EBA/CP/2023/31

8 November 2023

Consultation Paper

Draft Regulatory Technical Standards

on the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(6) of Regulation (EU) No 2023/1114 (MiCAR) and of e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation

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 section 6.2.

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 08.02.2024. 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. Abbreviations

AMLD	Anti-money laundering directive (Directive (EU) 2015/849)
AML	Anti-money laundering
ART	Asset-referenced token
CASP	Crypto-asset service provider
CP	Consultation paper
CFT	Countering financing of terrorism
EBA	European Banking Authority
ECB	European Central Bank
EU	European Union
EMT	E-money token
FTR	Funds Transfer Regulation (Regulation (EU) 2023/1113)
ITS	Implementing technical standards
MiCAR	Regulation on markets in crypto-assets (Regulation (EU) 2023/1114)
RTS	Regulatory Technical Standards

3. Executive Summary

Article 22(1), point (d) of Regulation (EU) 2023/1114 (MiCAR) requires the issuer of an asset-referenced token (ART) to report, among others, to the competent authority, on a quarterly basis, "an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses [of the ART] as a means of exchange within a single currency area".

In support of these provisions, Article 22(6) of MiCAR mandates the EBA to develop, in close cooperation with the ECB, draft regulatory technical standards (RTS) specifying the methodology to estimate "the quarterly average number and average aggregate value of transactions per day that are associated to uses [of an ART] as a means of exchange within a single currency area", as referred to in Article 22(1), point (d) of MiCAR.

In accordance with Articles 22(6) and 58(3) of MiCAR, the draft RTS proposed in this Consultation Paper (CP) apply to both ARTs and e-money tokens (EMTs) denominated in a non-EU currency.

The draft RTS specify the methodology to be applied by issuers for reporting the transactions referred to in Article 22(1), point (d) of MiCAR, including how issuers should estimate the number and value of transactions associated to uses of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", and the criteria for reporting these transactions per single currency area.

The draft RTS also clarify that it is the issuer's responsibility to ensure that the information reported to the competent authority pursuant to Article 22(1), point (d) of MiCAR is correct and complete. To this end, the proposals set out in the draft RTS include a requirement for the issuer to have in place systems and procedures that allow it to reconcile the data received from the crypto-asset service provider (CASP) of the payer and the CASP of the payee, where applicable, pursuant to Article 22(3) of MiCAR and the implementing technical standards (ITS) under Article 22(7) of MiCAR, as well as the data available from other sources, including, where applicable, data available on the distributed ledger.

The reporting templates for the purpose of the reporting under Article 22(1), point (d) of MiCAR are specified in the draft ITS under Article 22(7) of MiCAR, which are being consulted on under the separate CP (EBA/CP/2023/32).

Next steps

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

4. Background and rationale

4.1 Background

1. The Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets (MiCAR)[1] regulates the offering to the public and admission to trading of asset-referenced tokens (ARTs), e-money tokens (EMTs) and other types of crypto-assets, as well as crypto-assets services provided by crypto-asset service providers (CASPs) in the European Union (EU). MiCAR entered into force on 29 June 2023, and will apply from 30 December 2024, except for Titles III and IV regarding the offering to the public and the admission to trading of ARTs and EMTs, that will apply from 30 June 2024.

2. The objectives of MiCAR are to ensure the proper functioning of markets in crypto-assets, market integrity and financial stability in the EU, as well as the protection of holders of crypto-assets, in particular retail holders[2]. In particular, MiCAR aims to address risks that the wide use of crypto-assets which aim to stabilise their price in relation to a specific asset or a basket of assets (such as ARTs) could pose to financial stability, the smooth operation of payment systems, monetary policy transmission or monetary sovereignty[3].

3. MiCAR sets out a number of safeguards to address such risks. These include the monitoring by competent authorities of the use of ARTs and of EMTs denominated in a non-EU currency and limiting the issuance of these tokens when the volume and value of transactions associated to uses of these tokens "as a means of exchange" exceed certain thresholds (which are set out in Article 23 of MiCAR). Moreover, the competent authority may limit the issuance of these tokens where the European Central Bank (ECB) or, where applicable, a central bank referred to in Article 20(4) of MiCAR, issues an opinion that such tokens pose a threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty[4].

4. To allow competent authorities to monitor the use of ARTs, Article 22(1) of MiCAR requires the issuer of an ART to report on a quarterly basis to the competent authority:

    (a)   "the number of holders;

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

    (c)   the average number and average aggregate value of transactions per day during the relevant quarter; and

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[1] 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 (OJ L 150, 9.6.2023, p. 40–205)
[2] See recital 112 of MiCAR
[3] See recital 5 of MiCAR
[4] See Articles 24(3) and 58(3) of MiCAR

(d)   an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of the ART "as a means of exchange" within a single currency area".

5.   The above reporting requirements apply for each ART with an issue value that is higher than EUR 100 million, and where the competent authority so decides in accordance with Article 22(2) of MiCAR, also for ARTs with a value of less than EUR 100 million.

6.   To enable issuers to report this information, Article 22(3) of MiCAR requires CASPs that provide services related to ARTs to report to the issuer the information necessary to prepare the report referred to in Article 22(1), including by reporting transactions that are settled outside the distributed ledger.

7.   In support of these provisions, Article 22(6) of MiCAR mandates the EBA, in close cooperation with the ECB, to develop draft regulatory technical standards (RTS) specifying the methodology to estimate "the quarterly average number and average aggregate value of transactions per day that are associated to uses [of an ART] as a means of exchange within a single currency area", as referred to in Article 22(1), point (d) of MiCAR. The EBA is required to submit these draft RTS to the Commission by 30 June 2024.

8.   Furthermore, Article 22(7) mandates the EBA to develop draft implementing technical standards (ITS) to establish standard forms, formats and templates for the purposes of the reporting in Article 22(1), and for the purpose of the reporting by CASPs to the issuer in accordance with Article 22(3). The EBA's proposals on the draft ITS under Article 22(7) are included in the separate CP (EBA/CP/2023/32).

9.   In accordance with Article 58(3) of MiCAR, the provisions of Articles 22, 23 and 24(3) of MiCAR shall also apply to EMTs denominated in a currency that is not an official currency of a Member State. Accordingly, the RTS and ITS mentioned above shall also apply *mutatis mutandis* to such tokens.

10.   In what follows in the rationale section below, this Consultation Paper (CP) sets out how the EBA proposes to fulfill the mandate in Article 22(6) of MiCAR (RTS), which includes the assessments of various policy options that have been considered in the process. This is followed by the actual RTS with the draft provisions proposed by the EBA. Questions have been inserted throughout the document to elicit the views of external stakeholders.

4.2   Rationale

11.   This chapter sets out the approach the EBA has taken to develop the methodology referred to in Article 22(6) of MiCAR for reporting the information specified in Article 22(1)(d), and focuses on six topics:

- the objectives of the reporting in Article 22(1), point (d) of MiCAR;

- the scope of transactions associated to uses of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1), point (d) of MiCAR;

- the reporting of transactions per single currency area, as referred to in Article 22(1), point (d) of MiCAR;

- the calculation of the average number and average aggregate value of transactions referred to in Article 22(1), point (d) of MiCAR;

- data quality and the reconciliation by the issuer of the data reported by CASPs to the issuer; and

- the reporting of transactions between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved.

The objectives of the reporting in Article 22(1), point (d) of MiCAR

12. As mentioned above, Article 22(6) of MiCAR mandates the EBA to develop draft RTS specifying the methodology to estimate "the quarterly average number and average aggregate value of transactions per day that are associated to uses [of an ART] as a means of exchange within a single currency area", as referred to in Article 22(1), point (d) of MiCAR.

13. It is important to note that the transactions referred to Article 22(1), point (d) are the same as the transactions that are subject to the caps in Article 23(1) of MiCAR. This latter Article limits the issuance of an ART where "the estimated quarterly average number and average aggregate value of *transactions* per day *associated to its uses as a means of exchange within a single currency area* is higher than 1 million transactions and EUR 200 000 000, respectively" [emphasis added].

14. In accordance with Article 58(3) of MiCAR, the provisions in Articles 22 and 23(1) shall also apply to EMTs denominated in a non-EU currency.

15. In developing the draft RTS, the EBA took into account the objectives of Articles 22(1), point (d) and 23(1) of MiCAR, which, in the EBA's view, are to monitor and prevent risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects.

16. Also, in developing the draft RTS, the EBA took into account that the data to be reported by issuers under Article 22(1), point (d) of MiCAR is needed, among others, in order to assess

whether an ART or an EMT denominated in a non-EU currency meets the criteria in Articles 43(1) and 56(1) of MiCAR to be classified as "significant"[5].

The scope of transactions associated to uses of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1), point (d) of MiCAR

17. The second subparagraph of Article 22(1) of MiCAR defines a "transaction", for the purpose of points (c) and (d) of Article 22(1), as: "any change of the natural or legal person entitled to the token as a result of the transfer of the token from one distributed ledger address or account to another". Relatedly, recital 60 states that the monitoring in Article 22 "includes the monitoring of all transactions that are settled, whether they are settled on the distributed ledger ('on-chain') or outside the distributed ledger ('off-chain'), and including transactions between clients of the same crypto-asset service provider".

18. In the EBA's view, it follows from the above that the definition of "transactions" in Article 22(1) of MiCAR includes both transactions settled on a distributed ledger ('on-chain') and transactions settled outside a distributed ledger ('off-chain'). Furthermore, in the EBA's view, transfers between different addresses or accounts of the same person do not qualify as a "transaction" within the meaning of Article 22(1) of MiCAR and therefore should be excluded from the scope of the reporting in Article 22(1), point (d) of MiCAR. This is reflected in recital 1 and Article 3(4) of the draft RTS.

19. MiCAR does not define which transactions with an ART or with an EMT denominated in a non-EU currency are considered to be "associated to uses [of that token] as a means of exchange" but provides some indications as regards transactions that are included in this category, and those that are excluded. In particular, recital 61 of MiCAR provides that transactions associated with the use of an ART as a means of exchange *include* transactions "associated to payments of debts including in the context of transactions with merchants". Furthermore, the third subparagraph of Article 22(1) provides that "transactions that are associated with the exchange for funds or other crypto-assets with the issuer or with a crypto-asset service provider shall not be considered associated to uses of the asset-referenced token as a means of exchange, unless there is evidence that the asset-referenced token is used for the settlement of transactions in other crypto-assets". Relatedly, recital 61 provides that an ART should be deemed as used for settlement of transactions in other crypto-assets "where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens".

20. In the EBA's view, it follows from the above that the transactions associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1), point (d) of MiCAR, include transactions where such tokens are used to pay for goods or services, irrespective of whether the payment is made to a merchant or any other

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[5] These criteria refer to, among others, "the average number and average aggregate value of transactions in [an ART or an EMT]" (Art. 43(1)(c)) and "the significance of the activities of the issuer [...] on an international scale, including the use of the [ART or of the EMT] for payments and remittances" (Art. 43(1)(e)).

payee (legal or natural person). This excludes the exchange of an ART or of an EMT denominated in a non-EU currency for funds or other crypto-assets with the issuer or with a crypto-asset service provider, unless the respective ART or the EMT is used for the settlement of transactions in other crypto-assets.

21. Furthermore, in developing the draft RTS, the EBA took into account that, depending on the specific technical features of the underlying distributed ledger infrastructure used for transfers of ARTs or EMTs (e.g, in the case of public, permissionless distributed ledger infrastructure), the issuer or a CASP may not be able to determine with accuracy which transactions are associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange". In this regard, Article 3(1) of the draft RTS provides that issuers should estimate the number and value of transactions associated to uses of an ART as a means of exchange, as referred to in Article 22(1), point (d) of MiCAR, by deducting from the total number and value of transactions with an ART, during the relevant quarter, the transactions associated with the exchange of the ART for funds or other crypto-assets with the issuer or with a CASP.

22. By derogation from the above, Article 3(2) of the draft RTS provides that transactions associated to uses of an ART as a means of exchange shall include the exchange of an ART for funds or other crypto-assets with the issuer or with a CASP, where the ART is used for the settlement of transactions in other crypto-assets. In line with recital 61 of MiCAR, this would be the case "where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens". To further inform the EBA's assessment in this regard, the EBA is seeking feedback from external stakeholders on existing or foreseen use cases in which an ART or an EMT denominated in a non-EU currency is used for the settlement of transactions in other crypto-assets, as referred to in recital 61 and the third subparagraph of Article 22(1) of MiCAR.

23. In accordance with Article 58(3) of MiCAR, these provisions shall also apply *mutatis mutandis* to EMTs denominated in a non-EU currency. This is reflected in recital 9 and Article 1(2) of the draft RTS.

Question 1: Do you agree with the EBA's proposals on how issuers should estimate the number and value of transactions associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange", as reflected in Article 3 of the draft RTS? If not, please provide your reasoning and the underlying evidence, and suggest an alternative approach for estimating the number and value of these transactions.

Question 2: Please describe any observed or foreseen use cases where transactions involving two legs of crypto-assets, that are different from an ART, are settled in the ART, as referred to in recital 61 of MiCAR.

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24. As regards the geographical scope of the transactions covered by Article 22(1), point (d) of MiCAR, in the EBA's view, having discussed with the European Commission, the most reasonable interpretation of MiCAR is that the reporting in Article 22(1), point (d) covers only transactions where at least the payer or the payee is located in the EU, and excludes transactions where both the payer and the payee are located outside the EU.

25. In the EBA's view, this interpretation is in line with the objectives of Articles 22(1), point (d) and 23(1) of MiCAR, explained above, of preventing risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects. In the EBA's view, it was not the intention of the co-legislators to capture transactions where both the payer and the payee are located outside the EU in the scope of the reporting in Article 22(1), point (d) and of the caps in Article 23(1), taking into account that these transactions would be unlikely to endanger monetary policy transmission and monetary sovereignty within the EU. In arriving at this view, the EBA also took into account that, where both the payer and the payee are located outside the EU and there is no EU-CASP involved, it may not be feasible for the issuer to report such transactions under Article 22(1), point (d) of MiCAR, unless it has a contractual relationship with the third-country firm providing crypto-asset services used by the payer or by the payee (as applicable). This is because there is no requirement in MiCAR for third-country firms providing crypto-asset services to report transactional data to the issuer, if those firms do not provide crypto-assets services in the EU. This interpretation is reflected in recital 7 and Article 3(5) of the draft RTS.

26. The above is without prejudice to the reporting obligation of issuers under Article 22(1)(c) and the ITS to be developed under Article 22(1)(7) of MiCAR.

> **Question 3:** Do you agree with the EBA's proposals regarding the geographical scope of the transactions covered by Article 22(1), point (d) of MiCAR, as reflected in Article 3(5) of the draft RTS? If not, please provide your reasoning and the underlying evidence.

Reporting of transactions per single currency area, as referred to in Article 22(1), point (d) of MiCAR

27. According to Articles 22(1), point (d) and 58(3) of MiCAR, the issuer of an ART or of an EMT denominated in a non-EU currency is required to report to the competent authority transactions associated to uses of such tokens as a means of exchange "within a single currency area". A similar wording is used in Article 23(1), which limits the issuance of an ART when "the estimated quarterly average number and average aggregate value of *transactions* per day *associated to its uses as a means of exchange within a single currency area* is higher than 1 million transactions and EUR 200 000 000, respectively" [emphasis added]. In accordance with Article

58(3) of MiCAR, these provisions in Article 23 also apply to EMTs denominated in a non-EU currency.

28. In the EBA's view, the most reasonable interpretation of MiCAR is that, for the purpose of Articles 22(1), point (d) and 23(1) of MiCAR, a "single currency area" refers to one or several countries that have the same official currency. A "single currency area" may include, for example, the euro-area Member States (that shall collectively be a "single currency area"), or a non-euro area Member State. This is reflected in Article 2(2) of the draft RTS.

29. Furthermore, in the EBA's view, the reporting in Article 22(1), point (d) of MiCAR covers both: (i) transactions where the payer and the payee are located in the same single currency area (within the EU), and (ii) transactions where the payer and the payee are located in different single currency areas (where at least one of these single currency areas is in the EU).

30. In this regard, the EBA also assessed the alternative interpretation of considering that Article 22(1), point (d) of MiCAR covers only transactions where both the payer and the payee are located in the same single currency area. However, this would mean excluding from the scope of the reporting in Article 22(1), point (d), and of the caps in Article 23(1), a potentially high number of transactions where the payer and the payee are located in different single currency areas. In the EBA's view, having discussed with the European Commission, such interpretation would be contrary to the objectives of MiCAR of preventing risks that the wide use of ARTs and of EMTs denominated in a non-EU currency may pose to monetary policy transmission and monetary sovereignty within the EU. Also, in the EBA's view, this would not be in line with the policy intention explained in recital 60 of MiCAR, to ensure a "comprehensive monitoring over the whole ecosystem of asset-referenced tokens issuers" and "capture all transactions that are conducted with any given asset-referenced token". For these reasons, the EBA has discarded this interpretation.

31. Article 4(2) of the draft RTS specifies the criteria for assigning a transaction to a single currency area for the purpose of Article 22(1), point (d) of MiCAR. More specifically, this Article provides that, where both the payer and the payee are located in the same single currency area, the issuer should report the transaction for that single currency area (the transaction should be reported only once for that single currency area). Where the payer and the payee are located in different single currency areas, the issuer should report the transaction as a sent transaction for the single currency area where the payer is located, and as a received transaction for the single currency area where the payee is located.

32. In the EBA's view, this interpretation is in line with the objectives of Articles 22(1), point (d) and 23(1) of MiCAR, explained above, of preventing risks that the wide use of ARTs and of EMTs denominated in a non-EU currency may have on monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects, given that currency substitution effects may arise both in the single currency area where the payer is located and in the single currency area where the payee is located. Moreover, in the EBA's view, the approach

proposed above should allow to correctly reflect in the reporting the different legs of the transaction where the payer and the payee are located in different single currency areas.

33. For the purpose of these RTS, the location of the payer or of the payee refers to: (a) for natural persons, their habitual residence; and (b) for legal persons, the registered office address. The reference to the 'habitual residence' of natural persons is in line with the terminology used in other EU legislation and in the Consultation Paper on draft RTS on supervisory colleges under Article 119(8) of MiCAR (EBA/CP/2023/33) and the EBA draft Guidelines under Regulation (EU) 2023/1113 (the Funds Transfer Regulation or 'FTR'). This is reflected in Article 3(5) of the draft RTS.

34. The reporting template for issuers to report the transactions referred to in Article 22(1), point (d) of MiCAR, including the relevant breakdowns for reporting transactions per single currency area, will be specified in the ITS to be developed under Article 22(7) of MiCAR.

35. Relatedly, the EBA recalls that, in accordance with Article 23(1) of MiCAR, the caps set out in that Article are counted per single currency area. In this regard, the EBA is of the view that, for the purpose of applying the caps in Article 23(1):

   - A transaction where the payer and the payee are located within the same single currency area should be counted only once for that single currency area;

   - A transaction where the payer and the payee are located in different single currency areas should be counted both for the single currency area where the payer is located, and for the single currency area where the payee is located.

36. Furthermore, in the EBA's view, the most reasonable interpretation of MiCAR is that the obligation in Article 23(1) for the issuer to stop issuing the token applies once the caps in Article 23(1) are reached for a single currency area *within the EU*, but not when the caps are reached in a single currency area outside the EU, and not in a single currency area within the EU. In the EBA's view, it was not the intention of the co-legislators to automatically limit the issuance of an ART or of an EMT denominated in a non-EU currency where the caps in Article 23(1) are reached in a single currency area outside the EU, but not in a single currency area within the EU, as in such cases the potential impact on monetary policy transmission and monetary sovereignty within the EU is likely be more limited compared to cases where the thresholds are reached in a single currency area within the EU.

37. In the EBA's view, this interpretation is supported by the provisions in Article 23(2) of MiCAR, which requires the competent authority to "use the information provided by the issuer, its own estimates, or the estimates provided by the ECB or, where applicable, by the central bank referred to in Article 20(4), whichever is higher, in order to assess whether the threshold referred to in Article 23(1)] is reached", without providing for any involvement of foreign central banks or authorities. In the EBA's view, this implies that the obligation in Article 23(1) for the issuer to stop issuing the token applies only where the thresholds are reached for a single currency area within the EU.

38. The above is without prejudice to the provisions in Article 24(3) of MiCAR which provides that "competent authorities shall limit the amount of an asset-referenced token to be issued or impose a minimum denomination amount in respect of the asset-referenced token when the ECB or, where applicable, the central bank referred to in Article 20(4), issues an opinion that the asset-referenced token poses a threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty".

> **Question 4:** Do you agree with the EBA's proposals on how issuers should assign the transactions in scope of Article 22(1)(d) of MiCAR to a single currency area, as reflected in Article 4 of the draft RTS? If not, please provide your reasoning and the underlying evidence.

The calculation of the average number and average aggregate value of transactions referred to in Article 22(1), point (d) of MiCAR

39. As explained above, according to Articles 22(1), point (d) and 58(3) of MiCAR, the issuer of an ART or of an EMT denominated in a non-EU currency is required to report to the competent authority, on a quarterly basis, an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of such tokens as a means of exchange within a single currency area.

40. In this regard, Article 5(1) of the draft RTS specifies that the issuer should calculate the average number and average aggregate value of transactions per day referred to in Article 22(1), point (d) of MiCAR, for each single currency area, as this information stands on the following reporting reference dates: 31 March, 30 June, 30 September and 31 December. The deadline for the submission to the competent authority of the information referred to in Article 22(1), point (d) of MiCAR, after the end of the reporting period (the remittance dates) are specified in the draft ITS under Article 22(7) of MiCAR.

41. Furthermore, in Article 5(2) of the draft RTS, the EBA is proposing that the value of the transactions referred in Article 22(1), point (d) of MiCAR should be reported in the official currency of the home Member State of the issuer. Article 5(3) provides further details on the methodology for determining the value of transactions with an ART, or an EMT referencing a non-EU currency, depending on the asset(s) referenced by the respective token.

> **Question 5**: Do you agree with the EBA's proposals on how issuers should calculate the value of transactions referred in Article 22(1), point (d) of MiCAR, as reflected in Article 5 of the draft RTS? If not, please provide your reasoning and the underlying evidence.

Data quality and the reconciliation by the issuer of the data reported by CASPs to the issuer

42. Article 22(3) of MiCAR requires CASPs that provide services related to ARTs to report to the issuer the information necessary to enable the issuer to report to the competent authority the information in Article 22(1), including by reporting transactions that are settled outside the distributed ledger.

43. The data to be reported by CASPs to the issuer in accordance with Article 22(3) will be specified in the ITS under Article 22(7) of MiCAR. In this regard, in the CP on the draft ITS, the EBA is proposing that the CASP of the payer and the CASP of the payee should report to the issuer, among others, the following transactional data: the hash, the distributed ledger address, the crypto-asset account number of the payer or of the payee, as applicable, the value and date of the transaction, and the country of the payer and the payee. Moreover, in the draft ITS, the EBA is proposing that CASPs should report to the issuer the public distributed ledger addresses they use for making transfers on behalf of their clients, in order to make it easier for issuers to identify which transactions registered on the distributed ledger take place between non-custodial wallets.

44. The reporting obligations for CASPs under Article 22(3), as specified in the ITS, leverage on the controls and procedures that should be put in place by CASPs to identify and verify the identity of their customers and conduct ongoing monitoring of the business relationship with their customers in accordance with Directive (EU) 2015/849[6] (AMLD). In this regard, the EBA recalls that custodian wallet providers, as defined in Article 3(19) of the AMLD, and providers of exchange services between virtual currencies and fiat currencies, as referred to in Article 2(3)(g) of AMLD, are obliged entities under the AMLD. Furthermore, the recast FTR, which shall apply from 30 December 2024, brings all CASPs, as defined in MiCAR, within the scope of obliged entities under the AMLD.

45. This means that all CASPs regulated under MiCAR will be subject to the AML/CFT requirements under the AMLD, including customer due diligence requirements. Moreover, the recast FTR requires CASPs to accompany transfers of crypto assets with information on the payer and the payee (referred to in the FTR as the "originator" and the "beneficiary"). This includes the obligation of the CASP of the originator to ensure that transfers of crypto-assets are accompanied, among others, by the following information regarding the originator and the beneficiary: name, distributed ledger address and crypto-asset account number (where applicable), as well as information on the originator's address, official personal document number and customer identification number, or, alternatively, the originator's date and place of birth (see Article 14(1) and (2) of the recast FTR).

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[6] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

46. When reporting the information in Article 22(1), point (d) of MiCAR to the competent author-
ity, the issuer should ensure that the data reported is correct, complete and submitted within
the deadlines specified in the ITS. This is reflected in Article 6(1) of the draft RTS. Furthermore,
Article 6(2) of the draft RTS requires issuers to have systems and procedures in place that allow
them to reconcile, for each transaction, the data reported by the CASP of the payer and the
CASP of the payee to the issuer pursuant to Article 22(3) of MiCAR and the ITS, and the data
available to the issuer from other sources, including, where applicable, transactional data avail-
able on the distributed ledger. This aims to ensure that the data reported by the issuer to the
competent authority pursuant to Article 22(1)(d) is correct and complete, and to avoid double-
counting of transactions reported by the CASP of the payer and the CASP of the payee.

47. The above is without prejudice to the responsibility of CASPs to comply with the reporting re-
quirements in Article 22(3) of MiCAR and the ITS.

Question 6: In your view, does the transactional data to be reported by CASPs to the issuer, as
described in paragraph 43 above, cover the data needed to allow the issuer to reconcile the
information received from the CASP of the payer and the CASP of the payee before reporting the
information in Article 22(1), point (d) of MiCAR to the competent authority? If not, please provide
your reasoning with details and examples of which data should be added or removed.

Question 7: Do you agree that, based on the transactional data to be reported by CASPs to the
issuer as described in paragraph 43 above, issuers will be able to reconcile the data received from
the CASP of the payer and the CASP of the payee on a transactional basis and in automated
manner? If not, what obstacles do you see and how could these be overcome?

**The reporting of transactions between non-custodial wallets or between other type of
distributed ledger addresses where there is no CASP involved**

48. As explained above, Article 22(1) of MiCAR defines a "transaction", for the purpose of points
(c) and (d) of Article 22(1), as "any change of the person entitled to the token as a result of the
transfer of the token from *one distributed ledger address or account to another*" [emphasis
added]. This definition is agnostic to the type of wallets used for performing the transfer, which
can include custodial wallets, non-custodial wallets, or other distributed ledger addresses that
are used for settlement purposes and are not controlled by a user or by a CASP, such as a con-
tract address. A custodial wallet refers to a crypto-asset wallet address where a CASP ensures
the safekeeping or controlling, on behalf of its client, of crypto-assets or of the means of access
to such crypto-assets (where applicable in the form of private cryptographic keys). By contrast,
a non-custodial wallet refers to a crypto-asset wallet address where the user holds the means
of access to the crypto-assets.

49. In developing the methodology referred to in Article 22(6) of MiCAR, the EBA assessed whether
the data to be reported by the issuer pursuant to Article 22(1), point (d) of MiCAR should also

cover transactions that take place between non-custodial wallets, or between other types of distributed ledger addresses that are used for settlement purposes and where there is no CASP involved. In this regard, the EBA took into account that, while information on such transactions is relevant for the purposes explained in paragraphs 12-16 above, the issuer would not typically have the necessary information to report such transactions under Article 22(1), point (d) of MiCAR. This is because the data available to the issuer on the distributed ledger does *not* include information on:

(a)   Whether the transfer is made between addresses of different persons or between addresses of the same person, which means that the issuer may not be able to determine whether the transfer qualifies as a "transaction" as defined in Article 22(1) of MiCAR, and therefore whether the transfer should be reported under Article 22(1), point (d) of MiCAR; and

(b)   The location of the payer and the payee, which is needed in order to determine the relevant single currency areas for which transactions should be reported in accordance with Article 22(1), point (d) of MiCAR and Article 4 of the draft RTS.

50. In light of the above, the EBA assessed two policy options for the purpose of developing the methodology referred to in Article 22(6) of MiCAR:

▪ Option 1 – to require issuers to report under Article 22(1), point (d) of MiCAR transactions between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved, on a best-efforts basis, using the data available on the distributed ledger coupled with distributed ledger analytics tools. This would mean that issuers would need to use distributed ledger analytics tools (such as using clustering algorithms to link different addresses to a single user) to: (i) inform their assessment of which transfers between non-custodial wallets qualify as "transactions" within the meaning of Article 22(1) and (ii) identify the location of the payer and the payee, in order to determine the relevant single currency areas for which transactions should be reported.

▪ Option 2 – to not require issuers to report under Article 22(1), point (d) of MiCAR transactions between non-custodial wallets or between other types of distributed ledger addresses where there is no CASP involved, and to include instead in the ITS under Article 22(7) of MiCAR a requirement for issuers to report under Article 22(1), point (c) of MiCAR (i) the number and value of such *transactions* (on a best efforts basis), as well as (ii) the number and value of all *transfers* between non-custodial wallets or between other types of distributed ledger addresses where there is no CASP involved[7].

51. In the EBA's view, the advantage of Option 1 is that it would provide more granular data, compared to Option 2, on how many transactions between non-custodial wallets or between other

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[7] The concept of "transfers", as used in the draft ITS, is broader than "transactions", as defined in Article 22(1) of MiCAR, as it includes any transfer with a token in scope, regardless of whether the transfer is made between addresses of different persons or between addresses of the same person.

types of distributed ledger addresses where there is no CASP involved are associated to uses of an ART or of an EMT denominated in a non-EU currency as a means of exchange for each single currency area. However, this more granular data would be, at most, a rough approximation and unreliable. This is because currently there is no accurate way for issuers of determining, in the case of transfers where there is no CASP involved, (i) whether the transfer is made between addresses of different persons or between addresses of the same person (in which case it should not be reported because it would not qualify as a "transaction" within the meaning of Article 22(1), point (d) of MiCAR), and (ii) the relevant single currency areas for which transactions should be reported based on the location of the payer and of the payee.

52. Moreover, in the EBA's view, Option 1 would lead to higher implementation costs for issuers compared to Option 2 (costs related to using distributed ledger analytics tools), although the EBA does not have reliable data as regards the estimated level of such costs. In addition, Option 1 may lead to unlevel playing field issues as regards the application of the caps in Article 23(1) of MiCAR (which, as explained above, are counted per single currency area), where issuers use different methodologies for determining (i) which transfers qualify as a "transaction" within the meaning of Article 22(1), and/or (ii) the location of the payer and of the payee, which shall determine the single currency area(s) for which the transaction should be reported. Also, Option 1 may inadvertently create incentives for issuers to underreport such transactions under Article 22(1), point (d) of MiCAR to avoid reaching the caps in Article 23(1) of MiCAR.

53. In the EBA's view, Option 2 would be easier and less costly for issuers to implement compared to Option 1. Also, Option 2 would allow competent authorities and the EBA to have visibility on the number and value of transfers between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved, with the possibility to introduce more detailed requirements for such transactions at a later stage, depending on the evolution of the market (e.g, should the volume and value of these transactions become significant).

54. On the other hand, as mentioned above, Option 2 would provide less information to competent authorities on transactions carried out between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved. Also, Option 2 may inadvertently create incentives for the market to promote the use of non-custodial wallets or of other types of distributed ledger addresses where there is no CASP involved for making payments, to circumvent the more granular reporting requirements for transactions between custodial wallets or between a custodial wallet and a non-custodial wallet.

55. Having assessed the pros and cons of these options, the EBA arrived at the preliminary view that Option 2 would be preferable, as it would strike a good balance between the quality of the data obtained, on the one hand, and compliance costs on the other hand. This is reflected in recital 3 and Article 3(3) (b) of the draft RTS. The EBA will further assess these aspects after the public consultation, in light of the responses to the public consultation and further analysis to be conducted as regards the reporting of transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved. To inform this assessment, EBA is seeking feedback from external stakeholders on the methods that could

be used by issuers to determine (i) whether a transfer between such type of wallets/addresses is made between addresses of different persons, or between addresses of the same person, and (ii) the location of the payer and of the payee in such cases.

Question 8: In your view, how can an issuer estimate, in the case of transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved: (i) whether the transfer is made between addresses of different persons or between addresses of the same person, and (ii) the location of the payer and of the payee? Please describe the analytics tools and methodology that could be used for determining such aspects, and indicate what would be, in your view, the costs associated to using such tools and the degree of accuracy of the estimates referred to above?

Question 9: Do you consider the EBA's proposals set out in recital 2 of the draft RTS and further explained in paragraphs 48-55 above as regards the reporting of transactions between non-custodial wallets and between other type of distributed ledger addresses where there is no CASP involved to be achieving an appropriate balance between the competing demands of ensuring a high degree of data quality and imposing a proportionate reporting burden? If not, please provide your reasoning and the underlying evidence.

5. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets with regard to regulatory technical standards specifying the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(1) point (d) of Regulation (EU) 2023/1114 and of e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation

(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 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[8], and in particular to Article 22(6) third subparagraph thereof,

Whereas:

(1)   Having regard to the definition of "transactions" in Article 22(1), second subparagraph of Regulation (EU) 2023/1114 and recital 60 of that Regulation, the methodology to be specified according to Article 22(6) of that Regulation should consider that such definition includes transactions settled on the distributed ledger ('on-chain') and transactions settled outside the distributed ledger ('off-chain'). It should also include all transactions that lead to a change in the legal person entitled to the asset-referenced token, even where the beneficial owner, as defined in Article 3, point 6 of Directive (EU) 2015/849 of the European Parliament and of the Council[9], remains the same. This is without prejudice to the obligations of obliged entities under Directive 2015/849 to conduct customer due diligence on their customers, including in relation to the identification of beneficial owners. For the purpose of the reporting under Article 22(1), point (d) of Regulation (EU) 2023/1114, the data to be reported by the issuer to the competent authority in accordance with that Article should not include transfers of an asset referenced token between different addresses or accounts of the same person as these transfers do not qualify as a "transaction" within the meaning of Article 22(1) of that Regulation.

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[8]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 (OJ L 150, 9.6.2023, p. 40–205)

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

(2)   The definition of a "transaction" in Article 22(1) of Regulation (EU) 2023/1114 is agnostic to the type of wallets used by the payer or by the payee for initiating or receiving a transaction associated to the use of an asset referenced token as a means of exchange. Accordingly, for specifying the methodology according to Article 22(6) of Regulation (EU) 2023/1114 it is necessary to consider that the reporting in Article 22(1), point (d) of that Regulation should include transactions between custodial wallets as well as transactions between a custodial wallet and a non-custodial wallet. Transactions between non-custodial wallets, or between non-custodial wallets and other types of distributed ledger addresses that are used for settlement purposes and are not controlled by a user or by a crypto asset service provider, should be excluded from the scope of the reporting in Article 22(1), point (d) of Regulation (EU) 2023/1114, taking into account that issuers do not have the necessary information to report these transactions under those provisions. This is without prejudice to the reporting obligations of issuers in respect of such transactions under Article 22(1), point (c) of Regulation (EU) 2023/1114 and the Commission Delegated Regulation (EU) 2023/xx [ITS].

(3)   The issuer should estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange as referred to in Article 22(1), point (d) of Regulation (EU) 2023/1114 by deducting from the total number and value of transactions settled in the asset referenced token, during the relevant quarter, transactions associated with the exchange of the asset referenced token for funds or other crypto-assets with the issuer or with a crypto-asset service provider.

(4)   By derogation from the above, transactions associated with the exchange of an asset referenced token for funds or other crypto-assets with the issuer or with a crypto-asset service provider should be considered associated to uses of the asset-referenced token as a means of exchange where the asset-referenced token is used for the settlement of transactions in other crypto-assets. An asset referenced token should be considered to be used for settlement of transactions in other crypto-assets where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in that asset-referenced token.

(5)   The issuer should determine for each transaction in scope of Article 22(1), point (d) of Regulation (EU) 2023/1114 the single currency area(s) for which that transaction should be reported, in accordance with the methodology set out in this Regulation. In line with the objective of Regulation (EU) 2023/1114 of monitoring risks that the wide use of asset referenced tokens may pose to financial stability, smooth operation of payment systems, monetary policy transmission and monetary sovereignty, the transactions referred to in Article 22(1), point (d) of that Regulation should cover both transactions where the payer and the payee are located in the same single currency area, and transactions where the payer and the payee are located in different single currency areas.

(6)   Where both the payer and the payee are located in the same single currency area, the issuer should assign the transaction to that single currency area. Where the payer and the payee are located in different single currency areas, the issuer should assign the

transaction as a sent transaction for the single currency area where the payer is located, and as a received transaction for the single currency area where the payee is located. This should allow to correctly reflect in the reporting the different legs of the transaction and to monitor risks that the wide use of an asset referenced token as a means of exchange may pose to monetary policy transmission and monetary sovereignty, taking into account that currency substitution effects can arise both in the single currency area where the payer is located and in the single currency area where the payee is located.

(7)   The transactions to be reported under Article 22(1), point (d) of Regulation (EU) 2023/1114 should include transactions where at least the payer or the payee is located in the European Union. By contrast, transactions where both the payer and the payee are located outside the European Union should be excluded from the scope of the reporting in that Article, taking into account that such latter transactions would be unlikely to endanger monetary policy transmission and monetary sovereignty within the European Union.

(8)   To ensure that the data reported to the competent authority pursuant to Article 22(1), point (d) of Regulation (EU) 2023/1114 is correct and complete, the issuer should have systems and procedures in place that allows it to reconcile the data received for each transaction from the crypto-asset service provider of the payer and the crypto-asset service provider of the payee (where applicable) pursuant to Article 22(3) of Regulation (EU) 2023/1114 and the Commission Delegated Regulation (EU) 2023/xx [ITS]. These systems and procedures should also allow the issuer to reconcile the data reported by crypto-asset service providers with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.

(9)   In accordance with Article 58(3) of Regulation (EU) 2023/1114, the provisions of Articles 22, 23 and 24(3) of that Regulation shall also apply to e-money tokens denominated in a currency that is not an official currency of a Member State. Accordingly, this Regulation should also apply *mutatis mutandis* to such tokens.

(10)   This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (the European Banking Authority (EBA)) to the Commission.

(11)   EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010[10].

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation specifies the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an asset-referenced token as a means of exchange within a single currency area, in accordance with Article 22(1), point (d) of Regulation (EU) 2023/1114.

2. In accordance with Article 58(3) of Regulation (EU) 2023/1114, this Regulation shall also apply *mutatis mutandis* to e-money tokens denominated in a currency that is not an official currency of a Member State.

Article 2

Definitions

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

(1) 'single currency area' means one or several countries that have the same official currency;

(2) 'custodial wallet' means a crypto-asset wallet address where a crypto-asset service provider ensures the safekeeping or controlling, on behalf of its client, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;

(3) 'non-custodial wallet' means a crypto-asset wallet address where the user controls the means of access to the crypto-assets, where applicable in the form of private cryptographic keys.

Article 3

Scope of the transactions associated to uses of an asset referenced token as a means of exchange

1. The issuer shall estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange, as referred to in Article 22(1), point (d) of Regulation (EU) 2023/1114, by deducting from the total number and value of transactions with the asset-referenced token during the relevant quarter, the transactions associated with the exchange of the asset-referenced token for funds or other crypto-assets with the issuer or with a crypto-asset service provider.

2. By derogation from paragraph 1, transactions associated to uses of an asset-referenced token as a means of exchange shall include the exchange of an asset-referenced token for

funds or other crypto-assets with the issuer or with a crypto-asset service provider where the asset-referenced token is used for settlement of transactions in other crypto-assets.

3. Transactions associated to uses of an asset-referenced token as a means of exchange shall include:

    (a)   transactions settled on a distributed ledger and transactions settled outside a distributed ledger;

    (b)   transactions between custodial wallets and transactions between a custodial wallet and a non-custodial wallet or other type of distributed ledger addresses that is not controlled by a user or a crypto-asset service provider.

4. The transactions referred to in paragraph 1 shall exclude transfers between the same accounts or addresses of the same person.

5. The transactions referred to in paragraph 1 shall include transactions where at least the payer or the payee is located in the European Union. The location of a payer or a payee refers to their habitual residence, for natural persons, and to the registered office address, for legal persons.

Article 4

Assigning of transactions by single currency area

The issuer shall determine for each transaction in scope of Article 22(1), point (d) of Regulation (EU) 2023/1114 the single currency area(s) for which that transaction shall be reported, as follows:

(a)   Where both the payer and the payee are located in the same single currency area, the issuer shall assign the transaction for that single currency area.

(b)   Where the payer and the payee are located in different single currency areas, the issuer shall assign the transaction as a sent transaction for the single currency area where the payer is located and as a received transaction for the single currency area where the payee is located.

Article 5

Calculation of the average number and average aggregate value of transactions

1. The issuer shall calculate the quarterly average number and average aggregate value of transactions per day referred to in Article 22(1), point (d) of Regulation (EU) 2023/1114 for each single currency area, as this information stands on the following reporting reference dates: 31 March, 30 June, 30 September and 31 December.

2. The value of the transactions referred in paragraph 1 shall be reported in the official currency of the home Member State of the issuer.

3. The issuer shall determine the value of the transactions referred to in paragraph 1 as follows:

(a)   Where the basket of assets referenced by the asset referenced token includes one or more official currencies that are different from the official currency referred to in paragraph 2, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), letter (c) of Regulation (EU) 2023/1114.

(b)   Where the basket of assets referenced by the asset referenced token includes assets other than an official currency, the issuer shall determine the value of the respective transactions per day by using market prices calculated at the end of each calendar day during the applicable reporting period, whenever possible, in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), letter (c) of Regulation (EU) 2023/1114 and Article 36(11) and (12) of that Regulation.

(c)   Where the official currency referenced by the e-money token is different from the official currency referred to in paragraph 2, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period.

Article 6

Data quality

1.   The issuer shall have systems and procedures in place to ensure that the data submitted to the competent authority pursuant to Article 22(1), point (d) of Regulation (EU) 2023/1114 is correct, complete and submitted within the timeframe specified in the Commission Delegated Regulation (EU) No xx/xx [ITS].

2.   The systems and procedures referred to in paragraph 1 shall allow issuers to reconcile, for each transaction, the data received from the crypto-asset service provider of the payer and the crypto-asset service provider of the payee pursuant to Article 22(3) of Regulation 2023/1114 and the Commission Delegated Regulation (EU) No xx/xx [ITS], as well as to reconcile this data with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.

Article 7

Final provisions

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

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

According to Article 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of draft regulatory standards (RTS) developed by the EBA. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA), which analyses 'the potential related costs and benefits.'

This analysis presents the draft IA of the main policy options regarding the draft RTS on the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(6) of Regulation (EU) No 2023/1114 (MiCAR).

MiCAR sets out a new legal framework for the issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs). This includes the obligation of issuers of ARTs and of EMTs denominated in a non-EU currency to report, on a quarterly basis, to the competent authority an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of an ART or of an EMT denominated in a non-EU currency as a means of exchange within a single currency area. This reporting obligation applies for each ART and EMT denominated in a non-EU currency with an issue value that is higher than EUR 100 000 000, and where the competent authority so decides in accordance with paragraph 2 of Article 22, also for ARTs and EMTs denominated in a non-EU currency with a value of less than EUR 100 000 000. As explained in the Rationale section of the Consultation paper on these draft RTS, means of exchange in the context of the draft RTS is understood as the use of an ART or an EMT denominated in a non-EU currency for the purpose of payment of goods and services.

To enable issuers to report this information, MiCAR requires crypto asset service providers (CASPs) that provide services related to ARTs and EMTs denominated in a non-EU currency to report to the issuer the information necessary for issuers to prepare such reports, including by reporting transactions that are settled outside the distributed ledger. The information that CASPs should report to the issuer in accordance with MiCAR will be specified in the implementing technical standards (ITS) to be developed under Article 22(7) of MiCAR (EBA/CP/2023/32). In this regard, the costs and benefits for CASPs for complying with those requirements are covered in the draft IA on the Consultation Paper on those ITS, and are not repeated in this IA.

A. Problem identification

While the requirement for issuers to report the estimates mentioned above is clearly specified in MiCAR, the text does not specify how these estimates should be calculated. Due to the fact that the legal framework introduced by MiCAR is new, there is no established methodology to calculate estimates of the number and value of transactions associated to uses of ARTs and EMTs

denominated in a non-EU currency "as a means of exchange within a single currency area", as referred to in MiCAR. Moreover, currently there is limited data available particularly with regard to the geographical location of the parties to such transactions, as well as information whether the transfers of such tokens are made between addresses of different persons or between addresses of the same person.

B.   Policy objectives

The general objective of the draft RTS is to clarify the reporting obligation of issuers in accordance with MiCAR and to support the objectives of MiCAR of ensuring that the data reported allows to:

- monitor and prevent risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects;

- assess whether an ART or an EMT denominated in a non-EU currency meets the criteria in Articles 43(1) and 56(1) of MiCAR to be classified as significant.

The draft RTS also aims to ensure that issuers apply a similar and harmonized methodology to estimate the number and aggregate value of transactions associated with the use of an ART or of an EMT denominated in a non-EU currency as a means of exchange within a single currency area.

C.   Baseline scenario

In a baseline scenario, the issuers of ART and EMTs denominated in a non-EU currency would need to apply the MiCAR requirements to report an estimate of the number and aggregate value of transactions associated to means of exchange within a single currency area, without a clear methodology on how to report such transactions or guidance on the transactions in scope of the reporting. This scenario would lead to divergent approaches and interpretation on how such estimates are calculated and reported. This would lead to competent authorities having data that is not comparable. Moreover, such a divergence in approaches may lead to unreliable estimates which will create level playing field issues, and would not meet the objectives of MiCAR explained above.

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

D.   Policy issues, options considered

Policy issue 1: Reconciliation of data received from CASPs

Articles 22(3) and 58(3) of MiCAR requires CASPs that provide services related to ARTs and EMTs denominated in a non-EU currency to report to the issuer the information necessary to enable the

issuer to report to the competent authority the information in Article 22(1), including by reporting transactions that are settled outside the distributed ledger. The following two policy options were considered:

Option 1A: Issuers can report to the competent authority aggregated data received from CASPs without further reconciliation.

Option 1B: Issuers will receive transaction level data from CASPs and should reconcile the data before reporting it in an aggregated form to the competent authority.

Option 1A would imply no or lower costs for the issuer, compared to Option 1B, but may lead to less reliable estimates, because of the double counting of transactions where the payer and the payee use different CASPs, or because of mistakes in the reporting from CASPs. This in turn will lead to less reliable data on volumes and values of transactions, which will also impact the application of the caps in Article 23 of MiCAR and would not allow to properly monitor risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU. Also, the issuer, who is ultimately responsible for the data, will have less control over its quality.

Under Option 1B, the issuer should conduct a reconciliation of the data received from the CASP of the payer and the CASP of the payee. This option can allow for more reliable estimates to be reported to the competent authority, avoiding double counting of transactions where the payer and payee use different CASPs. This option however would entail costs associated with data processing.

Given that the ultimate responsibility for the quality of the data reported to competent authorities pursuant to Article 22(1) of MiCAR lies with the issuer, and due to the unreliability of estimates if transactions between wallets hosted by different CASPs would be double counted, Option 1B is preferred.

Policy issue 2: Reporting of transactions between non-custodial wallets

Option 2A: issuers to report transactions under Article 22(1)(d) of MiCAR between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved on a best-efforts basis, using the data available on the distributed ledger coupled with distributed ledger analytics tools.

Option 2B: issuers not to report under Article 22(1)(d) of MiCAR transactions between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved, and to report under Article 22(1)(c) and the ITS under Article 22(7) of MiCAR (i) *the number and value of such transactions (on a best efforts basis), as well as* (ii) *the number and value of all transfers between such wallets or distributed ledger addresses.*

Option 2A would provide more granular data, compared to Option 2B, on how many transactions between non-custodial wallets or between other type of distributed ledger addresses where there

is no CASP involved are associated to uses of an ART or of an EMT denominated in a non-EU currency as a means of exchange for each single currency area.

On the other hand, this more granular data would be, at most, a rough approximation and unreliable. This is because currently there is no accurate way for issuers of determining, in the case of transfers where there is no CASP involved, (i) whether the transfer is made between addresses of different persons or between addresses of the same person, and (ii) the location of the payer and of the payee, which is needed in order to assign transactions to the relevant single currency area. This option is also expected to have higher implementation costs for issuers related to using distributed ledger analytics tools compared to Option 2B.

In this context, due to the issuers using different methodologies for determining (i) which transfers qualify as a "transaction" within the meaning of Article 22(1), and/or (ii) the location of the payer and of the payee, which is needed in order to determine the single currency area(s) for which the transaction should be reported, Option 2A may also lead to unlevel playing field issues as regards the application of the caps in Article 23 which are counted per single currency area.

Option 2B would be easier and less costly for issuers to implement. It would allow competent authorities and EBA to have visibility on the number and value of transfers between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved, with the possibility to introduce more detailed requirements for such transactions at a later stage, depending on the evolution of the market (e.g, should the volume and value of these transactions become significant).

However, this option may inadvertently create incentives for the market to promote the use of non-custodial wallets or of other type of distributed ledger addresses where there is no CASP involved, for making payments, to circumvent the more granular reporting requirements for transactions between custodial wallets or between a custodial wallet and a non-custodial wallet.

Overall, the EBA arrived at the preliminary view that option 2B would be preferable as it would strike a good balance between the quality of the data obtained, on the one hand, and compliance costs on the other hand. As explained in paragraph 55 of the Rationale section of this CP, the EBA will further assess these aspects after the public consultation, in light of the responses to the public consultation and further analysis to be conducted as regards the reporting of transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved.

E. Cost and benefit analysis

When comparing with the baseline scenario (where the issuer will need to report information without a clear methodology or guidance on the transactions in scope of the reporting), the RTS is expected to bring benefits by achieving a higher level of harmonisation of methodology, comparability of data, and better data quality. This in turn will contribute to more effective supervision and monitoring of the use of ARTs and of EMTs denominated in a non-EU currency as

a means of exchange and of risks to monetary policy transmission and monetary sovereignty within the EU, in line with the MiCAR requirements. In that way, these RTS contribute to ensuring the safety and soundness of the European financial system.

The RTS is expected to lead to moderate costs to issuers in relation to the application of the methodology. These costs are associated with the reconciliation of the data and the data quality checks. Given the novelty of the requirements introduced by MiCAR, the EBA does not have at this stage reliable quantitative data to estimate actual costs of implementation of the RTS, however these costs are expected to be moderate, given that the costs of the RTS are only incremental to the costs for implementing the existing reporting requirements set out in MiCAR.

6.2   Overview of questions for consultation

Question 1: Do you agree with the EBA's proposals on how issuers should estimate the number and value of transactions associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange", as reflected in Article 3 of the draft RTS? If not, please provide your reasoning and the underlying evidence, and suggest an alternative approach for estimating the number and value of these transactions.

Question 2: Please describe any observed or foreseen use cases where transactions involving two legs of crypto-assets, that are different from an ART, are settled in the ART, as referred to in recital 61 of MiCAR.

Question 3: Do you agree with the EBA's proposals regarding the geographical scope of the transactions covered by Article 22(1), point (d) of MiCAR, as reflected in Article 3(5) of the draft RTS? If not, please provide your reasoning and the underlying evidence.

Question 4: Do you agree with the EBA's proposals on how issuers should assign the transactions in scope of Article 22(1)(d) of MiCAR to a single currency area, as reflected in Article 4 of the draft RTS? If not, please provide your reasoning and the underlying evidence.

Question 5: Do you agree with the EBA's proposals on how issuers should calculate the value of transactions referred in Article 22(1), point (d) of MiCAR, as reflected in Article 5 of the draft RTS? If not, please provide your reasoning and the underlying evidence.

Question 6: In your view, does the transactional data to be reported by CASPs to the issuer, as described in paragraph 43 above, cover the data needed to allow the issuer to reconcile the information received from the CASP of the payer and the CASP of the payee before reporting the information in Article 22(1), point (d) to the competent authority? If not, please provide your reasoning with details and examples of which data should be added or removed.

Question 7: Do you agree that, based on the transactional data to be reported by CASPs to the issuer as described in paragraph 43 above, issuers will be able to reconcile the data received from

the CASP of the payer and the CASP of the payee on a transactional basis and in automated manner? If not, what obstacles do you see and how could these be overcome?

Question 8: In your view, how can an issuer estimate, in the case of transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved: (i) whether the transfer is made between addresses of different persons, or between addresses of the same person, and (ii) the location of the payer and of the payee? Please describe the analytics tools and methodology that could be used for determining such aspects, and indicate what would be, in your view, the costs associated to using such tools and the degree of accuracy of the estimates referred to above?

Question 9: Do you consider the EBA's proposals set out in recital 3 of the draft RTS and further explained in paragraphs 48-55 above as regards the reporting of transactions between non-custodial wallets and between other type of distributed ledger addresses where there is no CASP involved to be achieving an appropriate balance between the competing demands of ensuring a high degree of data quality and imposing a proportionate reporting burden? If not, please provide your reasoning and the underlying evidence.