they receive may be subject to different rules although the risks associated with these services are similar. This may create gaps in consumer protection and may deteriorate consumer confidence in the sector. Similarly, firms operating in one or more of these sectors and providing consumer services of comparable risk are subject to different regulatory rules. This may then undermine the level playing field in the single market.

Currently, complaints handling is harmonised across the financial sector (credit institutions, non-credit institution creditors and credit intermediaries) via the Joint ESAs Guidelines complaints-handling. This harmonisation across these sectors was done to address the lack of consistency in the application of the regulatory rules related to handling consumer complaints. This harmonisation should be extended to the IART as well.

#### **B. Policy objective**

The general objective of this RTS is to enhance consumer protection by providing efficient and transparent complaints handling procedures for holders of ART or other interested parties, including consumer associations that represent holders of ART across the EU and clear requirements for issuers of ARTs and third-party entities, when the ARTs are distributed, totally or partially, by third-party entities.

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The more specific objectives of the RTS on complaints handling procedures include making available to EU consumers as much as possible, a single set of complaints handling arrangements, irrespective of the type of market, type of sector (banking, insurance, investments), type of product or service, type of financial institutions, and of the geographical location (of the financial institution and the complainant).

Another specific objective is to ensure efficiency and a reduction of compliance costs for financial institutions and other entities in the financial sector via the alignment as much as possible to the content of the already existing JC Guidelines on complaints handling already applicable across the three sectors. This would allow those IART that also provide other financial services to streamline and standardise their complaints handling arrangements and national regulators to supervise the same requirements across all sectors of financial services.

### **C. Baseline scenario**

In a baseline scenario no harmonisation of the templates and procedures for handling complaints would be made, and the issuers would conduct the complaint handling each in their own way and using their own templates in line with Article 31 of the MiCAR. As a result, the specific documentation and information requested may diverge significantly across entities, sectors and MSs.

### **D. Options considered, assessment of the options and preferred options**

Section D presents the main policy options discussed and the decisions made during the drafting of the RTS. Advantages and disadvantages of the policy options and the preferred options resulting from this analysis are assessed below.

#### **Policy issue 1: Approach to fulfil the mandate**

In light of existing previous guidelines on complaints handling developed by the JC of ESAs, as well as a similar mandate for an RTS on complaints handling for CASPs under MICA being developed by ESMA, the EBA has considered several approaches to fulfilling the mandate.

Option A: Follow JC Guidelines, and only deviate by inserting additional requirements that are needed to fulfil elements that are explicitly required in the MiCAR mandate.

Option B: Follow the ESMA RTS on complaints handling procedures under the ECSPR, which includes additional and more prescriptive requirements.

Option C: Follow JC Guidelines, and only deviate by inserting additional requirements that are needed to fulfil elements that are explicitly required in the MiCAR mandate), and the additional requirements that deviate from the Guidelines should be aligned with the ESMA RTSs on complaints handling under the ECSPR and the ESMA RTS under MICAR.

Following Option A would contribute to a consistent approach to complaints handling. It will lead to the same regulatory burden for IARTs as for all other financial entities that applied these

guidelines for many years, and with all the benefits it entails. Moreover, according to the latest report, these guidelines are fit for purpose and do not need further updates.

However, given that ESMA in developing its own RTS on complaints handling for CASPs and followed mainly the RTS on complaints handling procedures under the ECSPR, this option may lead to divergences within the complaints handling by IARTs compared to CASPs.

Following Option B would lead to greater consistency between the two MICA RTSs for CASPs and for the IART. However, it would also impose additional requirements that are not specified in MiCAR and which are stricter compared to the Guidelines. These additional requirements include specific language requirements, need to review complaints handling procedures at least once per year and amend them, as appropriate etc. The RTS would therefore go beyond the existing MiCAR mandate.

Finally, Option C combines Options A and B, by using the content of the established and tested Guidelines as a basis for the text of the new RTS, while using the ESMA RTS as a guidance for the additional requirements only, i.e. those requirements that are not covered in the Guidelines. Such an approach would allow leveraging the benefits of both the Guidelines and the ESMA RTS and ensure the harmonisation of complaints handling procedures, without going beyond the MICA mandate.

As a result Option C was chosen as the preferred one.

## E. Cost-benefit analysis

The table below summarizes the cost and benefits of the RTS on the main stakeholders affected by its implementation. Overall, the benefits are assessed as significantly larger than the costs. The costs are incremental to the costs that would have been incurred anyway due to the setup of the complaints handling procedures due to MiCAR requirements, but without the additional requirement for harmonization of templates and procedures.

Stakeholders affected	Costs	Benefits
Consumers	None	Improving consumer confidence in financial services, by being able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it within the EU

Stakeholders affected	Costs	Benefits
Issuers	<p>Limited incremental costs related to:</p>	<p>Harmonisation of complaints handling procedures, especially for firms selling products across several sectors</p>
	<p>(i) the initial one-off costs related to the development of complaints-handling procedures, the complaints management function and the arrangements for internal follow-up on handled complaints;</p> <p>(ii) ongoing costs of ensuring compliance with the various requirements related to the receipt, investigation and response to complaints from clients</p>	<p>Consistent approach to complaints handling with the same regulatory burdens for all actors no matter where they are registered</p>
NCAs	None	<p>Need to supervise only one set of guidelines in their respective jurisdiction</p>

## 6.2 Overview of the questions for consultation

**Question 1:** Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.

**Question 2:** Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?

**Question 3:** Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?