EBA/CP/2023/22

20/10/2023

Consultation Paper

Draft Regulatory Technical Standards

the minimum content of the governance arrangements on the remuneration policy under Article 45 of Regulation (EU) 2023/1114

Contents

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the "send your comments" button on the consultation page by 22 January 2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

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

2. Executive Summary

1. Article 45(1) Regulation (EU) 2023/1114 requires "Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards." In addition, Article 58(1)(a) of Regulation (EU) 2023/1114 requires issuers of e-money tokens, to apply the requirements in Article 45(1) Regulation (EU) 2023/1114.

2. As per Article 45(7)(a) of Regulation (EU) 2023/1114, the EBA, in close cooperation with ESMA is mandated to develop draft RTS specifying "the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1…". The mandate forms a part of the suit of mandates under Article 45(7) which also require to specify (b) the minimum content of the liquidity management policy and procedures and minimum amount of deposits with credit institutions in each official currency referenced and (c) the procedure and timeframe to adjust the amount of required own funds.

3. The RTS sets out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy's elements that should be adopted as part of the remuneration policy.

Next steps

Following the public consultation and finalisation of the draft regulatory technical standards, the EBA will submit them to the Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

3. Background and rationale

4. Article 45(1) Regulation (EU) 2023/1114 requires "Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards." In addition, Article 58(1)(a) of Regulation (EU) 2023/1114 requires issuers of e-money tokens, to apply the requirements in Article 45(1) Regulation (EU) 2023/1114.

5. As per Article 45(7)(a) of Regulation (EU) 2023/1114, the EBA, in close cooperation with ESMA is mandated to develop draft RTS specifying "the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1…"

6. The RTS sets out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy's elements that should be adopted as part of the remuneration policy.

7. To ensure that remuneration policies promote the sound and effective risk management of issuers, do not create incentives to reduce risk standards and ensure the cross sectoral consistency, the RTS sets a framework similar to the remuneration framework for investment firms that aims at achieving the same regulatory objectives. The requirements are tailored to the business model of issuers, which issue significant tokens, as defined by this RTS, that are not considered financial instruments.

8. The RTS provides for a level playing field between issuers of significant asset-referenced tokens and other institutions that are able to issue significant tokens as part of their authorisation. It ensures that gender neutral remuneration policies for all staff are applied and are compatible with risk management objectives, business objectives, corporate and risk culture. Furthermore, the RTS defines the elements of variable and fixed remuneration that can be granted. It also ensures that there are no incentives to lower risk standards, including by setting specific requirements for the variable remuneration of control functions so that they are remunerated mainly based on control objectives.

9. The proposed framework leads to a risk alignment of variable remunerations for staff that has a material impact on the risks of the issuer or of the significant tokens they issue and includes specific requirements that ensure the risk alignment of variable remunerations in the longer run. To this end, the RTS requires issuers to set a maximum ratio between the variable and the fixed remuneration as well as to apply other typical rules to elements of remuneration frameworks, e.g., link variable remuneration to performance of the issuer and its staff, pay out variable remuneration partly in instruments, apply deferral arrangements and malus and claw back, where appropriate.

10. The instruments used for the pay out of a part of the variable remuneration comprise shares and share-linked instruments. Considering risks related to the management of the reserve-

assets and operational risks, issuers of asset-referenced tokens should also be able to use the significant tokens they issue for the pay out of variable remuneration.

11. As Regulation (EU) 2023/1114 refers to ESG risks in general and considering the energy consumption of the processes and procedures supporting significant tokens, some specific performance criteria that relate to ESG risks are required to be applied.

4. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum content of the governance arrangements on the remuneration policy pursuant to Article 45(1) of Regulation (EU) 2023/1114.

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [1], and in particular Article 45(7)(a) thereof, that requires the EBA, in close cooperation with ESMA, to develop draft regulatory technical standards specifying the minimum content of the governance arrangements on the remuneration policy,

Whereas:

(1) Regulation (EU) 2023/1114 requires issuers of significant asset-referenced tokens to adopt, implement and maintain remuneration policies that promote sound and effective risk management of such issuers and that do not create incentives to relax risk standards. This regulation is relevant for issuers of e-money tokens that are subject to or required to comply with Article 45(1) of Regulation (EU) 2023/1114.

(2) To achieve those objectives remuneration policies should provide incentives for staff for long-term oriented risk-taking behaviour in line with the issuers of significant asset-referenced tokens risk appetite and contribute to the protection of the holders of asset-referenced.

(3) While Regulation (EU) 2023/1114 itself does not specify the elements of remuneration policies that should contribute to the risk alignment of the remuneration of staff, but considering the similarities of the business model of issuers of significant asset-referenced tokens to the business model of investment firms that issue financial instruments, and in order to ensure a level playing field across the Union, this Regulation should set out a framework for governance arrangements on remuneration policies that includes the same elements as the remuneration framework of investment

[1] OJ L 150, 9.6.2023 p. 40–205

firms, but is tailored to the business model of issuers of significant asset-referenced tokens, as it aims at ensuring the same objectives as the remuneration framework for investment firms under Directive (EU) 2019/2034.

(4) In order to ensure that remuneration policies are consistent with and promote sound and effective risk management of the issuers of significant asset-referenced tokens, do not provide incentives for excessive risk taking and are aligned with the long-term interests of these issuers across the European Union, this Regulation specifies the main aspects of the remuneration policies to be applied by such issuers.

(5) Issuers of significant asset-referenced tokens' remuneration policies should be gender neutral for all staff and be compatible with their risk management and business objectives, corporate and risk culture.

(6) The Regulation specifies the main governance processes regarding the adoption and maintenance of remuneration policies. While the main responsibility for the adoption and implementation of the remuneration framework is with the management body, the business and control functions must ensure that the adopted remuneration policies are being complied with.

(7) In order to ensure that the remuneration framework has no incentives to lower risk standards, specific requirements for the variable remuneration of control functions are set to ensure that they are remunerated mainly based on control objectives while the remuneration policies for marketing or sales staff are required not to provide incentives for a preferential treatment of clients or counterparts.

(8) To ensure cross sectoral consistency and to ensure that remuneration does not provide incentives for excessive risk taking, a distinction between variable and fixed remuneration should be made. Issuers of significant asset-referenced tokens should be required to specify an appropriate maximum ratio between the two different types of remuneration. Additional requirements have been set to align the variable remuneration of staff that has a material impact on the risk profile of the issuers of significant asset-referenced tokens or the tokens they issue, to ensure that the variable remuneration is linked to the risk adjusted performance of the issuer, including by requiring the application of deferral arrangements, malus and claw back.

(9) To ensure a proper risk alignment of the variable remuneration awarded in instruments, the instruments awarded should consist of shares, share linked or equivalent instruments or the significant tokens issued.

(10) To ensure the level playing field across the Union and cross sectoral consistency this Regulation applies to the issuer of significant asset referenced token, as a whole, independent of the fact that they may pursue different business activities as well.

(11) Environmental, social and governance (ESG) factors, such as through the adverse impact on the climate stemming from energy use and carbon footprint associated with the underlying information technology infrastructures and consensus mechanisms algorithms, used for the validation of transactions in blockchain systems are relevant for issuers of significant asset-referenced tokens. ESG factors can affect the risk profile of such issuers, its business model and the acceptance of the significant asset-referenced tokens. While climate and environmental factors are particularly relevant to the activities and services of issuers of significant asset-referenced tokens, other types of ESG factors such as tax transparency, human rights, employment conditions

and adequate management of risks related to money laundering and other financial crimes are also relevant factors. It is therefore necessary that issuers of significant asset-referenced tokens ensure that their remuneration policies are consistent with ESG risk-related objectives and take into account ESG risks and possible adverse impacts of ESG risk factors. In particular, the ESG risk-related factors should be aligned to the impacts on the climate and other environmental impacts caused by the consensus and validation mechanisms used.

(12) This Regulation is based on the draft regulatory technical standards developed by the European Supervisory Authority (European Banking Authority, EBA) in consultation with the European Securities Markets Authority (ESMA) and submitted by the EBA to the Commission.

(13) EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

1) ‘Staff’ means all employees of an issuer of significant asset-referenced tokens, and all members of their respective management bodies.
2) ‘Senior management‘ means those natural persons who exercise executive functions within an issuer of significant asset-referenced tokens and who are responsible, and accountable to the management body, for the day-to-day management of the issuer.
3) ‘Managerial responsibility’ means a situation, in which a staff member:
   (a) heads a business unit or a control function and is directly accountable to the management body as a whole or to a member of the management body or to the senior management;
   (b) heads one of the functions laid down in Article 4 (2) point (e).
4) ‘Risk appetite’ means the aggregate level and types of risk an issuer of significant asset-referenced tokens is willing to assume within its risk capacity, in line with its business model, to achieve its strategic objectives.
5) ‘Material business unit ‘means a business unit that is assessed by the issuer of significant asset-referenced tokens as having a material impact on the issuer’s business model or which represents a material source of revenue, profit, or franchise value for an issuer.

6) ‘Business unit’ means any separate organisational or legal entity, business line or geographical location.
7) ‘Control function’ means a function that is independent from the business units it controls and that is responsible for internal control procedures and includes the compliance, risk management and audit function.

Question 1: *Are the definitions within Article 1 appropriate and sufficiently clear?*

Article 2

Governance of remuneration

1) The management body of the issuer of significant asset-referenced tokens shall:
   (a) approve and retain ultimate responsibility for the issuer’s remuneration policy;
   (b) approve any changes to the remuneration policy
   (c) seek advice from the remuneration committee, where established, on the issuer’s remuneration policy.
2) Issuers of significant asset-referenced tokens shall ensure that:
   (a) the implementation of their remuneration policies is, at least annually, subject to review for compliance with policies and procedures by control functions. The review may be outsourced to an external party;
   (b) the compliance function and the risk management function, where established, or staff entrusted with the performance of compliance or risk management procedures, the internal audit, where established, and human resources’ function provide effective input on the design of the remuneration policies;
   (c) potential conflicts of interest caused by the pay out of instruments as part of the variable or fixed remuneration are identified and appropriately mitigated.

Question 2: *Are the provisions within Article 2 appropriate and sufficiently clear?*

Article 3

Remuneration policies

1) Issuers of significant asset-referenced tokens shall ensure that remuneration policies for all staff meet the following criteria:
   a) are consistent with the rights and interests of holders of significant asset-referenced tokens with a view to ensuring that holders are treated fairly, and their interests are not impaired by the remuneration practices adopted by the issuer;

b) are gender neutral and based on equal pay for male and female workers for equal work or work of equal value;
c) are consistent with the objectives of the business and risk strategy, including environmental, social and governance (ESG) risk-related objectives, corporate culture and values, risk culture, risk appetite, and incorporate measures to avoid conflicts of interest;
d) ensure that the staff in control functions are remunerated in accordance with the achievement of the objectives linked to their functions and independently of the performance of the business areas they control;
e) are consistent with the management of ESG risks and provide for incentives for the control and limitation of ESG impacts caused by the issuers business activities.

2) Issuers of significant asset-referenced tokens shall ensure that the remuneration policies:
   a) do not create a conflict of interest or incentive that may lead staff members to favour their own interests or the issuer's interests to the potential detriment of any holder of significant asset-referenced tokens;
   b) do not encourage risk-taking that exceeds the level of risk appetite of the issuer;
   c) are available to the staff concerned at all times;
   d) are transparent to all staff regarding the fixed remuneration, processes and criteria for setting the variable remuneration and the award criteria used;
   e) are clear, well documented, transparent, proportionate to their size, internal organisation and nature, as well as to the scope and complexity of their activities.
3) Issuers of significant asset-referenced tokens shall ensure that the remuneration policies for staff identified under Article 4, taking into account national contract and labour law, make a clear distinction between the following two components of total remuneration:
   a) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in a staff member's job description as part of the terms of employment; and
   b) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the staff member's job description as part of the terms of employment.

Question 3: *Are the provisions within Article 3 appropriate and sufficiently clear?*

Article 4

Identification of staff

1) Issuers of significant asset-referenced tokens shall identify all staff that has a material impact on their risk profile or the risk profile of the significant asset-referenced

tokens they issue and apply for this purpose at least the qualitative criteria set out in paragraph 2.

2) Staff shall be identified if they meet one or more of the following criteria:
   a) staff that are members of the management body or senior management;
   b) staff members with managerial responsibility over the issuer's control functions or material business units;
   c) staff members with managerial responsibility over the business area sales or marketing;
   d) the staff responsible for ensuring the compliance with data protection requirements (data protection officers);
   e) the staff member has managerial responsibility for:
      (i) the management of at least one of the following risk categories: liquidity risk, credit risk, market risk, operational risk, including legal and ICT risk;
      (ii) ICT technology – used for the processing of the tokens;
      (iii) ICT security;
      (iv) the prevention of money laundering and terrorist financing;
      (v) the management of reserve assets;
      (vi) the tokens' issuance function;
      (vii) the managing of outsourcing arrangements supporting critical or important functions;
      (viii) the development or implementation of the remuneration policy
      (ix) finance, including taxation and budgeting;
      (x) legal affairs;
      (xi) the soundness of accounting policies and procedures;
      (xii) human resources;
      (xiii) the establishment or internal approval of white papers;
   f) other categories of staff whose professional activities have an impact on the issuer's risk profile or tokens they issue comparably as the staff members specified in points (a) to (e) of this paragraph.

Question 4: *Are the criteria of identification of staff appropriate and sufficiently clear?*

Article 5

Variable remuneration

1) Issuers of significant asset-referenced tokens shall, within their remuneration policies for identified staff under Article 4:
   a) ensure that variable remuneration is linked to the assessment of the performance of the issuer, the business unit and the individual staff member concerned; when

assessing performance, financial and non-financial criteria, including the management of ESG risks and control over adverse ESG impacts, are taken into account

b) ensure that there is an effective risk adjustment mechanism to integrate all relevant types of current and future risks;
c) ensure that there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff;
d) ensure that remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the issuer;
e) ensure that payments relating to the early termination of an employment contract reflect performance achieved over time by the individual staff member and shall not reward failure or misconduct;
f) ensure that fixed and variable components of total remuneration are appropriately balanced, and the fixed components represent a sufficiently high proportion of the total remuneration to allow the operation of fully flexible policies on variable remuneration components, including the possibility to reduce the variable remuneration to zero;
g) set the appropriate maximum ratios between the variable and the fixed components of the total remuneration, taking into account the business activities of the issuer and associated risks, as well as the impact of different categories of staff;
h) ensure that variable remuneration for control functions is predominantly linked to control objectives and that the ratio between the variable and the fixed components of total remuneration for control functions is set significantly lower compared to the ratio applicable to the business units they control;
i) ensure that at least 50 % of the variable remuneration, consists of any of the following instruments:
    i. shares or equivalent ownership interests, subject to the legal structure of the issuer concerned;
    ii. share-linked instruments, subject to the legal structure of the issuer concerned;
    iii. significant asset-referenced tokens issued by the issuer.
j) set specific criteria for the application of malus and clawback on variable remuneration. Such criteria shall in particular cover situations where the staff member:
    i. participated in or was responsible for conduct which resulted in significant losses to the issuer, as defined in the issuer’s remuneration policy;
    ii. failed to meet appropriate standards of fitness and propriety;
k) ensure that at least 40% of the variable remuneration of identified staff is deferred for a period of at least 3 to 5 years, depending on the business cycle of the issuer,

the nature of its business, its risks and the activities of the individual staff member concerned, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred, in the same condition, is at least 60 %;

l) ensure that the deferred portion of the variable remuneration shall not vest sooner than 12 months after the start of the deferral period and that it vests no faster than on a pro-rata basis.

m) ensure that no interest or dividend on instruments which have been awarded as variable remuneration under deferral arrangements is paid to identified staff members for periods before the instrument has vested;

n) ensure that the variable remuneration is awarded and vests only if it is sustainable according to the financial situation of the issuer as a whole and justified on the basis of the performance of the issuer, of the business unit and of the staff member concerned;

o) ensure that no obligation is created to pay variable remuneration during the period when the issuer failed to meet prudential requirements set in accordance with Article 67 of Regulation (EU) 2013/1114.

2) The requirement in paragraph (1)(i) shall apply to the deferred and the non-deferred part of variable remuneration. Where issuer of significant asset-referenced tokens pays out a higher portion than 50% of the deferred remuneration in instruments, it may pay out a lower portion than 50% of the non-deferred part of variable remuneration in instruments, as long as in total the minimum requirement for the pay out of variable remuneration in instruments of at least 50% is met.

3) Paragraph 1, points (i) and (k) shall not apply to an individual staff member whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual staff member’s total annual remuneration.

Question 5*: Are the provisions within Article 5 appropriate and sufficiently clear?*

Question 6*: Is the possibility of paying a part of variable remuneration in significant asset-referenced tokens issued by the issuer appropriate also considering the still limited market experience on these instruments?”*

Article 6

Entry into force

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

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA) which analyses 'the potential related costs and benefits.'

Regulation (EU) 2023/1114 sets out a new legal framework. As part of the specific requirements applicable to issuers of significant asset-referenced tokens (ARTs) and issuers of significant e-money tokens (EMTs), the respective issuers are required to implement and maintain a remuneration policy that promotes the sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

This analysis presents the IA of the main policy options included in this Consultation Paper (CP) on regulatory technical standards (RTS) on the minimum content of the governance arrangements on the remuneration policy under Article 45 of Regulation (EU) 2023/1114.

A. Problem identification

While the objectives of the remuneration policy are clearly specified in Regulation (EU) 2023/1114, remuneration policies can take different approaches to achieve them. This in turn may lead to a significant divergence in the remuneration policies, which can have an impact on the level playing field between different issuers of ARTs.

B. Policy objectives

The draft RTS in this consultation paper aim to promote remuneration policies that support the sound and effective risk management of issuers. More specifically, it aims to ensure that the remuneration policies do not create incentives to reduce the risk standards and to ensure cross sectoral consistency, particularly with respect to the remuneration framework for investment firms, which has similar regulatory objectives.

C. Baseline scenario

In a baseline scenario, the issuers of significant asset-referenced tokens and significant e-money tokens would need to apply the Regulation (EU) 2023/1114 requirements to implement and maintain a remuneration policy that promotes sound and effective risk management and that does not create incentives to relax risk standards, without any additional specifications on the minimum contents of the governance arrangements on the remuneration policy in the form of an RTS. This scenario would lead to a diverse approaches and interpretation on how such a remuneration policy could be designed and implemented. This could potentially endanger the level playing field across issuers of significant ARTs.

The costs and benefits of the underlying Regulation are not assessed within this impact assessment.

General approach

Given that the objectives for remuneration policies of the underlying Regulation are similar to the objectives for remuneration policies under the Investment Firm Directive, the general approach followed has been aligned with the one taken for investment firms, while some specifications have been made to better align the provisions to the business model of issuers of ARTs. Moreover, issuers and investment firms as well as credit institutions compete to some extent for the same staff and therefore a consistent, but tailored, remuneration framework is the most appropriate to ensure a level playing field on the financial market regarding remuneration policies and practices.

Policy issue 1: Pay out in instruments

Option 1A: shares or equivalent ownership instruments or share linked instruments.

Option 1B: Option A + significant asset-referenced tokens issued by the issuer.

Option 1A was considered as it is aligned with the framework for investment firms (IFD). The list does not include instruments of the portfolio (as for IFs) as it would be difficult to relate these instruments to performance of issuers. However, it does not consider that tokens themselves could be used as remuneration instrument. Indeed, this is partially justified by the still limited market experience on the dynamics that could affect the value of tokens. It may also create additional burden in particular where shares are not listed (in particular as the valuation of shares would be needed and the creation of share linked instruments could also be more complex).

Option 1B allows in addition the use of significant asset-referenced tokens issued by issuer as instruments for remuneration. Similarly, to shares or share-linked instruments, awarding tokens are connected to the risk profile of the issuer (e.g., the risk of loss to the reserve assets, and operational risks related to the underlying IT processes). Where the variable remuneration is based on a fixed amount of tokens, reflecting the change of the price of tokens, staff would have incentives to care for the viability of the tokens, while the value of the tokens depend on the value of the assets it is linked to. The pay out in tokens would create an alignment towards the operational and liquidity risks of the issuer. Therefore, similarly, to shares and share-linked instruments, it is expected that these would add to the risk alignment of variable remuneration and represent a tool to incentivise performance, i.e. sound liquidity management and avoiding operational risks. The use of tokens, that would in any case by available to the issuer, would also reduce the costs for the pay out of variable remuneration. Considering the strict provisions on how reserve assets must be invested, the risk of inappropriate incentives for increased risk taking in order to increase the value of the asset referenced token should be very low. Considering the volume of tokens needed to be considered significant, it is not expected that the pay out of tokens to staff would have an impact on the market value of the token.

Policy issue 2: Scope of application

Option 2A: Application of the requirements on remuneration policies only to business activities connected with the issuing of significant tokens.

Option 2B: Application of the requirements on remuneration policies to the whole entity that issues significant tokens. As part of Option 2a, within an entity which has several business lines, only the staff that is involved in the issuance of tokens would be subject to the remuneration requirements. The reason is that applying the requirements to the entire entity would be disproportionate and may lead to level playing field concerns. For example, if a large data centre or crypto asset service provider is authorised as issuer and requirements on remuneration policies would be applied to the whole entity, this could lead to a competitive disadvantage of firms that issue also significant tokens. This disadvantage could be overcome when a specific subsidiary for this business would be created, which would create additional burden.

On the other hand, it would be challenging to draw a clear line between the business lines that are involved in the activities of issuing tokens and other activities, and legally it will be difficult to identify who the requirements apply to. Option 2B allows the application of the RTS to the whole entity that issues significant tokens, in line with other parts of the financial sector.

The provisions on the identification of staff that, who has a material impact on the issuer ensures that the stricter provisions on variable remuneration are applied only to identified staff, while some general principles for remuneration policies apply to all staff. The criteria for staff that is considered to have a material impact on the risk profile of the issuer has been tailored to the specific business model of ART issuers. In particular, functions have been added that are responsible for the underlying technologies and the issuance of the white paper.

Overall cost-benefit analysis

The overall cost impact of the RTS compared with the baseline scenario is low, while the benefits are medium. The implementation of the RTS will, in particular, create one-off costs for the change of policies and procedures in issuers of significant asset-referenced tokens and significant e-money tokens. They create a long-term benefit by achieving a higher level of harmonisation, providing a clear definition of variable and fixed remuneration and achieving sound risk management, and thus ensuring that compliance with the remuneration requirements implemented by the legislators can be affectively ensured. In that way, these RTS contribute to ensuring the safety and soundness of the issuers and to promoting the effective, efficient and stable functioning of the European financial system.

Stakeholders	Costs	Benefits
Issuers	• Costs related to the implementation of additional requirements for remuneration policies specified in the RTS	• Sound and effective risk management • Reduce incentive to decrease risk standards
CAs	• Supervision costs related to additional requirements	• Sound and effective risk management

		• Financial stability • Cross-sectoral consistency
Clients/ token holders	• None	• Financial stability • Confidence in the quality of the risk standards of the issuer

5.2 Overview of questions for consultation

Question 1. Are the definitions within Article 1 appropriate and sufficiently clear?

Question 2. Are the provisions within Article 2 appropriate and sufficiently clear?

Question 3. Are the provisions within Article 3 appropriate and sufficiently clear?

Question 4. Are the criteria of identification of staff appropriate and sufficiently clear?

Question 5. Are the provisions within Article 5 appropriate and sufficiently clear?

Question 6. Is the possibility of paying a part of variable remuneration in significant asset-referenced tokens issued by the issuer appropriate also considering the still limited market experience on these instruments?”