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EBA's Technical Advice

in response to the European Commission's December 2022 Call for Advice on two delegated acts under MiCAR concerning certain criteria for the classification of ARTs and EMTs as significant and the fees that are to be charged by EBA to issuers of significant ARTs and EMTs

Contents

1. Background and introduction	7
1.1 Background	7
1.2 Introduction	9
2. Advice on criteria for the classification of ARTs and EMTs as significant	11
2.1 Indicators of circumstances under which ARTs and EMTs and their issuers can be considered as interconnected with the financial system	12
2.2 Indicators of circumstances under which the activities of the issuer of ARTs and EMTs are considered to be significant on an international scale, including the use of the ART/EMT for payments and remittances	20
2.3 Reporting of data necessary for the significance assessment concerning criteria (e) and (f) of Article 43(1) MiCAR	25
3. Advice on supervisory fees	28
3.1 Introduction	28
3.2 Scope of the fees for the EBA's supervisory tasks: Estimated expenditure and applicable data for reserves (sARTs) and number of tokens in issue (sEMTs)	29
3.3 Method of calculation of the fees payable by issuers of sARTs and sEMTs	31
3.4 Practical issues related to the payment of fees	33
Annex I - EC request to EBA to provide technical advice on MiCAR	34
Annex II – Summary of the feedback received	40

Abbreviations

ABM	Activity-based management
AIF	Alternative Investment Fund
ART	Asset-referenced Token
CASP	Crypto-Asset Service Provider
CfA	Call for Advice
CTPP	Critical Third-Party Provider
DLT	Distributed Ledger Technology
DORA	Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011
EBA	European Banking Authority
EC	European Commission
EMD	Directive 2009/110/EC 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
EMI	Electronic Money Institution
EMT	Electronic Money Token
ESA	European Supervisory Authority (EBA, ESMA, EIOPA)
IIO	Independent Investigating Officer
ITS	Implementing Technical Standards
LFS	Legislative Financial Statement
MiCAR	Regulation (EU) 2023/1114 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
MMF	Money Market Funds
NCA	National Competent Authority
PI	Payment Institution
PSD2	Directive (EU) 2015/2366 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
PSP	Payment Services Provider

RTS	Regulatory Technical Standards
sART	Significant Asset-Referenced Token
sEMT	Significant Electronic Money Token
UCITS	Undertaking for Collective Investment in Transferable Securities

Executive Summary

Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR), confers on the European Commission (EC) powers to adopt delegated acts on the most relevant indicators in relation to specific criteria for determining whether asset-referenced tokens (ARTs) and electronic money tokens (EMTs) are to be regarded as 'significant' (namely the criteria on the issuer's activities on international scale outside the EU and on interconnectedness of ARTs/EMTs and their issuers with the financial system). MiCAR also confers on the EC powers to adopt delegated acts to specify further certain elements of the supervisory fees to be charged by the EBA to issuers of significant ARTs (sARTs) and significant EMTs (sEMTs).¹ In December 2022, the EC issued a Call for Advice (CfA) to the EBA on matters relating to these delegated acts, the response to which is to be delivered to the EC by 30 September 2023.

This report sets out the advice of the EBA in response to the CfA.

In the first part of the report, regarding the criteria for the classification of ARTs and EMTs as significant, the EBA recommends a set of core and ancillary indicators for each criterion. The EBA proposes that the outcome of the significance assessment should ultimately be subject to a holistic/collective assessment of both types of indicators. The proposed core indicators would inform the 'default' assessment of significance against the relevant criterion, with the ancillary indicators having a role when the core indicators do not lead to a conclusive determination of significance. Additionally, the EBA suggests that the significance assessment against each criterion is undertaken by giving pre-defined weights to each core indicator, but proposes to establish the hierarchy or weighting of indicators after the publication of the related delegated act by the EC. Similarly, with regard to the minimum thresholds for the proposed indicators, the EBA is not putting forward a methodology to determine them at this stage, due to the limited amount of data available, and instead proposes to develop benchmarks for the concerned indicators, where data becomes available, and only after the publication of the related delegated act.

In this report the EBA identifies gaps in reporting obligations for issuers of ARTs and EMTs under MiCAR. These gaps, left unremedied, would not only limit the EBA's ability to assess tokens against the criteria to which the EBA's advice relates, but would also limit the EBA's overall ability to assess tokens against the other criteria specified in Article 43 MiCAR. Ideally, these gaps would be remedied via 'Level 1' changes. However, absent legislative changes, the EBA anticipates the need for own-initiative Guidelines in accordance with Article 16 of its the EBA Founding Regulation (Regulation (EU) 1093/2010). This is considered the best available approach to secure consistent reporting of data by issuers in accordance with common formats and templates, which is urgently needed to ensure a proper application of MiCAR after 30 June 2024. The EBA anticipates work to start on these Guidelines in Q1 2024. It will not be possible for the EBA to remedy all reporting gaps in the Guidelines as, of course, the EBA can only address financial entities within its sphere of

¹ See Article 43 and Article 56 MiCAR.

competence and not, for example, funds. However, the EBA considers that gaps can be substantially remedied.

The second part of the report presents the EBA's advice in relation to the type of supervisory 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 that can be charged by the EBA. The EBA highlights that flexibility will be needed to estimate the amount of fees from year-to-year in view of the fast-evolving market for crypto-assets, and the fact the number of tokens within its direct supervision, and supervisory priorities, may evolve substantially over time.

The advice takes into account considerations from market participants, who were invited to provide their feedback on the EBA's preliminary proposals in two EBA workshops held on 17 May 2023² and 24 July 2023.³ The advice also benefits from inputs from the European Central Bank (ECB), Financial Stability Board (FSB), European Systemic Risk Board (ESRB) and ESMA staff.

The EBA stands ready to continue to support the EC as appropriate in the preparation of the two delegated acts referred to in this advice.

² See event web page here: <https://www.eba.europa.eu/calendar/workshop-ec%E2%80%99s-call-advice-mica-delegated-act-significance-criteria-arts-and-emts>

³ See event web page here: <https://www.eba.europa.eu/calendar/2nd-eba-workshop-ec%E2%80%99s-call-advice-mica-delegated-act-significance-criteria-arts-and-emts>

1. Background and introduction

1.1 Background

1. On 9 June 2023, the Regulation (EU) 2023/1114 (Regulation on Markets in Crypto-assets (MiCAR)) was published by the European Commission (EC) in the Official Journal.⁴ MiCAR aims to promote sustainable and safe innovation in crypto-assets and underlying distributed ledger technology while addressing the risks that this new class of assets poses to investors, to market integrity, and to financial stability. It regulates issuers of crypto-assets that are not already regulated by EU law⁵ and providers of services in relation to such crypto-assets. It establishes an EU-level supervision framework for specific types of crypto-assets, namely asset-referenced tokens⁶ (ARTs) and electronic money tokens⁷ (EMTs) that are determined by the EBA to be significant. MiCAR entered into force on 29 June 2023 and the provisions relating to ARTs and EMTs will apply from 30 June 2024.
2. In December 2022, the EC issued a Call for Advice (CfA) on two delegated acts to be adopted by the EC under MiCAR, requesting the EBA technical advice on certain criteria for the classification of ARTs and EMTs as significant, and on the fees to be charged by the EBA to issuers of significant ARTs and EMTs. The request is enclosed at Annex I.
3. As set out in MiCAR, in order to address increased risks from significant ARTs or EMTs, the issuers of those tokens must comply with additional obligations and their supervision, including via supervisory college arrangements, is fully or partly assigned to the EBA.
4. The EBA is responsible for carrying out assessments of significance of ARTs and can classify them as significant where they meet at least three criteria listed in Article 43(1) MiCAR, and those same criteria are met in either the first biannual report by the national competent authority (NCA) following authorisation of the issuer, or in at least two consecutive reports by the NCA.
5. According to Article 56(1) MiCAR, the EBA shall classify EMTs as significant EMTs on the basis of the criteria referred to in Article 43(1). Consequently, the criteria for the significance assessment in Article 43, and hence this report, apply to both ARTs and EMTs.
6. Additionally, according to Articles 44 and 57 MiCAR, prospective issuers of ARTs and EMTs can request, at the time of application for authorisation, a voluntary classification of ARTs or EMTs as significant. These prospective issuers must demonstrate, through their programme of

⁴ <http://data.europa.eu/eli/reg/2023/1114/oj>

⁵ See further Article 2(4) MiCAR.

⁶ '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 another value or right or a combination thereof, including one or more official currencies

⁷ 'electronic money token' or 'e-money token' means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency

operations, that the ARTs/EMTs are likely to meet at least three criteria listed in Article 43(1) MiCAR. The EBA shall classify ARTs/EMTs as significant if, based on the submitted programme of operations, it considers that the tokens are likely to meet at least three of the significance criteria.

7. In that context, Article 43(1) MiCAR lists the quantitative and qualitative criteria that the EBA shall consider for the classification of ARTs and EMTs as significant; namely:

(a) the number of holders is larger than 10 million;

(b) the value of the token issued, its market capitalisation or the size of the reserve of assets of the issuer of the token is higher than EUR 5 billion;

(c) the average number and average aggregate value of transactions in that token per day during the relevant period, is higher than 2,5 million transactions and EUR 500 million respectively;

(d) the issuer of the tokens is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU) 2022/1925 (Digital Markets Act).

(e) the significance of the activities of the issuer of the tokens on an international scale, including the use of the tokens for payments and remittances.

(f) the interconnectedness of the tokens or its issuers with the financial system.

(g) the fact that the same legal person or other undertaking issues at least one additional asset-referenced token or e-money token, and provides at least one crypto-asset service.

8. Article 43(11) MiCAR specifies that the EC shall adopt delegated acts to supplement MiCAR by further specifying the criteria set out in paragraph 1 for an ART to be classified as significant and determine:

(a) the circumstances under which the activities of the issuer of the asset-referenced token are deemed significant on an international scale outside the Union;

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

(c) the content and format of information provided by competent authorities to EBA and the ECB under paragraph 4 of this Article and Article 56(3);

9. Article 137 MiCAR specifies that the EBA shall charge fees to issuers of sARTs and sEMTs in relation to all costs incurred in connection with its supervisory tasks in accordance with Articles 117 and 119 MiCAR, as well as the reimbursement of costs that the competent authorities may incur carrying out work under MiCAR, in particular as a result of a delegation of tasks by the EBA in accordance with Article 138(1) MiCAR. Article 137(4) MiCAR specifies the EC shall adopt a

delegated act by 30 June 2024 to supplement MiCAR by specifying further the type of fees, the matters for which fees are due, the amount of the fees and 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 that can be charged by the EBA.

1.2 Introduction

10. This report sets out the EBA's response to the EC's CfA on the delegated acts. Specifically, the report addresses the need for further details about the indicators to be used to assess ARTs and EMTs against the significance criteria relating to interconnectedness and international scale of activities, and on the methodology to calculate supervisory fees.

11. The first part of the report presents the EBA's advice on indicators to inform an assessment of significance against the criteria. The EBA proposes both core indicators of significance for each concerned criterion and ancillary indicators. Additionally, the EBA sets out an analysis of the existing reporting obligations which could inform assessments against the criteria and identifies reporting gaps under MiCAR. As a result of those gaps, the EBA recommends an extension of existing reporting obligations for issuers of ARTs and EMTs and anticipates actions to address these gaps.

12. The second part of the report presents the EBA's advice in relation to the type of supervisory 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 that can be charged by the EBA.

13. To gather stakeholder views to inform this advice, the EBA organised two public workshops, on 17 May 2023 and 24 July 2023, during which EBA staff shared the EBA's preliminary and more developed proposals, respectively. The workshops were well attended by representatives of financial institutions, issuers of crypto-assets, industry associations, academia, providers of crypto-asset services and other types of stakeholders. Following the workshops, the participants were invited to provide written feedback. Participants overall showed strong support to the approach proposed by the EBA. Three sets of written feedback, including one from an industry association, were provided after each workshop. An overview of the feedback received is set out in Annex II. The advice also benefits from inputs from the FSB, ESRB, ECB and ESMA staff. Written feedback was also sought from the EBA's Banking Stakeholder Group (BSG).

14. Regarding supervisory fees, in providing this advice the EBA has also had regard to the experiences of national competent authorities, and other ESAs when setting supervisory fees for financial institutions, and to the joint-ESA response to the EC's CfA on DORA (criticality assessment for CTPPs, and oversight fees).⁸

8

https://www.eba.europa.eu/sites/default/documents/files/document_library/About%20Us/Missions%20and%20tasks/Call%20for%20Advice/2022/CfA%20DORA%20and%20MiCA/1050409/ESAs%20technical%20advice%20-%20DORA.pdf

15. The details on the collective application of core and ancillary indicators are out of scope of this report. However, the EBA considers it appropriate to develop a methodology in this regard, also proposed by the market participants in the context of the public consultation. The finalisation of this methodology could be envisaged after the publication of the related delegated act by the EC.
16. With regard to the minimum thresholds for the concerned indicators, the EBA is not putting forward a methodology to determine thresholds or specific thresholds at this stage, due to the limited amount of data available. The EBA instead proposes to develop benchmarks for the concerned indicators, where data becomes available, to use them to specify minimum thresholds. In this sense, the EBA is of the view that, after the publication of the related delegated act, the EC could provide instructions to the EBA on the methodology it could follow to specify those thresholds with the available data.
17. Regarding next steps, the EC is required by Article 137(3) MiCAR to adopt the delegated act on supervisory fees by 30 June 2024. In turn, the power to adopt a delegated act on significance criteria under 43(11) is conferred on the EC for a period of 36 months from 29 June 2023. However, the EBA expects the EC to adopt the delegated act also by 30 June 2024, with a view to establishing the elements covered by the delegated act before the start of application of Title III MiCAR, and hence significance assessments by competent authorities and the EBA. The EBA stands ready to support the EC with any further technical inputs as needed to facilitate the preparation of the delegated acts.

2. Advice on criteria for the classification of ARTs and EMTs as significant

18. Article 43(11) MiCAR mandates the EC to adopt delegated acts further specifying the criteria referred to in points (e) to (f) of Article 43(1). The purpose of this chapter of the CfA response is to assist the EC in drafting the delegated acts set out in Article 43(11) by specifying the most relevant indicators of a qualitative and, where possible, quantitative nature in relation to the relevant criteria:

- *Significance of the issuer's activities on international scale outside the EU:* the EBA is invited to explore other indicators than the criteria referred to in Article 43(1), points (a) to (c) that would indicate significance of activities of issuers of ARTs and EMTs on an international scale outside the EU.
- *Interconnectedness of ARTs/EMTs and their issuers with the financial system:* the EBA is invited when defining the indicators to consider, among other things the exposure of financial institutions to the ARTs or EMTs; and concentration of financial institutions' holdings of the ARTs or EMTs.

19. In that context, in this advice the EBA proposes core and ancillary indicators for each criterion. While core indicators aim at capturing the most relevant elements of significance, the EBA proposes ancillary indicators that enable supplemental aspects to be assessed in the event an assessment against the 'core' indicators is not determinative.

20. Core indicators aim to provide the EBA with a robust indication of significance. For that reason, the EBA proposes to frame the core indicators in a way that ensures the design of their calculation is not complex and leverages data availabilities, and hence the 'default' significance assessment of each criterion would rely on these indicators. Additionally, the EBA suggests that the significance of each criterion should be assessed by giving pre-defined weights to each core indicator, hence ensuring that the significance assessment is robust, credible and transparent. However, similarly to the minimum thresholds for the criteria, the EBA proposes to establish the hierarchy or weighting of indicators after the publication of the related delegated act by the EC.

21. Ancillary indicators, instead, aim at capturing aspects that are complementary to those captured by core indicators. As such, while these indicators would not inform the 'default' significance assessment, which would rely on core indicators, they would provide additional insights for the significance assessment. As a consequence, any proposal to designate an ART or EMT as significant based on ancillary indicators would require a strong indication of significance, one that would need to be transparent, explainable and robust.

22. The EBA thus suggests that the outcome of the significance assessment should ultimately be subject to a holistic/collective assessment of core and ancillary indicators, with the core indicators informing the 'default' assessment of significance against the relevant criterion, with the ancillary indicators having a role when the core indicators do not lead to a conclusive determination of significance.
23. Additionally, in this advice the EBA identifies the data needs, existing reporting obligations, including those to be developed by the EBA based on MiCAR L2 policy mandates, and gaps of the reporting requirements under MiCAR. As a result of identified gaps in reporting obligations, the EBA recommends the extension of existing reporting obligations for issuers of ARTs and EMTs and anticipates potential changes and actions needed to address these gaps.
24. Accordingly, in Section 2.1 the EBA suggests the core and ancillary indicators for the circumstances under which ARTs and EMTs and their issuers shall be considered as interconnected with the financial system. In Section 2.2 the EBA suggests the core and ancillary indicators for the circumstances under which the activities of the issuer of ARTs and EMTs are considered to be significant on an international scale. In Section 2.3 the EBA recommends the extension of existing reporting obligations under MiCAR, to ensure that data necessary for the significance assessment is available.

2.1 Indicators of circumstances under which ARTs and EMTs and their issuers can be considered as interconnected with the financial system

25. For the purposes of assessing the interconnectedness with the financial system, the EBA proposes to follow a broad approach and understand references to 'financial institutions' should be interpreted widely to include credit institutions, insurance companies, pension funds, investment firms, UCITS, alternative investment funds (AIFs), money market funds (MMFs), electronic money institutions (EMI) and payment institutions (PI).
26. As market experience demonstrates, the concentration of ART or EMT issuers' holdings in a certain or various financial institutions can lead to contagion effects in the other direction (from the financial institutions to issuers of ARTs or EMTs), in the case of financial distress by those financial institutions. That is, while contagion effects can take place from ARTs or EMTs to the broader financial system, they can also happen from the financial system to crypto-assets, such as ARTs/EMTs, and their issuers, if different issuers of tokens hold their reserve assets concentrated in a limited number of financial institutions. Hence the concentration of holdings of a given ART or EMT in a certain or various financial institutions intensifies the interconnectedness of that token (and also in general of the crypto-asset ecosystem) with the financial system.
27. Indeed, financial distress at one ART or EMT issuer can materially increase the likelihood of distress at other issuers of crypto-assets or at other financial institutions given the network of contractual obligations and/or reputational connections in which issuers operate, and potential

confidence effects and/or contagion risk that may arise as a consequence. It can also have effects on the value of the ART or EMT, and ultimately create distress in the financial system due to interconnectedness between the token and the financial system. An ART or EMT or their issuers' significance is likely to be positively related to its interconnectedness vis-à-vis the financial system.

28. In a stressed environment, if issuers of ARTs or EMTs were to experience financial difficulties and were unable to refinance their debt upon maturity, this could give rise to financial difficulties in financial institutions. Similarly, but in the opposite direction, in the event of stress in the financial sector, issuers of ARTs or EMTs reliant on lending from credit institutions could lose access to financing. Additionally, financial distress at issuers of ARTs or EMTs holding large amounts of certain types of assets could drive down the prices of those assets if big sell-offs are required from the issuer, impacting valuations that may result in write-downs of similar asset holdings by financial institutions. The consequences of those effects would be more marked if issuers of ARTs or EMTs were highly interconnected with the financial system.

Core indicators

1.1 Share of non-deposit reserve assets that are financial instruments issued by financial institutions.

29. According to Article 36 MiCAR, issuers of ARTs shall constitute and at all times maintain a reserve of assets composed and managed in such a way that the risks associated to the assets referenced by the ART are covered and the liquidity risks associated to the permanent rights of redemption of the holders are addressed. To further specify the liquidity requirements of reserves of assets, the EBA is mandated under Article 36(4) MiCAR to develop draft RTS to further specify, among others, the minimum amounts in each official currency referenced to be held as deposits in credit institutions. That provision already specifies that deposits in credit institutions cannot be lower than 30 % of the amount referenced in each official currency.

30. Additionally, Article 38 MiCAR states that issuers of ARTs that invest a part of the reserve of assets shall only invest those assets in highly liquid financial instruments with minimal market risk, credit risk and concentration risk. Paragraph 2 of that article specifies that units in UCITS shall be deemed to be assets with minimal market risk, credit risk and concentration risk for the purposes of paragraph 1. However, the EBA is mandated under Article 38(5) MiCAR to develop draft RTS specifying the financial instruments that can be considered highly liquid and bearing minimal market risk, credit risk and concentration risk. That RTS shall also specify the assets in which UCITS shall invest for units in those UCITS to be considered of minimal market risk, credit risk and concentration risk.

31. In the case of EMTs, Article 54 MiCAR specifies that at least 30% of the funds received by issuers of EMTs in exchange for EMTs shall always be deposited in separate accounts in credit institutions. The remaining funds received shall be invested in secure, low-risk assets that qualify as highly

liquid financial instruments with minimal market risk, credit risk and concentration risk, and are denominated in the same official currency as the one referenced by the EMT.

32. As a consequence, the EBA is of the view that, while MiCAR already addresses risks potentially arising from the deposit part of the reserve of assets, assessing the non-deposit part of the reserve of assets of issuers of ARTs or EMTs is key in the assessment of the issuer's interconnectedness with the financial system.

33. Therefore, the EBA suggests three sub-indicators for the assessment of the significance of interconnectedness: the share of non-deposit reserve assets that are financial instruments issued by financial institutions; for issuers of ARTs, the share of non-deposit reserve assets that are derivatives; and for issuers of EMTs, the share of non-deposit reserve assets that are covered bonds issued by credit institutions. This proposal entails applying two sub-indicators to ART issuers and two to EMT issuers, with only one of the two sub-indicators being repeated in both ART and EMT issuers.

34. Data necessary to inform assessments against these indicators is expected to be available based on the ART or EMT issuers' reporting of the composition of the reserve of assets in accordance with Articles 30(1), 36(8), 38, and 54 MiCAR.

35. Accordingly, the EBA suggests the following calculation for the proposed sub-indicators:

Core Indicator 1.1 Share of non-deposit reserve assets that are financial instruments issued by financial institutions
Sub-indicator 1.1.1 Share of non-deposit reserve assets that are financial instruments issued by financial institutions
<p><u>Numerator</u>: total value of financial instruments issued by financial institutions that are part of the reserve of assets</p> <p><u>Denominator</u>: [total value of the reserve assets] – [total value of deposits in the reserve assets]</p>
Sub-indicator 1.1.2 Share of non-deposit reserve assets that are derivatives (only applying to ARTs)
<p><u>Numerator</u>: total value of derivatives that are part of an ART issuer's reserve of assets</p> <p><u>Denominator</u>: [total value of the reserve assets] – [total value of deposits in the reserve assets]</p>

Sub-indicator 1.1.3 Share of non-deposit reserve assets that are covered bonds (only applying to EMTs)

Numerator: total value of covered bonds issued by credit institutions that are part of an EMT issuer's reserve of assets

Denominator: [total value of the reserve assets] – [total value of deposits in the reserve assets]

1.2 Share of ART/EMT issuer's asset holdings relative to total supply of specific financial instruments (e.g. units of a UCITS, sovereign bonds).

36. Core indicators proposed for this criterion aim to capture direct interconnections between ARTs or EMTs and their issuers with the financial system. However, the EBA is of the view that it is also necessary to capture within this criterion indicators of indirect interconnections between issuers of ARTs or EMTs and the financial system.

37. Indirect interconnections could affect the traditional financial system, mainly, in cases where the issuer of an ART or an EMT is forced to fire sell its asset holdings because of financial distress. That sell-off could drive down the value of those assets and affect financial institutions indirectly via a decrease of the value of the assets they hold.

38. The EBA assumes that indirect interconnections may be more significant in connection with certain types of financial instruments, such as units of money market funds (MMFs) or sovereign bonds. Therefore, the EBA suggests that the assessment of the share of holdings of those types of financial instruments (either in the reserve of assets or as part of the issuer's own balance sheet) should be prioritised in the assessment of this core indicator. Accordingly, the EBA does not aim to prescribe at this stage which should be the specific types of financial instruments that should be considered for the calculation of this ancillary indicator. Rather, based on market experience and available data, the EBA should qualitatively assess this indicator.

39. Data necessary to calculate this indicator is expected to be available based on the ART or EMT issuers' reporting of the composition of the reserve of assets in accordance with Articles 30(1), 36(8), 38, and 54 MiCAR.

40. The EBA suggests the following calculation for the proposed indicator:

Core Indicator 1.2 Share of ART/EMT issuer's asset holdings relative to total supply of specific financial instruments (e.g. units of a UCITS, sovereign bonds)

Numerator: total value of an ART or EMT issuer's holdings of a [type of financial instrument – e.g. unit of UCITS]

Denominator: total supply of a [type of asset – e.g. unit of UCITS]

1.3 Share of ART/EMTs issued that are held by financial institutions [once data becomes available].

41. As indicators 1.1 and 1.2 capture direct and indirect interconnectedness between ART or EMT issuers with the financial system, respectively, the EBA is of the view that there is merit in also capturing the interconnectedness between the ART or EMTs themselves and the financial system. The most suitable indicator of that type of interconnectedness is the share of ARTs or EMTs issued that are held by financial institutions. The aim of this indicator is to cover holdings of ARTs or EMTs by financial institutions that would capture potential contagion effects that could arise in cases, for instance, where a sudden significant decline in the value of ARTs or EMTs would have a negative direct effect on the assets held by financial institutions.

42. However, the EBA is aware of the fact that existing harmonised EU reporting obligations, including under MiCAR and other sectoral measures, would not provide currently sufficient data to perform a robust assessment of tokens against this indicator from the start of application of MiCAR. Moreover, the EBA does not expect credit institutions and other types of financial institutions to be subject to EU-wide reporting obligations on holdings of crypto-assets until at least 2026/2027. As a consequence, the EBA proposes this indicator should be used for the significance assessment once data becomes available as a result of adjustments to sectoral reporting obligations.

43. The EBA is aware of the fact that this requires that the calculation methodology and time series dimension for the assessment of indicators maintains strong statistical properties, to ensure consistency of the assessment results after the addition of a new indicator.

Ancillary indicators

1.4 Ownership structure of the issuer of an ART or EMT.

44. The assessment of the ownership structure of credit institutions and e-money institutions can provide relevant elements related to significance of the interconnectedness between an issuer of an ART or an EMT and the financial system. While the EBA does not identify a specific ownership structure as more interconnected than others, the EBA is of the view that for this qualitative indicator, it may assess aspects such as whether the issuer has a dispersed or concentrated ownership, whether natural or legal persons with qualifying holdings are financial institutions or not, or the complexity of the structure.

45. The EBA expects this qualitative indicator to provide a complete view of the potential effects that financial distress could have in the financial system, not only from a purely financial stability risk perspective, but also in connection to reputational risks. Financial distress or critical events in the issuer of an ART or EMT could have a significant effect in institutions that run other financial activities via their link to the issuer through the ownership structure.
46. With respect to issuers of ARTs that are not credit institutions, under Article 18 MiCAR the issuer is expected to report a significant amount of information in the context of the application for authorisation. The final details of the information to be reported by the issuer is not known during the drafting of this advice, and it may not be sufficient for monitoring its ownership structure after the issuance.
47. In addition to that information, Article 41(1) MiCAR requires any natural or legal persons who intend to acquire, directly or indirectly, a qualifying holding in an issuer of an ART or to increase, directly or indirectly, to notify the competent authority of that issuer the size of the intended holding and the information required by the RTS adopted by the EC in accordance with Article 42(4) MiCAR. Similarly, paragraph 2 of the same article includes equivalent requirements with respect to disposals of qualifying holdings. In full, the competent authority should receive the necessary information to assess the ownership structure of issuers of ARTs.
48. However, the requirements mentioned above do not apply to cases where a credit institution is the issuer of an ART, in accordance with Article 17(4) MiCAR. They do not apply to issuers of EMTs regardless of the issuer being a credit institution or an e-money institution.
49. Credit institutions, however, are already subject to reporting requirements and assessments of acquisitions of qualifying holdings. Additionally, under the existing regulatory framework, any natural or legal persons are required to notify the national competent authority when they intend to acquire or increase a qualifying holding in an electronic money institution.
50. Accordingly, necessary data to qualitatively assess this indicator should be available for the EBA.

1.5 Concentration of [custody of] an ART or EMT issuer's reserve assets

51. The EBA is of the view that an additional channel for interconnectedness between the issuer of an ART or an EMT and the financial system can arise via the concentration of reserve assets in a small number of financial institutions. The EBA considers that the higher is the diversification of an issuer's reserve assets, the lower are the potential contagion effects and financial stability risks of the issuer. Considering recent events in the financial sector, where financial distress in financial institutions strongly affected the activities of crypto-asset issuers, the EBA considers that allocating reserve assets in a low number of financial institutions or in a highly concentrated degree is an indication of higher interconnectedness with the financial system.

52. Because of the specific relevance of interconnectedness that may arise from the concentration of deposits in credit institutions, the EBA is of the view that there is merit in having two sub-indicators; one that captures concentration of reserve assets in financial institutions, and another that covers only deposits in credit institutions.

53. Data necessary to calculate this indicator is expected to be available based on the ART or EMT issuers' reporting of the composition of the reserve of assets in accordance with Articles 30(1), 36(8), 38, and 54 MiCAR.

54. The EBA suggests the following calculation for the proposed sub-indicators:

Ancillary Indicator 1.5 Concentration of [custody of] an ART or EMT issuer's reserve assets
Sub-indicator 1.5.1 Concentration of an ART or EMT issuer's reserve assets to financial institutions
$\text{Concentration} = s_1^2 + s_2^2 + s_3^2 + \dots + s_n^2$
<p><i>where s_n: the share of reserve assets held in financial institution n (expressed as a whole number)</i></p>
Sub-indicator 1.5.2 Concentration of deposits held in credit institutions by an issuer of an ART or an EMT
$\text{Concentration} = c_1^2 + c_2^2 + c_3^2 + \dots + c_n^2$
<p><i>where c_n: the share of deposits held in credit institution n (expressed as a whole number)</i></p>

1.6 Portfolio overlap of reserve assets with other ART/EMT issuers.

55. The EBA is of the view that the criterion concerned should also capture interconnectedness that can arise between the issuer of an ART or EMT and other issuers of ARTs or EMTs. That is, the EBA considers that the expression 'financial system' also includes issuers of ARTs or EMTs themselves, and hence this type of interconnectedness should also be covered in the significance assessment.

56. This indicator would be necessary to estimate the extent of asset holdings that are common to other issuers of ARTs/EMTs (capturing what is traditionally termed as 'portfolio overlap'). The aim is thus to capture the contagion mechanisms that could arise from cases where different issuers of ARTs or EMTs holding similar assets and financial distress and a resulting sell-off in one issuer can have negative effects on other issuers.

57. Again, data necessary to calculate this indicator is expected to be available based on the ART or EMT issuers' reporting of the composition of the reserve of assets in accordance with Articles 30(1), 36(8), 38, and 54 MiCAR.

58. The EBA suggests the following calculation for the proposed indicator:

Ancillary Indicator 1.6 Portfolio overlap of reserve assets with other ART/EMT issuers
<p><u>Numerator</u>: total value of assets in the reserve of assets that are also held by other issuers of ARTs or EMTs</p>
<p><u>Denominator</u>: total value of reserve assets</p>

Table 1: Summary of core and ancillary indicators of circumstances under which ARTs and EMTs and their issuers can be considered as interconnected with the financial system

Indicator	Objective
Core indicators	
1.1 Share of non-deposit reserve assets that are financial instruments issued by financial institutions	Direct interconnections via the issuer's reserve of assets
1.2 Share of ART/EMT issuer's asset holdings relative to total supply of specific financial instruments (e.g. units of a UCITS, sovereign bonds)	Indirect interconnections between the issuer and the financial system via the issuer's asset holdings
1.3 Share of ART/EMTs issued that are held by financial institutions (<i>upon available data</i>)	Direct interconnections of the ART or EMT and the financial system via financial institutions' holdings
Ancillary indicators	
1.4 Ownership structure of the issuer of an ART or EMT	Direct interconnectedness between the ART or EMT issuer and the financial system via ownership and qualifying holdings

1.5 Concentration of [custody of] an ART or EMT issuer's reserve assets	Interconnectedness from the financial system to the issuer, arising from the concentration of reserve assets in a low number of financial institutions
1.6 Portfolio overlap of reserve assets with other ART/EMT issuers	Interconnectedness between an ART or EMT issuer and other issuers of ARTs or EMTs

2.2 Indicators of circumstances under which the activities of the issuer of ARTs and EMTs are considered to be significant on an international scale, including the use of the ART/EMT for payments and remittances

59. According to recital 2 MiCAR, crypto-assets, when used as a means of payment, can present potential opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries. Those opportunities can be particularly relevant in the case of EMTs and ARTs.
60. By definition, EMTs aim to stabilise their value by referencing to one official currency, and their function is very similar to that of 'electronic money' (e-money) as defined in the Electronic Money Directive (EMD). Like e-money, EMTs are considered 'funds' and can be used for making payments. However, as argued in recital 103 MiCAR, the potential widespread use of significant EMTs as a means of payment poses risks to financial stability, which merits the dual supervision of issuers of significant EMTs by both the competent authority of the home Member State and the EBA.
61. Similarly, ARTs, depending on their design, could be adopted by holders to transfer value or as a means of exchange and may can be used as a means of exchange and to make large volumes of transactions. As explained in recital 102 MiCAR, such large volumes can pose specific risks to monetary transmission channels and monetary sovereignty.
62. As a consequence, this criterion should capture the significance of the use of ARTs or EMTs for payments and remittances on an international scale. In addition to this, the criterion should also capture the significance of the cross-border transactions with ARTs or EMTs not necessarily associated to uses as means of exchange.
63. Finally, the EBA is of the view that the cross-border dimension of the indicators should cover cases where either the payer or payee is in the EU and the payer or payee is outside the EU, hence leaving out of the scope of this criterion the cases where both payer and payee are outside of the EU.

Core indicators

2.1 Market share of value of cross-border transactions with ARTs/EMTs into and from the EU.

64. The EBA is of the view that, because Article 43(1)(e) MiCAR makes reference to the “average number and average aggregate value of transactions” in ARTs (and given that these provisions also apply to EMTs referencing non-EU official currencies), the share of cross-border transactions that take place with each ART or EMT referencing a non-EU currency is a suitable indicator of the significance of that ART or EMT in the international scale.
65. In this regard, there may be merit in decomposing this indicator into two sub-indicators: one sub-indicator where the payer is within the EU and the payee outside (outflow) and another where the payee is within the EU and the payer is outside (inflow). While both types of cross-border flows are significant, the effects of each type of flow on monetary sovereignty and financial stability aspects may be different. The numerator of both sub-indicators should capture the total volume of cross-border transactions with a certain ART or EMT.
66. Regarding the denominator, the EBA is of the view that it should capture the total value of either inflow or outflow transactions with all ARTs and EMTs authorised to be offered to the public or admitted to trading in the EU under MiCAR. These sub-indicators would hence provide a robust indication of the significance of an ART or EMT in the market for inflows and outflows with ARTs and EMTs. The EBA considers that this is consistent with the legislators’ objective to identify significance levels that could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty.
67. An alternative approach for the sub-indicators would be that the denominators only capture the total volumes of transactions with a specific ART or EMT. However, this approach would likely give the false impression of significance in the case of tokens with a high proportion of cross-border activity but an insignificant proportional value of cross-border transactions with respect to the market of ARTs or EMTs.
68. The EBA expects that data necessary for the calculation of sub-indicators proposed should be available in accordance with the implementing technical standards (ITS) the EBA shall develop pursuant to its mandate under Article 22(7) MiCAR, with respect to elements covered by paragraph 1(c) of that Article. While the ITS is still under development by the EBA at the time of the conclusion of this advice and submission to the EC, issuers of ARTs and issuers of EMTs referencing non-EU currencies can be expected to be required to report the average number and average value of transactions per day within a reporting period of six months. That reporting is expected to include the following breakdown: transactions within the EU, inflows to the EU, outflows from the EU, and transactions fully outside the EU. Based on this data, the EBA would have the necessary data to calculate the sub-indicators proposed.
69. However, because reporting obligations under Article 22(1) MiCAR only apply to issuers of ARTs and EMTs referencing non-EU currencies, data necessary for the calculation of the proposed sub-indicators concerning EMTs referencing EU currencies is not available under MiCAR. To

cover this reporting gap, the EBA proposes to introduce additional reporting obligations on issuers of EMTs referencing EU currencies. See Section 2.3 for more information on how the EBA proposes to overcome the limitations on existing reporting obligations.

70. The EBA suggests the following calculation for the proposed sub-indicators:

<p>Core Indicator 2.1 Market share of value of cross-border transactions with ARTs/EMTs into and from the EU</p>
<p>Sub-indicator 2.1.1 Market share of inflow transactions with ARTs/EMTs into the EU</p>
<p><u>Numerator</u>: total aggregate value of cross-border transactions of an ART or EMT into the EU (inflows) during the relevant period</p> <p><u>Denominator</u>: total aggregate value of all cross-border transactions in ARTs or EMTs into the EU (inflows) during the relevant period</p>
<p>Sub-indicator 2.1.2 Market share of outflow transactions with ARTs/EMTs from the EU</p>
<p><u>Numerator</u>: total aggregate value of cross-border transactions of an ART or EMT from the EU (outflows) during the relevant period</p> <p><u>Denominator</u>: total aggregate value of all cross-border transactions in ARTs or EMTs from the EU (outflows) during the relevant period</p>

2.2 Market share of cross-border transactions into and from the EU with an ART or EMT that are associated as means of exchange.

71. According to recital 71 and recital 102 MiCAR, respectively, EMTs have the potential to pose risks to financial stability if their use as means of payment becomes widespread and ARTs may pose risks to monetary transmission channels and monetary sovereignty if they are widely adopted to make large volumes of payment transactions. As a consequence, the EBA proposes that one of the core indicators of the ART or EMT issuer's significance in the international scale captures the proportion of cross-border transactions with an ART or EMT that is used as means of exchange. As reflected by the use of the expression "including the use for payments and remittances" in Article 43(1)(e) MiCAR, this is a relevant part of this significance criterion.

72. To ensure consistency with indicator 2.1, the EBA suggests that cross-border transactions considered for this indicator should also account only for cases where either the payer or payee is assigned to a single currency area (as referred to in Article 22(1)(d) MiCAR) within the EU and

the other (payer or payee) is assigned to a SCA outside EU. That is, the EBA proposes to exclude from this indicator those cross-border transactions that happen fully outside the EU.

73. Similarly to indicator 2.1, the ART or EMT issuers' reporting obligations will depend upon the final text of the RTS and ITS to be developed by the EBA in accordance with Article 22(6) and (7) MiCAR. However, it is expected that, pursuant to Article 22(1)(d), issuers of ARTs and EMTs will be required to report the average aggregate value of transactions per day during the relevant period that are associated to its uses as means of exchange within a single currency area. This reporting obligation can be expected to incorporate a further breakdown, including the average aggregate value of transactions that are associated to its uses as means of exchange where either the payer or the payee is assigned to a single currency area within the EU and the payer or payee is assigned to a single currency area outside the EU. That is, the reporting obligations under Article 22(1)(d) are expected to capture the cross-border transactions with ARTs or EMTs that are associated to uses as means of exchange, as needed for this indicator.

74. However, as in the case of indicator 2.1, because reporting obligations under Article 22(1) MiCAR only apply to issuers of ARTs and EMTs referencing non-EU currencies, data necessary for the calculation of this indicator 2.2 concerning EMTs referencing EU currencies is not available under MiCAR. To cover this reporting gap, the EBA proposes to introduce additional reporting obligations on issuers of EMTs referencing EU currencies. See Section 2.3 for more information on how the EBA proposes to overcome the limitations on existing reporting obligations.

75. Finally, the EBA suggests that the denominator of this indicator should cover the total aggregate value of all cross-border transactions with ARTs or EMTs during the relevant period that are associated to uses as means of exchange.

76. Accordingly, the EBA suggests the following calculation for the proposed indicator:

Core Indicator 2.2 Market share of cross-border transactions into and from the EU with an ART or EMT that are associated to uses as means of exchange

Numerator: total aggregate value of cross-border transactions into and from the EU with an ART/EMT associated to its uses as means of exchange during the relevant period

Denominator: total aggregate value of all cross-border transactions into and from the EU with ARTs/EMTs associated to its uses as means of exchange during the relevant period

Ancillary indicators

2.3 Ratio of the total value of cross-border transactions with an ART or EMT used as means of exchange as compared to total value of cross-border payment transactions into and from the EU.

77. The objective of this indicator is to capture the extent to which the market share in payments with an ART or an EMT grows to a market share that is similar or close to that of payment transactions in the EU. Using ART or EMTs as means of payments introduces and enhances risks for financial stability. Those risks could be assessed by comparing the total value of those payments with the total value of payments processed with traditional payment providers and systems, or with the total value of payment transactions processed and reported by authorised PSPs (e.g. banks, credit institutions, e-money institutions) under PSD2. While the EBA considered both options for this ancillary indicator, the EBA is of the view that the latter option is the most suitable indicator due to the lack of complexity for calculation, the scope of data and existing reporting obligations.
78. The EBA is of the view that considering this indicator is relevant to account for cases where an ART or EMT becomes significant with respect to payment transactions, at the cross-border level. Because of the technological nature of ARTs and EMTs, if the DLT network in which transactions with ARTs and EMTs are issued and settled becomes unavailable, holders of those ARTs and EMTs may no longer have access to their means of payment (the ART or EMT), or this can be disrupted during a certain period of time. As a consequence, the rise in prominence of ARTs and EMTs in cross-border payments could have significant implications and is considered as a good indicator of ARTs or EMTs' international scale.
79. To account for this indicator, it would be necessary to cover all cross-border transactions used as means of exchange with an ART or an EMT. For consistency and comparability, the denominator should account for all cross-border payment transactions into and from the EU.
80. Because this data is expected to be available for ARTs and EMTs referencing non-EU currencies, based on the RTS and ITS to be developed under Article 22 MiCAR, additional reporting obligations for EMTs referencing EU currencies would be necessary, as explained in Section 2.3.
81. For the denominator of this indicator, it would be necessary to consider data on the total value of cross-border payment transactions processed and reported by authorised PSPs (e.g. banks, credit institutions, e-money institutions) under PSD2 during the relevant reporting period⁹.
82. Accordingly, the EBA suggests the following calculation for the proposed indicator:

Ancillary Indicator 2.3 Ratio of the total value of cross-border transactions with an ART/EMT used as means of exchange as compared to total value of cross-border payment transactions into and from the EU

⁹ The EBA is aware of the fact that, according to Guideline 4.7 of the EBA Guidelines on fraud reporting under PSD2, authorised PSPs report payment transactions processed 'cross-border outside the EEA'. This refers to 'payment transactions initiated by a payer, or by or through a payee, where either the payer's or the payee's payment service provider is located outside the EEA while the other is located within the EEA', and therefore the reported data is consistent with that necessary for the calculation of this indicator. Additionally, the EBA recognizes that there may be differences between the MiCAR and PSD2 reporting obligations with regards to reference periods and to whether it is the location of the payer/payee (MiCAR) or the location of the PSP (PSD2) which determines the cross-border nature of the transaction. However, regardless of those differences, the EBA still sees benefits on assessing this indicator of the international scale of an ART or EMT.

Numerator: total value of cross-border transactions into and from the EU with an ART or an EMT associated to its uses as means of exchange during the relevant reporting period

Denominator: total value of cross-border payment transactions into and from the EU processed and reported by authorised PSPs under PSD2 during the relevant reporting period

Table 2: Summary of core and ancillary indicators of circumstances under which ARTs and EMTs and their issuers shall be considered as interconnected with the financial system

Indicator	Objective
Core indicators	
2.1 Market share of value of cross-border transactions with ARTs/EMTs into and from the EU	Use of the ART or EMT at international scale for cross-border transactions (in general)
2.2 Market share of cross-border transactions into and from the EU with an ART or EMT that are associated as means of exchange	Use of the ART or EMT at international scale for payments and remittances, and/or transfer of value, to capture currency substitution effects
Ancillary indicators	
2.3 Ratio of the total value of cross-border transactions with an ART/EMT used as means of exchange as compared to total value of cross-border payment transactions into and from the EU	Assess the significance of the use of ART or EMT as compared to payment transactions, due to the potential effects of disruptions of DLT network in payments services users

2.3 Reporting of data necessary for the significance assessment concerning criteria (e) and (f) of Article 43(1) MiCAR

83. As explained throughout this advice, the EBA has identified gaps in reporting obligations for issuers of ARTs or EMTs under MiCAR. Those gaps could not only limit the EBA's ability to assess the two significance criteria covered by this advice, but would also limit the EBA's ability to assess the rest of the significance criteria specified in Article 43 MiCAR, limit the EBA's ability to

apply the provisions in Article 119 MiCAR on supervisory colleges, and limit its ability to undertake general supervisory activities under Article 117 MiCAR. Additionally, in the context of its work on Level 2 mandates under MiCAR, and supervisory preparedness activities, the EBA has identified other data gaps that could impact NCAs' ability to supervise conformity by issuers of ART (and EMT) with their obligations under MiCAR (e.g. own funds requirements).

84. As a consequence, the EBA is of the view that, in order to be able to use the proposed indicators for the ART or EMT's significance assessment (and for broader supervisory purposes), additional reporting is needed. Consistent with the recommendations of the ESRB in its May 2023 Report on crypto-assets and DeFi,¹⁰ as the most urgent policy priority, the EBA considers that the extension of reporting obligations is necessary to improve capacities to monitor potential interconnectedness between ARTs, EMTs, their issuers, and the financial system.
85. Regarding gaps in the existing reporting obligations under MiCAR, as explained in Section 2.2, the ITS under Article 22(1) MiCAR only applies to issuers of ARTs and EMTs referencing non-EU currencies. The EBA recommends that those reporting obligations should be extended also to issuers of EMTs referencing EU currencies. These types of tokens are also covered by Article 43 MiCAR, and paragraph 4 of that article specifies that competent authorities of the issuer's home Member State shall report to the EBA and the ECB information relevant for the assessment of the fulfilment of the significance criteria. However, Article 22 does not cover all information required.
86. Ideally, this issue would be remedied by Level 1 changes – i.e. by the conferral on the EBA of a wider ITS mandate to specify broader reporting requirements. However, as it does not appear as though a suitable legislative vehicle to make this change will be available in the immediate period, the EBA proposes to remedy the reporting gaps via developing own initiative Guidelines (under Article 16 of its Founding Regulation) to complement the ITS under Article 22 MiCAR.
87. This is considered the best available approach to secure consistent reporting of data in accordance with common formats and templates, which is urgently needed to ensure a proper application of MiCAR after 30 June 2024. The EBA suggests to start work on these Guidelines in Q1 2024.
88. Moreover, regarding the data necessary to calculate indicator 1.3 on the share of ART/EMTs issued that are held by financial institutions, the EBA recognises the existing gaps in EU-wide reporting obligations, including under MiCAR. This indicator would require the existence of obligations on financial institutions to report holdings of ART/EMTs. While there are already legislative efforts underway to require reporting by certain financial institutions, the EBA does not expect credit institutions, investment funds and other types of financial institutions to be subject to EU-wide reporting obligations on holdings of crypto-assets until at least 2026/2027.

10

<https://www.esrb.europa.eu/pub/pdf/reports/esrb.cryptoassetsanddecentralisedfinance202305~9792140acd.en.pdf?853d899dcdf41541010cd3543aa42d37>

Furthermore, the EBA cannot introduce new reporting obligations on financial institutions that are not within the scope of action of the EBA.

89. As a consequence of the above, and as explained in Section 2.1, indicator 1.3 may only be used once, and to the extent that, data become available based on the conclusion of legislative initiatives in the EU. Where necessary and with respect to the financial institutions that fall within the scope of action of the EBA, the EBA may assess whether a further extension of reporting obligations may be necessary.

3. Advice on supervisory fees

3.1 Introduction

90. Article 137(1) MiCAR specifies that the EBA shall charge fees to issuers of sARTs and sEMTs to cover the EBA's expenditure for the execution of its supervisory tasks in accordance with Article 117 MiCAR (supervisory responsibilities of the EBA with respect to issuers of sARTs and sEMTs) and Article 119 MiCAR (colleges for issuers of sARTs and sEMTs, including for sEMTs issued by credit institutions).

91. Such fees will be the sole way to fund the supervisory tasks of the EBA, given that the fees shall cover the EBA's costs, including its overheads (recital 107 MiCAR). The MiCAR Legislative Financial Statement (LFS) also makes clear that the supervision tasks are to be funded by fees and not by the EBA's general budget.¹¹

92. In terms of allocation of fees, MiCAR (recital 107, and Article 137(2)) specifies that:

- a. for issuers of sARTs, the fee should be proportionate to the size of the reserve of assets;
- b. for issuers of sEMTs, the fee should be proportionate to the size of issuance of the sEMT in exchange for funds.

93. The MiCAR LFS includes estimates related to the costs of supervision. However, it is important to highlight that these estimates cannot be considered comprehensive or sufficiently indicative. This is because the crypto-asset market is dynamic and fast-evolving, therefore the estimate as to the number of issuers likely to fall within the scope of the EBA's supervisory tasks as set out in the LFS are inherently uncertain. Additionally, the EBA's supervisory priorities may change from time to time in light of events. Accordingly, it is of the highest importance for the EBA, and the competent authorities to whom tasks may be delegated by the EBA, to have the necessary flexibility to estimate their likely costs from year-to-year, including the possibility to reassess the fees to be levied in relation to the EBA's supervisory tasks from one year to another. It must be emphasised that the functioning of the supervisory framework for sARTs and sEMTs under MiCAR will particularly rely on the means that will be available to the EBA and the competent authorities to perform the supervisory tasks foreseen in MiCAR, and in light of market developments, therefore flexibility in estimating and setting the fees is essential.

94. In line with the applicable financial rules, the total amount of the yearly fees charged will be published in the EU Official Journal and on the website of the EBA.

95. While preparing this advice, the EBA faced several challenges. The main one is the lack of actual information on the future sARTs and sEMTs (number, size, type), given that assessments of

¹¹ The original Legislative Financial Statement accompanying the EC's proposal for MiCAR is available using the following link: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0593>

significance will be performed by the EBA only after the publication of the related delegated act, and taking account of market developments (including any successful applications for authorisation to issue ARTs that are made after the application date of Title III MiCAR (30 June 2024)).¹² The ability of the EBA to anticipate which ART and EMT issuers will be determined to be ‘significant’ is limited as the market is relatively new, the tokens are novel, and some of the indicators to inform assessments of ARTs and EMTs against the significance criteria are yet to be identified (see chapter 2 of this advice). Therefore, the EBA is of the opinion that the method of calculation of the fees for the supervisory tasks should be adaptable to the annual designation process for sARTs/sEMTs, while being proportionate in accordance with the factors identified Article 137(2) MiCAR. The method proposed by the EBA is inspired by the experience of national supervisors and the ESMA when setting supervisory fees for financial institutions.

96. Moreover, the EBA notes that some sARTs and some sEMTs may be determined by the EBA to be significant based on ‘voluntary opt-in’ (Articles 44 and 57 MiCAR) and such tokens should also be taken into account.

97. Finally, the EC invited the EBA to reflect on the frequency of review of the delegated act to reflect related developments. In this regard, it is considered appropriate to ensure consistency with the arrangements for oversight fees under DORA and hence to perform a review on the need for potential amendments every three years. This could facilitate adequate planning and stability in the calculation, charging, and collection of fees for the EBA’s supervisory tasks.

3.2 Scope of the fees for the EBA’s supervisory tasks: Estimated expenditure and applicable data for reserves (sARTs) and number of tokens in issue (sEMTs)

Scope of the estimated expenditure

98. The specific rules on fees which are set out in sectoral (Level 1) legislation, as well as in relevant delegated (Level 2) acts²⁰ rely on the principle of full-cost recovery, put in place by an activity-based management (ABM) model, which establishes that the fees should cover:

- the annual estimate of all direct and indirect expenditure necessary for the targeted/defined tasks performed by the EBA (so staff resources directly involved in the defined tasks, but also the costs of the horizontal services i.e., operational and administrative support provided to the directly-involved staff);
- the annual estimate of direct and indirect expenditure for the reimbursement of competent authorities to whom the EBA has delegated tasks.

99. Based on the MiCAR LFS, fees for the EBA’s supervisory tasks shall cover staff expenditure, infrastructure costs, and operating expenditure. Estimated figures are set out in the LFS. However, as noted above, the EBA is of the view that such figures are underestimated given that they do not cover all identified costs related to the supervisory tasks. For instance, there is no reference to

¹² Article 149(3) MiCAR.

additional costs generated by the use of independent experts, or by the involvement of the competent authorities.

100. The EBA therefore clarifies that the related expenditure of at least the following activities identified in MiCAR must be funded by the fees (this list should not be considered exhaustive and should not prevent the inclusion of other types of expenditure related to the performance by the EBA of its supervisory tasks):
- a. Determination of ARTs and EMTs as significant (Articles 43 and 56 MiCAR), including costs incurred in relation to data gathering and analysis, and engagement with the issuer, competent authorities, central banks and other relevant authorities;
 - b. Classification as significant based on voluntary opt-in (Articles 44 and 57 MiCAR), including all costs of a kind referred to in the designation process;
 - c. Conduct of supervision (Article 117 MiCAR), including the establishment and functioning of the EBA crypto-asset committee (Article 118 MiCAR), and the exercise of any powers and competences as referred to in Chapter 5 of Title VII MiCAR, including onsite inspections, investigations, and the appointment of independent investigating officer (IIOs) and delegation of tasks to competent authorities;
 - d. Establishment and functioning of supervisory colleges (Article 119 MiCAR), including for sEMTs issued by credit institutions;
 - e. Tasks performed by competent authorities as delegated by the EBA (Article 138 MiCAR).

Reference data for allocation of costs between sARTs and sEMTs

101. Article 137(2) MiCAR is clear as to the basis for allocating costs between issuers of sARTs and sEMTs – namely:
- a. for issuers of sARTs, the fees charged to an individual issuer shall be *proportionate to the size of its reserve assets*;
 - b. for issuers of sEMTs, the fees charged to an individual issuer shall be *proportionate to the size of the issuance* of the e-money token.¹³
102. The EBA notes that data on reserve assets (for ARTs) and tokens in issuance (for EMTs) will be readily available from issuers and will be reported to competent authorities on at least a quarterly basis as a result of the forthcoming reporting obligations under Article 22(7). Furthermore, issuers are expected to be able to produce ‘point in time’ data on a more frequent basis – e.g. as a result of ‘marking to market’ reserve assets, and in knowledge of the number of tokens in issuance.

¹³ This contrasts with the position under DORA, where the amount of oversight fees to be charged to CTPPs is required to be proportionate to turnover.

103. As such, the EBA expects to be able to acquire from competent authorities, and from issuers, relevant data on which calculations can be made to allocate fees proportionately to relevant issuers.

3.3 Method of calculation of the fees payable by issuers of sARTs and sEMTs

104. In respect of the method of calculations of the fees, the first issue is to determine if the collected fees should be adapted yearly or fixed by the delegated act. To-date, both approaches are used by the ESAs, but for different kinds of fees. Registration, recognition and certification fees to be paid by financial entities are generally envisaged as ‘fixed’ fees for efficiency purposes. In some cases, their amount can however be adjusted based on (i) the complexity of the application, (ii) the size of the concerned entity (for instance, entities with a smaller number of employees are subject to lower registration fees), or (iii) the expected turnover. This assumes an advanced determination of every possible situation with different fee buckets (e.g. depending on the number of employees, the diversity of activities, the expected turnover, etc) to make it adaptable to the potential changes of the entities subject to such fees. However, given the sARTs and sEMTs will be identified only after the application of Titles III and IV MiCAR (30 June 2024), it is not possible to determine fixed fees in the delegated act since neither the exact amount of supervision task expenditure nor the exact number of sARTs/sEMTs will be known before the framework is fully established.

105. With regard to annual supervisory fees, on the basis of the principle of annuality and the principle of full cost recovery, they are calculated based on the estimated (direct and indirect) costs to be incurred to perform the tasks. While these estimated costs are generally consistent from one year to the next, there is still a need to adjust them every year (e.g., in the event of additional sARTs and sEMTs being designated, or in view of changes to the supervisory model and associated costs). The total annual fees are therefore adjusted every year to match the estimated costs. At entity level, the annual fee is calculated based on a “fully proportionate approach”, i.e., the fee charged is determined as a prorated amount that corresponds to the percentage represented by the charged entity compared to the sum applicable to all supervised entities. Therefore, based on the experience of the ESAs, and consistent with the approach proposed in the DORA CfA response, the EBA is of the view that yearly adaptable fees calculated through a fully proportionate approach should be used to calculate the fees payable under Article 137 MiCAR.

106. The EBA recognises that such approach contains some challenges, in particular in terms of predictability for both the issuers and for the EBA. To ensure all entities contribute to the funding of the framework on a minimum basis, some existing delegated acts (e.g. for trade repositories, securitisation repositories, benchmark and data reporting service providers) include a requirement for a minimum annual supervisory fixed fee. This gives a bit more predictability to the concerned entities. In addition, it can help ensure the coverage of the EBA’s minimum cost estimated for the supervision of one issuer of a sART/sEMT regardless the size.

107. Therefore, the EBA proposes a fee approach that requires the payment of a minimum fee (including at the point of entry to supervision), which should be capable of being specified by the EBA, and subject to the annual fee calculation as set out in the paragraphs that follow.
108. The EBA notes that its supervision tasks for sEMTs are narrower than for sARTs (see Article 117 MiCAR) and are not expected to be fully linear as regards costs/number of significant tokens in scope of its supervision. This is because costs will depend on the intensity of the supervision as may be necessary depending on the facts, including market developments.
109. Therefore, in accordance with the principle of proportionality, and also mirroring the formulation of Article 137(2) MiCAR which establishes a different basis for dividing fees between sARTs and sEMTs, the EBA proposes to establish an activities-based estimates, and monitoring system that would allow for the capture *estimated costs* to be attributed, respectively, to sARTs and sEMTs.
110. Concretely, this should involve two parts:
- a. Part 1: staff time projected/allocated to, respectively ARTs/EMTs (Title 1 and Title 2 costs: staff and overheads) plus costs of IT systems developed and maintained to support the EBA's work on MiCAR (Title 3);
 - b. Part 2: costs assigned directly to individual issuers/tokens (Title 3: missions, meetings etc)
111. The total costs for (a) then being assigned respectively to the pool of anticipated/actual sARTs/sEMTs under EBA supervision would then be divided by issuers as follows:

sARTs

$$\% \text{ of costs related to sART supervision paid by issuer} = \frac{\text{Reserve of sART}}{\text{Reserves of all sARTs}}$$

sEMTs

$$\% \text{ of costs related to sEMT supervision paid by issuer} = \frac{\text{Size of issuance of sEMT}}{\text{Size of issuance of all sEMTs}}$$

112. The EBA considers that the delegated act, therefore should foresee the above approach and formulae for the apportionment of costs between sART issuers and sEMT issuers consistent with Article 137(2) MiCAR.
113. Additionally, to ensure comparability between issuers, in view of the fact some issuers may use different currency denominations (e.g., for valuing reserves), the EBA should be able to

apply an exchange rate to convert all values to EUR (for this purpose, the EBA foresees that the daily ECB rate can be used).

114. The EBA operates an annual budget by calendar year. Consistent with the approach proposed under the response to the DORA CfA:
- a. in case of deficits on the fees charges in a year to issuers of sARTs/sEMTs (the fees collected by the EBA are lower than the costs incurred by the EBA), the EBA does not recover the deficit from issuers of sARTs/sEMTs;
 - b. in case of surpluses (the EBA collects more fees than costs incurred), the EBA does not pay back the surplus. Any such surpluses is paid over to the EC in the year Y+1 following the annual financial accounts, like for other types of surpluses (coming from EU subsidy or NCAs' contributions) as per the EBA Financial Regulation.

3.4 Practical issues related to the payment of fees

115. The EBA cross-refers to the response to the DORA CfA,¹⁴ and proposes to establish a one-instalment payment for the collection of annual supervision fees from all issuers of sARTs/sEMTs. It is also proposed that the fees should be cashed by the end of April each year (n) based on estimates calculated using reference data (sART reserves, sEMT in issuance) and estimated costs as at [1 October of the previous year] and any adjustments up to end-February in the year in which the fees are to be charged.
116. Any issuers that enter the EBA's supervision in the year (n) in which the fees are paid, should be required to pay the minimum fee on entry to EBA supervision, pro-rata to the days remaining of the year calculated from the point of entry.
117. Reference is made to the response to the DORA CfA regarding: the reimbursement of competent authorities, the first year in which the supervisory framework is implemented, and the late payment of supervision fees.

¹⁴ <https://www.eba.europa.eu/about-us/missions-and-tasks/calls-for-advice>

Annex I - EC request to EBA to provide technical advice on MiCAR

Request to the European Banking Authority (EBA) for technical advice on delegated acts under a Regulation on markets in crypto-assets concerning certain criteria for classification of asset-referenced tokens and e-money tokens as significant, and the fees that are to be charged by EBA to issuers of significant asset-referenced tokens and e-money tokens

With this provisional request the Commission seeks EBA's technical advice on certain delegated acts to be adopted under the future Regulation on markets in crypto-assets ("MiCA" or "Regulation"). These delegated acts should be adopted in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU).

The request is provisional since MiCA has not yet entered into force. Yet the provisional agreement was reached by the Council and the European Parliament on 30 June 2022, which was endorsed by COREPER and the ECON Committee on 5 October and 10 October, respectively. Currently, MiCA is subject to legal revision prior to its formal adoption by the European Parliament and the Council and publication in the EU Official Journal planned for Spring 20231.

The Commission reserves its right to revise or supplement this mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows MiCA (Article 39(6) and Article 119(3) read in conjunction with Article 121), the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union² (the "290 Communication"), the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making³ and the Framework Agreement on Relations between the European Parliament and the European Commission⁴ (the "Framework Agreement").

According to Article 39(6) of MiCA, the Commission must adopt delegated acts in accordance with Article 121 to further specify certain criteria for classification of asset-referenced tokens (ARTs) and e-money tokens (EMTs) as significant by EBA as well as on the content and format of the information to be provided by the competent authorities to the EBA and central banks on the classification criteria and the procedure and timelines for the EBA's decision on classification of asset-referenced tokens as significant.

According to Article 119(3) of MiCA the Commission must adopt a delegated act in accordance with Article 121 by 12 months after the entry into force of MiCA to specify further the type of fees that EBA is empowered to impose on the issuers of significant ARTs and EMTs in accordance with MiCA, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and the methodology to calculate the maximum amount per entity that can be charged by the EBA.

The European Parliament and the Council shall be duly informed about this provisional request.

In accordance with the Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of possible delegated acts in the financial services area.

In accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with experts appointed by the Member States within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The Commission is empowered to adopt delegated acts pursuant to Article 39(6) and Article 119(3) read in conjunction with Article 121 of MiCA. As soon as the Commission adopts the delegated acts, it will notify them simultaneously to the European Parliament and the Council.

1. Context

1.1. Scope

On 24 September 2020, the Commission published its proposal for a Regulation, as part of the Digital Finance Package. On 30 June 2022 the Council and the European Parliament reached a political agreement on a compromise text, which was formally endorsed by the two institutions, respectively, on 5 October 2022 and 10 October 2022. Publication in the Official Journal is expected in Spring 2023. The text will enter into force on the twentieth day following its publication.

MiCA aims to promote sustainable and safe innovation in crypto-assets and underlying distributed ledger technology while addressing the risks that this new class of assets pose to investors, market integrity and financial stability. It regulates issuers of currently unregulated crypto-assets and providers of services in relation to such crypto-assets. MiCA provides for the provisions to classify crypto-assets that stabilise their value by referencing another asset/basket of assets or a single official currency (ARTs or EMTs, respectively) as significant. EBA classifies ARTs or EMTs as significant based on criteria defined in the Regulation. Once ARTs or EMTs are classified as significance, EBA will in most cases directly supervise the issuers of such significant tokens.

This provisional request for a call for advice concerns possible delegated acts:

- under Article 39(6) on certain criteria for classification of ARTs and EMTs as significant by EBA as well as on the content and format of the information to be provided by the competent authorities to the EBA and central banks on the classification criteria, and the procedure and timelines for the EBA's decision on classification of ARTs as significant.
- under Article 119(3) to be adopted by the Commission within 12 months after the entry into force of MiCA to specify further the type of fees that EBA is empowered to impose on the issuers of significant ARTs and EMTs in accordance with MiCA, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and the methodology to calculate the maximum amount per entity that can be charged by the EBA.

1.2. Principles that the ESAs should take into account

On the working approach, the EBA is invited to take into account the following principles:

- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the Regulation. It should be simple and avoid excessive financial, administrative or procedural burdens for issuers of ARTs and EMTs, national competent authorities (NCAs) and central banks.
- The rule-of-law principle, which requires appropriate rights of defence for persons that are subject to EBA's supervision.
- While preparing its advice, the EBA should seek coherence within the regulatory framework of the Union.
- In accordance with the EBA Regulation⁵, the EBA should not feel confined in their reflections to elements that they consider should be addressed by the delegated acts but, if appropriate, they may indicate guidelines and recommendations that they believe should accompany the delegated acts to better ensure their effectiveness.
- The EBA will determine their own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- In their approach, the EBA should ensure cross-sectoral consistency, and where relevant, cooperate with the ESMA and central banks.
- The EBA is invited to justify its advice by providing an analysis of all the options considered and proposed. The EBA should provide the Commission with a description of the problem, the objectives of the technical advice, possible options for consideration and a comparison of the main arguments for and against the considered options. The analysis should justify EBA's choices vis-à-vis the main considered options.
- The EBA's technical advice should not take the form of a legal text. However, the EBA should provide the Commission with a clear and structured ("articulated") text, accompanied by sufficient and detailed explanations. Furthermore, the technical advice should be presented in an easily understandable language respecting current terminology in the Union.
- The EBA should provide comprehensive technical analysis on the subject matters described in section 3 below, where these are covered by the delegated powers included in:
 - the relevant provisions of the Regulation;
 - the corresponding recitals, or;
 - the relevant Commission's request included in this mandate.
- The EBA should address to the Commission any question to clarify the text of the Regulation that the EBA consider of relevance to the preparation of its technical advice.

2. Procedure

The Commission is requesting EBA's technical advice in view of the preparation of certain delegated acts to be adopted pursuant to MiCA and in particular regarding the questions referred to in section 3 of this provisional request.

The provisional request takes into account the Regulation (Article 39(6) and Article 119(3) in conjunction with Article 121), the EBA Regulation, the 290 Communication, the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making and the Framework Agreement.

The Commission reserves the right to revise or supplement this mandate. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision.

In accordance with established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of delegated acts relating to the Regulation. The Commission must duly inform the European Parliament and the Council about this provisional request. As soon as the Commission adopts the delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3. The EBA is invited to provide technical advice on the following matters

3.1. Delegated acts on criteria and procedures for classification of ARTs and EMTs as significant

In order to address increased risk from significant ARTs or EMTs, the issuers of those tokens must comply with additional obligations and their supervision shifts to the EBA. While issuers of significant ARTs are solely supervised by EBA, only those issuers of significant EMTs that are e-money institutions and with respect to compliance with certain provisions are supervised by EBA (dual supervision by EBA and NCAs).

EBA classifies ARTs and EMTs as significant in accordance with the procedures set out in Articles 39 and 50, respectively. Article 39(1) provides that EBA classifies ARTs as significant where they meet at least three criteria listed in that Article and those same criteria are met in the first biannual report by the competent authority following the authorisation of the issuer of the ARTs or in at least two consecutive reports. When several issuers issue the same ART, the criteria shall be assessed after aggregating the data from all issuers. Article 50 on classification of EMTs as significant cross-refers to the criteria set out in Article 39(1). At the same time, the Regulation allows an issuer to request, normally at the time of application for authorisation, a voluntary classification of ARTs and EMTs as significant in accordance with the procedures set out in Articles 40 and 51, respectively. In this case, EBA classifies ARTs or EMTs as significant if based on the issuer's programme of operations at least three of the criteria in Article 39(1) are met or are likely to be met.

Article 39(1) lists quantitative and qualitative criteria for classification of ARTs and EMTs as significant. The quantitative criteria are the following:

- (a) the number of holders of the asset-referenced tokens is larger than 10 million;
- (b) the value of the ARTs 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;

The qualitative criteria are the following:

(da) the issuer of the asset-referenced tokens is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU) .../... (Digital Markets Act).

(e) the significance of the activities of the issuer of the asset-referenced tokens on an international scale, including the use of the asset-referenced tokens for payments and remittances.

(f) the interconnectedness with the financial system.

(g) the fact that the same legal person or other undertaking issues at least one additional asset-referenced token or e-money token, and provides at least one crypto-asset service.

According to Article 39(6) the Commission shall adopt delegated acts to further specify the criteria referred to in points (e) to (g) above by determining:

- the circumstances under which the activities of the issuer of asset-referenced tokens are considered to be significant on an international scale outside the EU;
- the circumstances under which asset-referenced tokens and their issuers shall be considered as interconnected with the financial system;
- the circumstances under which the issuance of other asset-referenced tokens, e-money tokens or provision of crypto-asset services should be considered for the purposes of identification of an asset-referenced token as significant.

In addition, those delegated acts must also further specify:

- the content and format of information provided by competent authorities to the EBA under paragraph 2 of Article 39;
- the procedure and timeframe for the decisions taken by the EBA under paragraphs 3 to 5 of Article 39.

EBA is invited to provide technical advice to assist the Commission in drafting the delegated acts as set out in Article 39(6). Thereby EBA is invited to specify the most relevant indicators of a qualitative and, where possible, quantitative nature in relation to the relevant criteria:

a) As regards the criterion of significance of the issuer's activities on international scale outside the EU, the EBA is invited to explore other indicators than the criteria referred to in Article 39(1), points (a) to (c) that would indicate significance of activities of issuers of ARTs and EMTs on an international scale outside the EU.

b) As regards the criterion of interconnectedness of ARTs/EMTs and their issuers with the financial system, EBA is invited when defining the indicators to consider, among other things:

- the exposure of financial institutions to the ARTs or EMTs;
- concentration of financial institutions' holdings of the ARTs or EMTs.

3.2. Delegated act on supervisory fees

According to Article 119(1) of MiCA, the EBA must charge fees to the issuers of significant ARTs and EMTs in accordance with this Regulation and the delegated acts adopted pursuant to paragraph 3 of that Article. Those fees cover the EBA's expenditure relating to the supervision of issuers of significant ARTs and EMTs 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.

Article 119(2) of MiCA provides that the amount of the fee charged to an individual issuer of significant ARTs or EMTs must be proportionate to the size of the reserve assets of the ART or to the size of the EMT and must cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

Article 119(3) of MiCA requires the Commission to adopt a delegated act by 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.

The EBA is invited to provide technical advice to assist the Commission in drafting the delegated act set out in Article 119(3).

4. Indicative timeline

This provisional request takes into consideration that the EBA requires sufficient time to prepare its technical advice and that the Commission needs to adopt the delegated acts according to Article 290 of the TFEU. The powers of the Commission to adopt the delegated acts are subject to Article 39(6) and Article 119(3) in conjunction with Article 121 of the Regulation, which allow the European Parliament and the Council to object to a delegated act within a period of three months, extendible by three further months. The delegated act will only enter into force if neither the European Parliament nor the Council has objected on expiry of that period or if both institutions have informed the Commission of their intention not to raise objections.

The Regulation requires the Commission to adopt the delegated act under Article 119(3) within twelve months from its entry into force. In order for the Regulation to be fully operational and for the EBA to be able to perform their new tasks with regard to the direct supervision of issuers of significant ARTs and EMTs, it is of the outmost importance to start working on this issue as soon as possible.

The deadline set to the EBA to deliver the technical advice is 30 September 2023.

The request is also available online: [20221218 Call for advice MiCA FINAL.pdf \(europa.eu\)](#)

Annex II – Summary of the feedback received

Feedback on the EBA’s advice on criteria for the classification of ARTs and EMTs as significant:

General comments:

- While respondents recognised that the proposed approach accurately identified the potential data sources to calculate the indicators, some identified limitations in terms of availability and data sources for some indicators. In seek of clarity, respondents argued it is important to understand the timeline when all indicators can become fully operational.
- Respondents suggested to avoid, to the extent possible, potential sources of statistical biases (e.g. different reference periods in the collection of data points, introducing data quality control checks), and adding adequate statistical treatment when new data sources are added (based on availability) to ensure the coherence of the time series.
- One respondent highlighted that building as much as possible supervisory discretion into the significance assessment is of utmost importance.
- Regarding the proposal of sub-indicators, respondents supported the approach, both for the significance assessment and overall monitoring of ARTs/EMTs, provided data is available and automation is achieved.
- Respondents suggested setting a hierarchy or weighting of indicators, to ensure that the calculation is as transparent as possible, and the assessment of significance is automated.
- Respondents suggested to pay attention to the trade-off between the number of indicators needed and the complexity, time and resources required to calculate them.
- Respondents suggested to introduce specific quantitative thresholds to both core and ancillary indicators, to fully assess their suitability and to support the issuers’ internal assessment of whether a certain ART/EMT meets the significance criteria almost.

On indicators of circumstances under which ARTs and EMTs and their issuers can be considered as interconnected with the financial system:

- Respondents suggested to focus the indicators on capturing the nature while preventing the implicit creation of additional reserve and custody requirements for industry participants. Respondents warned that proposed indicators could have the unintended consequence that issuers take prudential decisions only based in an effort to avoid meeting this criterion (e.g. partner with a larger number of smaller and riskier custody partners).

- A respondent suggested that, to obtain information necessary to assess this criterion, regulatory data (reported to comply with reserve of assets composition obligations), financial data (financial statements data) and market data (size of issuances) may need to be combined. Further, the respondent highlighted that the granularity and reference periods may need to be further aligned to make the information comparable.

On indicators of circumstances under which the activities of the issuer of ARTs and EMTs are considered to be significant on an international scale, including the use of the ART/EMT for payments and remittances:

- A respondent suggested adding a further element to the international dimension by covering transactions between non-EU payees and non-EU payers. According to that respondent, focusing solely on cross-border transactions involving EU payees or payers provides only a partial picture of the international use of an ART/EMT.
- A few respondents suggested that there may be cases where there are large shares of cross-border (i.e. in and out of the EU) usage of ARTs/EMTs for very small total amounts, and in those cases, the tokens should be assessed against total size and deemed not significant.
- A respondent highlighted the need to account for ways to prevent artificial inflation of transaction volumes and data through (adversarial) third parties.

Feedback on the EBA's advice on supervisory fees:

Only one comment was received on this aspect of the EBA's advice – namely, to express support for the approach to the allocation of fees between different types of issuer, and to call for a further refinement based on the nature of the reserve assets in view of the different risks involved (e.g. commodity only, vs currency/commodity reference assets). A sub-classification based on the type of reserve assets is not possible in view of the Level 1 text which prescribes the basis on which to allocate fees between different types of issuers. However, the approach proposed does allow for some adjustment based on costs associated depending on the supervisory model, priorities, work programme etc set by the EBA, on which the supervisory costs, and therefore fees, are estimated (see further paragraph 111 of this advice).