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[1] Text with EEA relevance.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2023/1113 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 31 May 2023

on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Regulation (EU) 2015/847 of the European Parliament and of the Council ([4]) has been substantially amended ([5]). Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) Regulation (EU) 2015/847 was adopted to ensure that the Financial Action Task Force (FATF) requirements on wire transfer service providers, and in particular the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee, were applied uniformly throughout the Union. The latest changes introduced in June 2019 in the FATF standards on new technologies, with the aim of regulating virtual assets and virtual asset service providers, have provided new and similar obligations for virtual asset service providers, with the purpose of facilitating the traceability of transfers of virtual assets. Further to those changes, virtual asset service providers are to accompany transfers of virtual assets with

([1]) OJ C 68, 9.2.2022, p. 2.
([2]) OJ C 152, 6.4.2022, p. 89.
([3]) Position of the European Parliament of 20 April 2023 (not yet published in the Official Journal) and decision of the Council of 16 May 2023.
([4]) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).
([5]) See Annex I.

information on the originators and beneficiaries of those transfers. Virtual asset service providers are also required to obtain, hold and share that information with their counterpart on the other end of the virtual assets transfer and make it available on request to competent authorities.

(3) Given that Regulation (EU) 2015/847 currently only applies to transfers of funds, that is to banknotes and coins, scriptural money, and electronic money as defined in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council ([6]), it is appropriate to extend the scope of Regulation (EU) 2015/847 in order to also cover transfers of virtual assets.

(4) Flows of illicit money through transfers of funds and virtual assets can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level. The soundness, integrity and stability of the system of transfers of funds and virtual assets, and confidence in the financial system as a whole, could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to transfer funds or virtual assets for criminal activities or terrorist purposes.

(5) In order to facilitate their criminal activities, money launderers and financers of terrorism are likely to take advantage of the freedom of capital movements within the Union's integrated financial area unless certain coordinating measures are adopted at Union level. International cooperation within the framework of FATF and the global implementation of its recommendations aim to prevent money laundering and terrorist financing while transferring funds or virtual assets.

(6) By reason of the scale of the action to be undertaken, the Union should ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF on 16 February 2012 and then revised on 21 June 2019 (the 'revised FATF Recommendations'), and in particular FATF Recommendation 15 on new technologies, FATF Recommendation 16 on wire transfers and the revised interpretative notes on those recommendations, are applied uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand, national payments or transfers of virtual assets within a Member State and, on the other, cross-border payments or transfers of virtual assets between Member States. Uncoordinated action by Member States acting alone in the field of cross-border transfers of funds and virtual assets could have a significant impact on the smooth functioning of payment systems and virtual asset services at Union level and could therefore damage the internal market in the field of financial services.

(7) In order to foster a coherent approach in the international context and to increase the effectiveness of the fight against money laundering and terrorist financing, further Union action should take account of developments at international level, in particular the revised FATF Recommendations.

(8) Their global reach, the speed at which transactions can be carried out and the possible anonymity offered by their transfer make virtual assets particularly susceptible to criminal misuse, including in cross-border situations. In order to effectively address the risks posed by the misuse of virtual assets for money laundering and terrorist financing purposes, the Union should promote the application at global level of the standards implemented by this Regulation and the development of the international and cross-jurisdictional dimension of the regulatory and supervisory framework for transfers of virtual assets in relation to money laundering and terrorist financing.

([6]) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

(9) Directive (EU) 2015/849 of the European Parliament and of the Council ([7]), as a result of its amendment by Directive (EU) 2018/843 of the European Parliament and of the Council ([8]), introduced a definition of virtual currencies and recognised providers engaged in exchange services between virtual currencies and fiat currencies, as well as custodial wallet providers, among the entities subject to anti-money laundering and counter-terrorist financing requirements under Union law. Recent international developments, in particular within the framework of FATF, now imply the need to regulate additional categories of virtual asset service providers not yet covered and to broaden the current definition of virtual currency.

(10) The definition of crypto-assets in Regulation (EU) 2023/1114 of the European Parliament and of the Council ([9]) corresponds to the definition of virtual assets set out in the revised FATF Recommendations, and the list of crypto-asset services and crypto-asset service providers covered in that Regulation also encompasses the virtual asset service providers identified as such by FATF and considered likely to raise money laundering and terrorist financing concerns. In order to ensure coherency of Union law in that area, this Regulation should use the same definitions of crypto-assets, crypto-asset services and crypto-asset service providers as those used in Regulation (EU) 2023/1114.

(11) The implementation and enforcement of this Regulation represent relevant and effective means of preventing and combating money laundering and terrorist financing.

(12) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers, crypto-asset service providers or persons who use their services. In that regard, the preventive approach should be targeted and proportionate and should be in full compliance with the free movement of capital, which is guaranteed throughout the Union.

(13) The Union's Revised Strategy on Terrorist Financing of 17 July 2008 (the 'Revised Strategy') states that efforts must be maintained to prevent terrorist financing and to control the use by suspected terrorists of their own financial resources. It recognises that FATF is constantly seeking to improve its recommendations and is working towards a common understanding of how they should be implemented. The Revised Strategy notes that implementation of the revised FATF Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that a common approach to implementation by Member States is therefore important.

(14) In addition, the Commission in its communication of 7 May 2020 on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing identified six priority areas for urgent action to improve the Union's anti-money laundering and counter-terrorist financing regime, including the establishment of a coherent regulatory framework for that regime in the Union to obtain more detailed and harmonised rules, in particular to address the implications of technological innovation and developments in international standards and to avoid diverging implementation of existing rules. Work at international level suggests a need to expand the scope of sectors or entities covered by that regime and to assess how it should apply to crypto-asset service providers not covered so far.

([7]) 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).

([8]) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

([9]) 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).

(15) In order to prevent terrorist financing, measures with the purpose of freezing the funds and economic resources of certain persons, groups and entities have been taken, including Council Regulations (EC) No 2580/2001 ([10]), (EC) No 881/2002 ([11]) and (EU) No 356/2010 ([12]). To the same end, measures with the purpose of protecting the financial system against the channelling of funds and economic resources for terrorist purposes have also been taken. Directive (EU) 2015/849 contains a number of such measures. Those measures do not, however, fully prevent terrorists or other criminals from accessing payment systems for transferring their funds.

(16) The traceability of transfers of funds and crypto-assets can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain or the transfer of crypto-assets chain, to provide for a system imposing the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee and the obligation on crypto-asset service providers to accompany transfers of crypto-assets with information on the originator and the beneficiary.

(17) Certain transfers of crypto-assets entail specific high-risk factors for money laundering, terrorist financing and other criminal activities, in particular transfers related to products, transactions or technologies designed to enhance anonymity, including privacy wallets, mixers or tumblers. To ensure the traceability of such transfers, the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([13]) (EBA), should clarify, in particular, how the risk factors listed in Annex III to Directive (EU) 2015/849 are to be taken into account by crypto-asset service providers, including when carrying out transactions with non-Union entities that are not regulated, registered or licensed in any third country, or with self-hosted addresses. Where situations of higher risk are identified, EBA should issue guidelines specifying the enhanced due diligence measures that obliged entities should consider applying to mitigate such risks, including the adoption of appropriate procedures such as the use of distributed ledger technology (DLT) analytic tools, to detect the origin or destination of crypto-assets.

(18) This Regulation should apply without prejudice to the national restrictive measures and Union restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union, such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010 and Council Regulations (EU) No 267/2012 ([14]), (EU) 2016/1686 ([15]) and (EU) 2017/1509 ([16]), which may require that payment service providers of payers and of payees, crypto-asset service providers of originators and of beneficiaries, intermediary payment service providers, as well as intermediary crypto-asset service providers, take appropriate action to freeze certain funds and crypto-assets or that they comply with specific restrictions concerning certain transfers of funds or of crypto-assets. Payment service providers and crypto-asset service providers should have in place internal policies, procedures and controls to ensure implementation of those restrictive measures, including screening measures against Union and national lists of designated persons. EBA

([10]) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).
([11]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (OJ L 139, 29.5.2002, p. 9).
([12]) Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ L 105, 27.4.2010, p. 1).
([13]) 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).
([14]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).
([15]) Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them (OJ L 255, 21.9.2016, p. 1).
([16]) Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224, 31.8.2017, p. 1).

should issue guidelines specifying those internal policies, procedures and controls. It is intended that the requirements of this Regulation on internal policies, procedures and controls related to restrictive measures will be repealed in the near future by a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

(19) The processing of personal data under this Regulation should take place in full compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council ([17]). Further processing of personal data for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. In applying this Regulation, the transfer of personal data to a third country is required to be carried out in accordance with Chapter V of Regulation (EU) 2016/679. It is important that payment service providers and crypto-asset service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union should not be prevented from transferring data about suspicious transactions within the same organisation, provided that they apply adequate safeguards. In addition, the crypto-asset service providers of the originator and of the beneficiary, the payment service providers of the payer and of the payee and the intermediary payment service providers and intermediary crypto-asset service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, or unauthorised disclosure or access.

(20) Persons that merely convert paper documents into electronic data and are acting under a contract with a payment service provider, and persons that provide payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems should not fall within the scope of this Regulation.

(21) Persons that provide only ancillary infrastructure, such as internet network and infrastructure service providers, cloud service providers or software developers, that enables another entity to provide transfer services for crypto-assets, should not fall within the scope of this Regulation unless they perform transfers of crypto-assets.

(22) This Regulation should not apply to person-to-person transfers of crypto-assets conducted without the involvement of a crypto-asset service provider, or to cases where both the originator and the beneficiary are providers of transfer services for crypto-assets acting on their own behalf.

(23) Transfers of funds corresponding to services referred to in Article 3, points (a) to (m) and point (o), of Directive (EU) 2015/2366 of the European Parliament and of the Council ([18]) do not fall within the scope of this Regulation. It is also appropriate to exclude from the scope of this Regulation transfers of funds and of electronic money tokens, as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114, that represent a low risk of money laundering or terrorist financing. Such exclusions should cover payment cards, electronic money instruments, mobile phones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers. However, the use of a payment card, an electronic money instrument, a mobile phone or any other digital or IT prepaid or postpaid device with similar characteristics in order to effect a transfer of funds or of electronic money tokens between natural persons acting as consumers for purposes other than trade, business or professional activity, falls within the scope of this Regulation. In addition, automated teller machine withdrawals, payments of taxes, fines or other levies, transfers of funds carried out through cheque images exchanges, including truncated cheques, or bills of exchange, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf should be excluded from the scope of this Regulation.

([17]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([18]) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

(24) Crypto-assets that are unique and not fungible are not subject to the requirements of this Regulation unless they are classified as crypto-assets or funds under Regulation (EU) 2023/1114.

(25) Crypto-asset automated teller machines (the 'crypto-ATMs') can enable users to perform transfers of crypto-assets to a crypto-asset address by depositing cash, often without any form of customer identification and verification. Crypto-ATMs are particularly exposed to money laundering and terrorist financing risks because the anonymity they provide, and the possibility of operating with cash of unknown origin, make them an ideal vehicle for illicit activities. Given the role of crypto-ATMs in providing or actively facilitating transfers of crypto-assets, transfers of crypto-assets linked to crypto-ATMs should fall under the scope of this Regulation.

(26) In order to reflect the special characteristics of national payment systems, and provided that it is always possible to trace the transfer of funds back to the payer, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giro payments, used for the purchase of goods or services.

(27) Due to the inherent borderless nature and global reach of transfers of crypto-assets and of the provision of crypto-asset services, there are no objective reasons to distinguish the treatment of money laundering and terrorist financing risks of national transfers from that of cross-border transfers. In order to reflect those specific features, no exemption from the scope of this Regulation should be granted to domestic low-value transfers of crypto-assets, in line with the FATF requirement to treat all transfers of crypto-assets as cross-border.

(28) Payment service providers and crypto-asset service providers should ensure that the information on the payer and the payee or on the originator and the beneficiary is not missing or incomplete.

(29) In order not to impair the efficiency of payment systems and in order to balance the risk of driving transactions underground as a result of overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether information on the payer or the payee is accurate should, in the case of transfers of funds where verification has not yet taken place, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, unless the transfer appears to be linked to other transfers of funds which together would exceed EUR 1 000, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.

(30) Compared to transfers of funds, transfers of crypto-assets can be carried out across multiple jurisdictions at a larger scale and higher speed due to their global reach and technological characteristics. In addition to the pseudo-anonymity of crypto-assets, those features of transfers of crypto-assets offer criminals the opportunity to carry out at high speed large illicit transfers while circumventing traceability obligations and avoiding detection, by means of structuring a large transaction into smaller amounts, using multiple seemingly unrelated DLT addresses, including one-time use DLT addresses, and using automated processes. Most crypto-assets are also highly volatile and their value can fluctuate significantly within a very short timeframe which makes the calculation of linked transactions more uncertain. In order to reflect those specific features, transfers of crypto-assets should be subject to the same requirements regardless of their amount and of whether they are domestic or cross-border transfers.

(31) For transfers of funds or for transfers of crypto-assets where verification is deemed to have taken place, payment service providers and crypto-asset service providers should not be required to verify the accuracy of the information on the payer or the payee accompanying each transfer of funds, or on the originator and the beneficiary accompanying each transfer of crypto-assets, provided that the obligations laid down in Directive (EU) 2015/849 are met.

(32) In view of the Union legislative acts in respect of payment services, namely Regulation (EU) No 260/2012 of the European Parliament and of the Council ([19]), Directive (EU) 2015/2366 and Regulation (EU) 2021/1230 of the European Parliament and of the Council ([20]), it should be sufficient to provide that only simplified information accompany transfers of funds within the Union, such as the payment account number or a unique transaction identifier.

(33) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds or crypto-assets used for those purposes, transfers of funds or transfers of crypto-assets from the Union to outside the Union should carry complete information on the payer and the payee, in respect of transfers of funds, and on the originator and the beneficiary, in respect of transfers of crypto-assets. Complete information on the payer and the payee should include the legal entity identifier (LEI), or any equivalent official identifier, where that identifier is provided by the payer to its payment service provider, since that would allow for better identification of the parties involved in a transfer of funds and could easily be included in existing payment message formats, such as that developed by the International Organisation for Standardisation for electronic data interchange between financial institutions. The authorities responsible for combating money laundering or terrorist financing in third countries should be granted access to complete information on the payer and the payee or on the originator and the beneficiary, as applicable, only for the purposes of preventing, detecting and investigating money laundering and terrorist financing.

(34) Crypto-assets exist in a borderless virtual reality and can be transferred to any crypto-asset service provider, whether or not that provider is registered in a jurisdiction. Many non-Union jurisdictions have in place rules relating to data protection and its enforcement that differ from those in the Union. When transferring crypto-assets on behalf of a client to a crypto-asset service provider that is not registered in the Union, the crypto-asset service provider of the originator should assess the ability of the crypto-asset service provider of the beneficiary to receive and retain the information required under this Regulation in compliance with Regulation (EU) 2016/679, using, where appropriate, the options available in Chapter V of Regulation (EU) 2016/679. The European Data Protection Board should, after consulting EBA, issue guidelines on the practical implementation of data protection requirements for transfers of personal data to third countries in the context of transfers of crypto-assets. Situations might occur where personal data cannot be sent because the requirements of Regulation (EU) 2016/679 cannot be fulfilled. EBA should issue guidelines on suitable procedures for determining whether the transfer of crypto-assets should be executed, rejected or suspended in such cases.

(35) The Member State authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement authorities in the Member States and at Union level, should intensify cooperation with each other and with relevant third country authorities, including those in developing countries, in order to strengthen further transparency and the sharing of information and best practices.

(36) The crypto-asset service provider of the originator should ensure that transfers of crypto-assets are accompanied by the name of the originator, the originator's distributed ledger address, in cases where a transfer of crypto-assets is registered on a network using DLT or similar technology, the originator's crypto-asset account number, in cases where such an account exists and is used to process the transaction, the originator's address including the name of the country, official personal document number and customer identification number, or, alternatively, the

([19]) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

([20]) Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, p. 20).

originator's date and place of birth, and, subject to the existence of the necessary field in the relevant message format and where provided by the originator to its crypto-asset service provider, the current LEI or, in its absence, any other available equivalent official identifier of the originator. The information should be submitted in a secure manner and in advance of, or simultaneously or concurrently with, the transfer of crypto-assets.

(37) The crypto-asset service provider of the originator should also ensure that transfers of crypto-assets are accompanied by the name of the beneficiary, the beneficiary's distributed ledger address, in cases where a transfer of crypto-assets is registered on a network using DLT or similar technology, the beneficiary's account number, in cases where such an account exists and is used to process the transaction and, subject to the existence of the necessary field in the relevant message format and where provided by the originator to its crypto-asset service provider, the current LEI or, in its absence, any other available equivalent official identifier of the beneficiary. The information should be submitted in a secure manner and in advance of, or simultaneously or concurrently with, the transfer of crypto-assets.

(38) Regarding transfers of crypto-assets, the requirements of this Regulation should apply to all transfers including transfers of crypto-assets to or from a self-hosted address, as long as there is a crypto-asset service provider involved.

(39) In the case of a transfer to or from a self-hosted address, the crypto-asset service provider should collect the information on both the originator and the beneficiary, usually from its client. A crypto-asset service provider should in principle not be required to verify the information on the user of the self-hosted address. Nonetheless, in the case of a transfer of an amount exceeding EUR 1 000 that is sent or received on behalf of a client of a crypto-asset service provider to or from a self-hosted address, that crypto-asset service provider should verify whether that self-hosted address is effectively owned or controlled by that client.

(40) As regards transfers of funds from a single payer to several payees that are to be sent in a batch file transfer containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the payment account number of the payer or the unique transaction identifier, as well as complete information on the payee, provided that the batch file contains complete information on the payer that is verified for accuracy and complete information on the payee that is fully traceable.

(41) As regards batch file transfers of crypto-assets, the submission of information on the originator and beneficiary in batches should be accepted, as long as that submission occurs immediately and securely. It should not be permitted to submit the required information after the transfer, as submission must occur before or at the moment the transaction is completed, and crypto-asset service providers or other obliged entities should submit the required information simultaneously with the batch file transfer of crypto-assets.

(42) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place to detect whether information on the payer and the payee is missing or incomplete. Those procedures should include monitoring after or during the transfers where appropriate. Competent authorities should ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.

(43) As regards transfers of crypto-assets, the crypto-asset service provider of the beneficiary should implement effective procedures to detect whether the information on the originator or beneficiary is missing or incomplete. Those procedures should include, where appropriate, monitoring after or during the transfers. It should not be required that the information is attached directly to the transfer of crypto-assets itself, as long as it is submitted in advance of, or simultaneously or concurrently with, the transfer of crypto-assets, and is available upon request to appropriate authorities.

(44) Given the potential threat of money laundering and terrorist financing presented by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee and to require crypto-asset service providers to request information on the originator and the beneficiary. In line with the risk-based approach developed by FATF, it is appropriate to identify areas of higher and lower risk, with a view to better targeting the risk of money laundering and terrorist financing. Accordingly, the crypto-asset service provider of the beneficiary, the payment service provider of the payee, the intermediary payment service provider and the intermediary crypto-asset service provider should have effective risk-based procedures that apply where a transfer of funds lacks the required information on the payer or the payee, or where a transfer of crypto-assets lacks the required information on the originator or the beneficiary, in order to allow that service provider to decide whether to execute, reject or suspend that transfer and to determine the appropriate follow-up action to take.

(45) Crypto-asset service providers, like all obliged entities, should assess and monitor the risk related to their clients, products and delivery channels. Crypto-asset service providers should also assess the risk related to their transactions, including where performing transfers to or from self-hosted addresses. In the event that the crypto-asset service provider is or becomes aware that the information on the originator or beneficiary using the self-hosted address is inaccurate, or where the crypto-asset service provider encounters unusual or suspicious patterns of transactions or situations of higher risks of money laundering and terrorist financing associated with transfers involving self-hosted addresses, that crypto-asset service provider should implement, where appropriate, enhanced due diligence measures to manage and mitigate the risks appropriately. The crypto-asset service provider should take those circumstances into account when assessing whether a transfer of crypto-assets, or any related transaction, is unusual and whether it is to be reported to the Financial Intelligence Unit (FIU) in accordance with Directive (EU) 2015/849.

(46) This Regulation should be reviewed in the context of the adoption of a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 and a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010, in order to ensure consistency with the relevant provisions.

(47) When assessing the risks, the payment service provider of the payee, the intermediary payment service provider, the crypto-asset service provider of the beneficiary or the intermediary crypto-asset service provider should exercise special vigilance where it becomes aware that information on the payer or the payee or on the originator or the beneficiary, as applicable, is missing or incomplete, or where a transfer of crypto-assets is required to be considered suspicious based on the origin or destination of the crypto-assets concerned, and should report suspicious transactions to the competent authorities in accordance with the reporting obligations set out in Directive (EU) 2015/849.

(48) Similar to transfers of funds between payment service providers, transfers of crypto-assets involving intermediary crypto-asset service providers might facilitate transfers as an intermediate element in a chain of transfers of crypto-assets. In line with international standards, such intermediary providers should also be subject to the requirements set out in this Regulation, in the same way as existing obligations on intermediary payment service providers.

(49) The provisions on transfers of funds and transfers of crypto-assets in relation to which information on the payer or the payee or the originator or the beneficiary is missing or incomplete, and in relation to which transfers of crypto-assets are required to be considered suspicious based on the origin or destination of the crypto-assets

concerned, apply without prejudice to any obligations on payment service providers, intermediary payment service providers, crypto-asset service providers and intermediary crypto-asset service providers to reject or suspend transfers of funds and transfers of crypto-assets which breach a provision of civil, administrative or criminal law.

(50) In order to ensure technology neutrality, this Regulation should not mandate the use of a particular technology for the transfer of transaction information by crypto-asset service providers. To ensure the efficient implementation of requirements applicable to crypto-asset service providers under this Regulation, standard-setting initiatives involving or led by the crypto-asset industry will be critical. The resulting solutions should be interoperable through the use of international or Union-wide standards in order to allow for a swift exchange of information.

(51) With the aim of assisting payment service providers and crypto-asset service providers to put effective procedures in place to detect cases in which they receive transfers of funds or transfers of crypto-assets with missing or incomplete information on the payer, payee, originator or beneficiary and to take effective follow-up action, EBA should issue guidelines.

(52) To enable prompt action to be taken in the fight against money laundering and terrorist financing, payment service providers and crypto-asset service providers should respond promptly to requests for information on the payer and the payee or on the originator and the beneficiary from the authorities responsible for combating money laundering or terrorist financing in the Member State where those payment service providers are established or where those crypto-asset service providers have their registered office.

(53) The number of working days elapsing in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.

(54) As it may not be possible in criminal investigations to identify the data required or the individuals involved in a transaction until many months, or even years, after the original transfer of funds or transfer of crypto-assets, and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers or crypto-asset service providers to keep records of information on the payer and the payee or the originator and the beneficiary for a period of time for the purposes of preventing, detecting and investigating money laundering and terrorist financing. That period should be limited to five years, after which all personal data should be deleted unless national law provides otherwise. If necessary for the purposes of preventing, detecting or investigating money laundering or terrorist financing, and after carrying out an assessment of the necessity and proportionality of the measure, Member States should be able to allow or require retention of records for a further period of no more than five years, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings and in full compliance with Directive (EU) 2016/680 of the European Parliament and of the Council ([21]). Those measures could be reviewed in light of the adoption of a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

(55) In order to improve compliance with this Regulation, and in accordance with the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions and measures should be provided for and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions and measures that are effective, proportionate and dissuasive. Member States should notify the Commission and the permanent internal committee on anti-money-laundering and countering terrorist financing referred to in Article 9a(7) of Regulation (EU) No 1093/2010 thereof.

([21]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(56) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([22]).

(57) A number of countries and territories which do not form part of the territory of the Union share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the Union represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.

(58) Given the potential high risks associated with, and the technological and regulatory complexity posed by, self-hosted addresses, including in relation to the verification of ownership information, by 1 July 2026, the Commission should assess the need for additional specific measures to mitigate the risks posed by transfers to or from self-hosted addresses or to or from entities not established in the Union, including the introduction of possible restrictions, and should assess the effectiveness and proportionality of the mechanisms used to verify the accuracy of information concerning the ownership of self-hosted addresses.

(59) At present, Directive (EU) 2015/849 only applies to two categories of crypto-asset service providers, namely, custodial wallet providers and providers engaged in exchange services between virtual currencies and fiat currencies. In order to close existing loopholes in the anti-money laundering and counter-terrorist financing framework and to align Union law with international recommendations, Directive (EU) 2015/849 should be amended to include all categories of crypto-asset service providers as defined in Regulation (EU) 2023/1114, which covers a broader range of crypto-asset service providers. In particular, with a view to ensuring that crypto-asset service providers are subject to the same requirements and level of supervision as credit and financial institutions, it is appropriate to update the list of obliged entities by including crypto-asset service providers within the category of financial institutions for the purpose of Directive (EU) 2015/849. In addition, taking into account that traditional financial institutions also fall within the definition of crypto-asset service providers when offering such services, the identification of crypto-asset service providers as financial institutions allows for a single consistent set of rules that applies to entities providing both traditional financial services and crypto-asset services. Directive (EU) 2015/849 should also be amended in order to ensure that crypto-asset service providers are able to appropriately mitigate the money laundering and terrorist financing risks to which they are exposed.

(60) Relationships established between crypto-asset service providers and entities established in third countries for the purpose of executing transfers of crypto-assets or the provision of similar crypto-asset services present similarities to correspondent banking relationships established with a third country's respondent institution. As those relationships are characterised by an ongoing and repetitive nature, they should be considered a type of correspondent relationship and be subject to specific enhanced due diligence measures similar in principle to those applied in the context of banking and financial services. In particular, crypto-asset service providers should, when establishing a new correspondent relationship with a respondent entity, apply specific enhanced due diligence measures in order to identify and assess the risk exposure of that respondent, based on its reputation, the quality of supervision and its anti-money laundering and counter-terrorist financing (AML/CFT) controls. Based on the information gathered, the correspondent crypto-asset service providers should implement appropriate risk mitigating measures, which should take into account in particular the potential higher risk of money

([22]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

laundering and terrorist financing posed by unregistered and unlicensed entities. That is especially relevant as long as the implementation of the FATF standards relating to crypto-assets at global level remains uneven, which poses additional risks and challenges. EBA should provide guidance on how crypto-asset service providers should conduct the enhanced due diligence and should specify the appropriate risk mitigating measures, including the minimum action to be taken, when interacting with unregistered or unlicensed entities which provide crypto-asset services.

(61) Regulation (EU) 2023/1114 has established a comprehensive regulatory framework for crypto-asset service providers which harmonises the rules pertaining to the authorisation and operation of crypto-asset service providers across the Union. In order to avoid duplication of requirements, Directive (EU) 2015/849 should be amended to remove registration requirements in relation to those categories of crypto-asset service providers which will become subject to a single licensing regime under Regulation (EU) 2023/1114.

(62) Since the objectives of this Regulation, namely to fight money laundering and the financing of terrorism, including by implementing international standards and by ensuring the availability of basic information on payers and payees of transfer of funds, and on originators and beneficiaries of transfers of crypto-assets, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(63) This Regulation is subject to Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([23]). It respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.

(64) In order to ensure consistency with Regulation (EU) 2023/1114, this Regulation should apply from the date of application of that Regulation. By that date, Member States should also transpose the amendments to Directive (EU) 2015/849.

(65) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 22 September 2021 ([24]),

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Subject matter, scope and definitions

Article 1

Subject matter

This Regulation lays down rules on the information on payers and payees accompanying transfers of funds, in any currency, and on the information on originators and beneficiaries accompanying transfers of crypto-assets, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers or crypto-asset service providers involved in the transfer of funds or transfer of crypto-assets is established or has its registered office, as applicable, in the Union. In addition, this Regulation lays down rules on internal policies, procedures and controls to ensure implementation of restrictive measures where at least one of the payment service providers or crypto-asset service providers involved in the transfer of funds or transfer of crypto-assets is established or has its registered office, as applicable, in the Union.

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

([24]) OJ C 524, 29.12.2021, p. 10.

Article 2

Scope

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider or an intermediary payment service provider established in the Union. It shall also apply to transfers of crypto-assets, including transfers of crypto-assets executed by means of crypto-ATMs, where the crypto-asset service provider, or the intermediary crypto-asset service provider, of either the originator or the beneficiary has its registered office in the Union.

2. This Regulation shall not apply to the services listed in Article 3, points (a) to (m) and point (o), of Directive (EU) 2015/2366.

3. This Regulation shall not apply to transfers of funds or to transfers of electronic money tokens, as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114, carried out using a payment card, an electronic money instrument, a mobile phone or any other digital or IT prepaid or postpaid device with similar characteristics, provided that the following conditions are met:

(a) that card, instrument or device is used exclusively to pay for goods or services; and

(b) the number of that card, instrument or device accompanies all transfers flowing from the transaction.

However, this Regulation shall apply when a payment card, an electronic money instrument, a mobile phone or any other digital or IT prepaid or postpaid device with similar characteristics is used in order to effect a transfer of funds or electronic money tokens between natural persons acting as consumers for purposes other than trade, business or professional activity.

4. This Regulation shall not apply to persons that have no activity other than to convert paper documents into electronic data and that do so pursuant to a contract with a payment service provider, or to persons that have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems.

This Regulation shall not apply to a transfer of funds where any of the following conditions is met:

(a) it involves the payer withdrawing cash from the payer's own payment account;

(b) it constitutes a transfer of funds to a public authority as payment for taxes, fines or other levies within a Member State;

(c) both the payer and the payee are payment service providers acting on their own behalf;

(d) it is carried out through cheque images exchanges, including truncated cheques.

This Regulation shall not apply to a transfer of crypto-assets where any of the following conditions is met:

(a) both the originator and the beneficiary are crypto-asset service providers acting on their own behalf;

(b) the transfer constitutes a person-to-person transfer of crypto-assets carried out without the involvement of a crypto-asset service provider.

Electronic money tokens, as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114, shall be treated as crypto-assets under this Regulation.

5. A Member State may decide not to apply this Regulation to transfers of funds within its territory to a payee's payment account permitting payment exclusively for the provision of goods or services where all of the following conditions are met:

(a) the payment service provider of the payee is subject to Directive (EU) 2015/849;

(b) the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;

(c) the amount of the transfer of funds does not exceed EUR 1 000.

Article 3

Definitions

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

(1) 'terrorist financing' means terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849;

(2) 'money laundering' means the money laundering activities referred to in Article 1(3) and (4) of Directive (EU) 2015/849;

(3) 'payer' means a person that holds a payment account and allows a transfer of funds from that payment account or, where there is no payment account, that gives a transfer of funds order;

(4) 'payee' means a person that is the intended recipient of the transfer of funds;

(5) 'payment service provider' means the categories of payment service provider referred to in Article 1(1) of Directive (EU) 2015/2366, natural or legal persons benefiting from a waiver pursuant to Article 32 thereof and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC, providing transfer of funds services;

(6) 'intermediary payment service provider' means a payment service provider that is not the payment service provider of the payer or of the payee and that receives and transmits a transfer of funds on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;

(7) 'payment account' means a payment account as defined in Article 4, point (12), of Directive (EU) 2015/2366;

(8) 'funds' means funds as defined in Article 4, point (25), of Directive (EU) 2015/2366;

(9) 'transfer of funds' means any transaction at least partially carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, irrespective of whether the payer and the payee are the same person and irrespective of whether the payment service provider of the payer and that of the payee are one and the same, including:

(a) a credit transfer as defined in Article 4, point (24), of Directive (EU) 2015/2366;

(b) a direct debit as defined in Article 4, point (23), of Directive (EU) 2015/2366;

(c) a money remittance as defined in Article 4, point (22), of Directive (EU) 2015/2366, whether national or cross-border;

(d) a transfer carried out using a payment card, an electronic money instrument, a mobile phone or any other digital or IT prepaid or postpaid device with similar characteristics;

(10) 'transfer of crypto-assets' means any transaction with the aim of moving crypto-assets from one distributed ledger address, crypto-asset account or other device allowing the storage of crypto-assets to another, carried out by at least one crypto-asset service provider acting on behalf of either an originator or a beneficiary, irrespective of whether the originator and the beneficiary are the same person and irrespective of whether the crypto-asset service provider of the originator and that of the beneficiary are one and the same;

(11) 'batch file transfer' means a bundle of several individual transfers of funds or transfers of crypto-assets put together for transmission;

(12) 'unique transaction identifier' means a combination of letters, numbers or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement systems or messaging systems used for the transfer of funds, or determined by a crypto-asset service provider, which permits the traceability of the transaction back to the payer and the payee or the traceability of the transfer of crypto-assets back to the originator and the beneficiary;

(13) 'person-to-person transfer of crypto-assets' means a transfer of crypto-assets without the involvement of any crypto-asset service provider;

(14) 'crypto-asset' means a crypto-asset as defined in Article 3(1), point (5), of Regulation (EU) 2023/1114, except where falling within the categories listed in Article 2(2), (3) and (4) of that Regulation or otherwise qualifying as funds;

(15) 'crypto-asset service provider' means a crypto-asset service provider as defined in Article 3(1), point (15), of Regulation (EU) 2023/1114, where performing one or more crypto-asset services as defined in Article 3(1), point (16), of that Regulation;

(16) 'intermediary crypto-asset service provider' means a crypto-asset service provider that is not the crypto-asset service provider of the originator or of the beneficiary and that receives and transmits a transfer of crypto-assets on behalf of the crypto-asset service provider of the originator or of the beneficiary, or of another intermediary crypto-asset service provider;

(17) 'crypto-asset automated teller machines' or 'crypto-ATMs' means physical or on-line electronic terminals that enable a crypto-asset service provider to perform, in particular, the activity of transfer services for crypto-assets, as referred to in Article 3(1), point (16)(j), of Regulation (EU) 2023/1114;

(18) 'distributed ledger address' means an alphanumeric code that identifies an address on a network using distributed ledger technology (DLT) or similar technology where crypto-assets can be sent or received;

(19) 'crypto-asset account' means an account held by a crypto-asset service provider in the name of one or more natural or legal persons and that can be used for the execution of transfers of crypto-assets;

(20) 'self-hosted address' means a distributed ledger address not linked to either of the following:

(a) a crypto-asset service provider;

(b) an entity not established in the Union and providing services similar to those of a crypto-asset service provider;

(21) 'originator' means a person that holds a crypto-asset account with a crypto-asset service provider, a distributed ledger address or a device allowing the storage of crypto-assets, and allows a transfer of crypto-assets from that account, distributed ledger address, or device, or, where there is no such account, distributed ledger address, or device, a person that orders or initiates a transfer of crypto-assets;

(22) 'beneficiary' means a person that is the intended recipient of the transfer of crypto-assets;

(23) 'legal entity identifier' or 'LEI' means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;

(24) 'distributed ledger technology' or 'DLT' means distributed ledger technology as defined in Article 3(1), point (1), of Regulation (EU) 2023/1114.

CHAPTER II

Obligations on payment service providers

Section 1

Obligations on the payment service provider of the payer

Article 4

Information accompanying transfers of funds

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:

(a) the name of the payer;

(b) the payer's payment account number;

(c) the payer's address including the name of the country, official personal document number and customer identification number, or, alternatively, the payer's date and place of birth; and

(d) subject to the existence of the necessary field in the relevant payments message format, and where provided by the payer to its payment service provider, the current LEI of the payer or, in its absence, any available equivalent official identifier.

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

(a) the name of the payee;

(b) the payee's payment account number; and

(c) subject to the existence of the necessary field in the relevant payments message format, and where provided by the payer to its payment service provider, the current LEI of the payee or, in its absence, any available equivalent official identifier.

3. By way of derogation from paragraph 1, point (b), and paragraph 2, point (b), in the case of a transfer not made to or from a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number.

4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 and, where applicable, in paragraph 3, on the basis of documents, data or information obtained from a reliable and independent source.

5. Verification as referred to in paragraph 4 of this Article shall be deemed to have taken place where one of the following applies:

(a) the identity of the payer has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been retained in accordance with Article 40 of that Directive;

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

Article 5

Transfers of funds within the Union

1. By way of derogation from Article 4(1) and (2), where all payment service providers involved in the payment chain are established in the Union, transfers of funds shall be accompanied by at least the payment account number of both the payer and the payee or, where Article 4(3) applies, the unique transaction identifier, without prejudice to the information requirements laid down in Regulation (EU) No 260/2012, where applicable.

2. Notwithstanding paragraph 1, the payment service provider of the payer shall, within three working days of receiving a request for information from the payment service provider of the payee or from the intermediary payment service provider, make available the following:

(a) for transfers of funds exceeding EUR 1 000, whether such transfers are carried out in a single transaction or in several transactions which appear to be linked, the information on the payer or the payee in accordance with Article 4;

(b) for transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, at least:

(i) the names of the payer and of the payee; and

(ii) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

3. By way of derogation from Article 4(4), in the case of transfers of funds referred to in paragraph 2, point (b), of this Article, the payment service provider of the payer need not verify the information on the payer unless the payment service provider of the payer:

(a) has received the funds to be transferred in cash or in anonymous electronic money; or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

Article 6

Transfers of funds to outside the Union

1. In the case of a batch file transfer from a single payer where the payment service providers of the payees are established outside the Union, Article 4(1) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in Article 4(1), (2) and (3), that that information has been verified in accordance with Article 4(4) and (5), and that the individual transfers carry the payment account number of the payer or, where Article 4(3) applies, the unique transaction identifier.

2. By way of derogation from Article 4(1), and, where applicable, without prejudice to the information required in accordance with Regulation (EU) No 260/2012, where the payment service provider of the payee is established outside the Union, transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, shall be accompanied by at least:

(a) the names of the payer and of the payee; and

(b) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

By way of derogation from Article 4(4), the payment service provider of the payer need not verify the information on the payer referred to in this paragraph unless the payment service provider of the payer:

(a) has received the funds to be transferred in cash or in anonymous electronic money; or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

Section 2

Obligations on the payment service provider of the payee

Article 7

Detection of missing information on the payer or the payee

1. The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The payment service provider of the payee shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the following information on the payer or the payee is missing:

(a) for transfers of funds where the payment service provider of the payer is established in the Union, the information referred to in Article 5;

(b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b);

(c) for batch file transfers where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b), in respect of that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee referred to in paragraph 2 of this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 83 and 84 of Directive (EU) 2015/2366.

4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:

(a) effects the pay-out of the funds in cash or in anonymous electronic money; or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

5. Verification as referred to in paragraphs 3 and 4 of this Article shall be deemed to have taken place where one of the following applies:

(a) the identity of the payee has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been retained in accordance with Article 40 of that Directive;

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payee.

Article 8

Transfers of funds with missing or incomplete information on the payer or the payee

1. The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849 for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving a transfer of funds, that the information referred to in Article 4(1), points (a), (b) and (c), Article 4(2), points (a) and (b), Article 5(1), or Article 6, is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall, on a risk-sensitive basis:

(a) reject the transfer; or

(b) request the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall:

(a) take steps, which may initially include the issuing of warnings and setting of deadlines, before proceeding to a rejection, restriction or termination in accordance with point (b) if the required information is still not provided; or

(b) directly reject any future transfers of funds from that payment service provider, or restrict or terminate its business relationship with that payment service provider.

The payment service provider of the payee shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter-terrorist financing provisions.

Article 9

Assessment and reporting

The payment service provider of the payee shall take into account missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU) in accordance with Directive (EU) 2015/849.

Section 3

Obligations on intermediary payment service providers

Article 10

Retention of information on the payer and the payee accompanying the transfer

Intermediary payment service providers shall ensure that all the information received on the payer and the payee that accompanies a transfer of funds is retained with the transfer.

Article 11

Detection of missing information on the payer or the payee

1. The intermediary payment service provider shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The intermediary payment service provider shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the following information on the payer or the payee is missing:

(a) for transfers of funds where the payment service providers of the payer and the payee are established in the Union, the information referred to in Article 5;

(b) for transfers of funds where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b);

(c) for batch file transfers where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b), in respect of that batch file transfer.

Article 12

Transfers of funds with missing information on the payer or the payee

1. The intermediary payment service provider shall establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required payer and payee information and for taking the appropriate follow-up action.

Where the intermediary payment service provider becomes aware, when receiving a transfer of funds, that the information referred to in Article 4(1), points (a), (b) and (c), Article 4(2), points (a) and (b), Article 5(1), or Article 6, is missing or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), that intermediary payment service provider shall on a risk-sensitive basis:

(a) reject the transfer; or

(b) request the required information on the payer and the payee before or after the transmission of the transfer of funds.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the intermediary payment service provider shall:

(a) take steps, which may initially include the issuing of warnings and setting of deadlines, before proceeding to a rejection, restriction or termination in accordance with point (b) if the required information is still not provided; or

(b) directly reject any future transfers of funds from that payment service provider or restrict or terminate its business relationship with that payment service provider.

The intermediary payment service provider shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter-terrorist financing provisions.

Article 13

Assessment and reporting

The intermediary payment service provider shall take into account missing information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious, and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849.

CHAPTER III

Obligations on crypto-asset service providers

Section 1

Obligations on the crypto-asset service provider of the originator

Article 14

Information accompanying transfers of crypto-assets

1. The crypto-asset service provider of the originator shall ensure that transfers of crypto-assets are accompanied by the following information on the originator:

(a) the name of the originator;

(b) the originator's distributed ledger address, in cases where a transfer of crypto-assets is registered on a network using DLT or similar technology, and the crypto-asset account number of the originator, where such an account exists and is used to process the transaction;

(c) the originator's crypto-asset account number, in cases where a transfer of crypto-assets is not registered on a network using DLT or similar technology;

(d) the originator's address, including the name of the country, official personal document number and customer identification number, or, alternatively, the originator's date and place of birth; and

(e) subject to the existence of the necessary field in the relevant message format, and where provided by the originator to its crypto-asset service provider, the current LEI or, in its absence, any other available equivalent official identifier of the originator.

2. The crypto-asset service provider of the originator shall ensure that transfers of crypto-assets are accompanied by the following information on the beneficiary:

(a) the name of the beneficiary;

(b) the beneficiary's distributed ledger address, in cases where a transfer of crypto-assets is registered on a network using DLT or similar technology, and the beneficiary's crypto-asset account number, where such an account exists and is used to process the transaction;

(c) the beneficiary's crypto-asset account number, in cases where a transfer of crypto-assets is not registered on a network using DLT or similar technology; and

(d) subject to the existence of the necessary field in the relevant message format, and where provided by the originator to its crypto-asset service provider, the current LEI or, in its absence, any other available equivalent official identifier of the beneficiary.

3. By way of derogation from paragraph 1, point (c), and paragraph 2, point (c), in the case of a transfer of crypto-assets not registered on a network using DLT or similar technology and not made to or from a crypto-asset account, the crypto-asset service provider of the originator shall ensure that the transfer of crypto-assets is accompanied by a unique transaction identifier.

4. The information referred to in paragraphs 1 and 2 shall be submitted in advance of, or simultaneously or concurrently with, the transfer of crypto-assets and in a secure manner and in accordance with Regulation (EU) 2016/679.

The information referred to in paragraphs 1 and 2 shall not be required to be attached directly to, or be included in, the transfer of crypto-assets.

5. In the case of a transfer of crypto-assets made to a self-hosted address, the crypto-asset service provider of the originator shall obtain and hold the information referred to in paragraphs 1 and 2 and shall ensure that the transfer of crypto-assets can be individually identified.

Without prejudice to specific risk mitigating measures taken in accordance with Article 19b of Directive (EU) 2015/849, in the case of a transfer of an amount exceeding EUR 1 000 to a self-hosted address, the crypto-asset service provider of the originator shall take adequate measures to assess whether that address is owned or controlled by the originator.

6. Before transferring crypto-assets, the crypto-asset service provider of the originator shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.

7. Verification as referred to in paragraph 6 of this Article shall be deemed to have taken place where one of the following applies:

(a) the identity of the originator has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been retained in accordance with Article 40 of that Directive;

(b) Article 14(5) of Directive (EU) 2015/849 applies to the originator.

8. The crypto-asset service provider of the originator shall not allow for the initiation, or execute any transfer, of crypto-assets before ensuring full compliance with this Article.

Article 15

Batch file transfers of crypto-assets

In the case of a batch file transfer of crypto-assets from a single originator, Article 14(1) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in Article 14(1), (2) and (3), that that information has been verified in accordance with Article 14(6) and (7), and that the individual transfers carry the distributed ledger address of the originator, where Article 14(2), point (b), applies, the crypto-asset account number of the originator, where Article 14(2), point (c), applies, or the unique transaction identifier, where Article 14(3) applies.

Section 2

Obligations on the crypto-asset service provider of the beneficiary

Article 16

Detection of missing information on the originator or the beneficiary

1. The crypto-asset service provider of the beneficiary shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the information referred to in Article 14(1) and (2) on the originator and the beneficiary is included in, or follows, the transfer or batch file transfer of crypto-assets.

2. In the case of a transfer of crypto-assets made from a self-hosted address, the crypto-asset service provider of the beneficiary shall obtain and hold the information referred to in Article 14(1) and (2) and shall ensure that the transfer of crypto-assets can be individually identified.

Without prejudice to specific risk mitigating measures taken in accordance with Article 19b of Directive (EU) 2015/849, in the case of a transfer of an amount exceeding EUR 1 000 from a self-hosted address, the crypto-asset service provider of the beneficiary shall take adequate measures to assess whether that address is owned or controlled by the beneficiary.

3. Before making the crypto-assets available to the beneficiary, the crypto-asset service provider of the beneficiary shall verify the accuracy of the information on the beneficiary referred to in Article 14(2) on the basis of documents, data or information obtained from a reliable and independent source.

4. Verification as referred to in paragraphs 2 and 3 of this Article shall be deemed to have taken place where one of the following applies:

(a) the identity of the beneficiary has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been retained in accordance with Article 40 of that Directive;

(b) Article 14(5) of Directive (EU) 2015/849 applies to the beneficiary.

Article 17

Transfers of crypto-assets with missing or incomplete information on the originator or the beneficiary

1. The crypto-asset service provider of the beneficiary shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject, return or suspend a transfer of crypto-assets lacking the required complete information on the originator and the beneficiary and for taking the appropriate follow-up action.

Where the crypto-asset service provider of the beneficiary becomes aware that the information referred to in Article 14(1) or (2), or in Article 15, is missing or incomplete, that crypto-asset service provider shall, on a risk-sensitive basis and without undue delay:

(a) reject the transfer or return the transferred crypto-assets to the originator's crypto-asset account; or

(b) request the required information on the originator and the beneficiary before making the crypto-assets available to the beneficiary.

2. Where a crypto-asset service provider repeatedly fails to provide the required information on the originator or the beneficiary, the crypto-asset service provider of the beneficiary shall:

(a) take steps, which may initially include the issuing of warnings and setting of deadlines, before proceeding to a rejection, restriction or termination in accordance with point (b) if the required information is still not provided; or

(b) directly reject any future transfers of crypto-assets to or from, or restrict or terminate its business relationship with, that crypto-asset service provider.

The crypto-asset service provider of the beneficiary shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter-terrorist financing provisions.

Article 18

Assessment and reporting

The crypto-asset service provider of the beneficiary shall take into account missing or incomplete information on the originator or the beneficiary as a factor when assessing whether a transfer of crypto-assets, or any related transaction, is suspicious and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849.

Section 3

Obligations on intermediary crypto-asset service providers

Article 19

Retention of information on the originator and the beneficiary accompanying the transfer

Intermediary crypto-asset service providers shall ensure that all the information received on the originator and the beneficiary that accompanies a transfer of crypto-assets is transmitted with the transfer and that records of such information are retained and made available on request to the competent authorities.

Article 20

Detection of missing information on the originator or the beneficiary

The intermediary crypto-asset service provider shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the information on the originator or the beneficiary referred to in Article 14(1), points (a), (b) and (c), and Article 14(2), points (a), (b) and (c), has been submitted previously, simultaneously or concurrently with the transfer or batch file transfer of crypto-assets, including where the transfer is made to or from a self-hosted address.

Article 21

Transfers of crypto-assets with missing information on the originator or the beneficiary

1. The intermediary crypto-asset service provider shall establish effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject, return or suspend a transfer of crypto-assets lacking the required information on the originator and the beneficiary and for taking the appropriate follow up action.

Where the intermediary crypto-asset service provider becomes aware, when receiving a transfer of crypto-assets, that the information referred to in Article 14(1), points (a), (b) and (c), and Article 14(2), points (a), (b) and (c), or Article 15(1), is missing or incomplete, that intermediary crypto-asset service provider shall, on a risk-sensitive basis and without undue delay:

(a) reject the transfer or return the transferred crypto-assets; or

(b) request the required information on the originator and the beneficiary before making the transmission of the transfer of crypto-assets.

2. Where the crypto-asset service provider repeatedly fails to provide the required information on the originator or the beneficiary, the intermediary crypto-asset service provider shall:

(a) take steps, which may initially include the issuing of warnings and setting of deadlines, before proceeding to a rejection, restriction or termination in accordance with point (b) if the required information is still not provided; or

(b) directly reject any future transfers of crypto-assets to or from, or restrict or terminate its business relationship with, that crypto-asset service provider.

The intermediary crypto-asset service provider shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter-terrorist financing provisions.

Article 22

Assessment and reporting

The intermediary crypto-asset service provider shall take into account missing information on the originator or the beneficiary as a factor when assessing whether a transfer of crypto-assets, or any related transaction, is suspicious, and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849.

CHAPTER IV

Common measures applicable by payment service providers and crypto-asset service providers

Article 23

Internal policies, procedures and controls to ensure implementation of restrictive measures

Payment service providers and crypto-asset service providers shall have in place internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures when performing transfers of funds and crypto-assets under this Regulation.

The European Banking Authority (EBA) shall issue guidelines by 30 December 2024 specifying the measures referred to in this Article.

CHAPTER V

Information, data protection and record-retention

Article 24

Provision of information

Payment service providers and crypto-asset service providers shall respond fully and without delay, including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed, and in accordance with the procedural requirements laid down in the national law of the Member State in which they are established or have their registered office, as applicable, to enquiries exclusively from the authorities responsible for preventing and combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.

Article 25

Data protection

1. The processing of personal data under this Regulation is subject to Regulation (EU) 2016/679. Personal data that is processed pursuant to this Regulation by the Commission or EBA is subject to Regulation (EU) 2018/1725.

2. Personal data shall be processed by payment service providers and crypto-asset service providers on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.

3. Payment service providers and crypto-asset service providers shall provide new clients with the information required pursuant to Article 13 of Regulation (EU) 2016/679 before establishing a business relationship or carrying out an occasional transaction. That information shall be provided in a concise, transparent, intelligible and easily accessible form in accordance with Article 12 of Regulation (EU) 2016/679 and shall, in particular, include a general notice concerning the legal obligations of payment service providers and crypto-asset service providers under this Regulation when processing personal data for the purposes of the prevention of money laundering and terrorist financing.

4. Payment service providers and crypto-asset service providers shall ensure at all times that the transmission of any personal data on the parties involved in a transfer of funds or a transfer of crypto-assets is conducted in accordance with Regulation (EU) 2016/679.

The European Data Protection Board shall, after consulting EBA, issue guidelines on the practical implementation of data protection requirements for transfers of personal data to third countries in the context of transfers of crypto-assets. EBA shall issue guidelines on suitable procedures for determining whether to execute, reject, return or suspend a transfer of crypto-assets in situations where compliance with data protection requirements for the transfer of personal data to third countries cannot be ensured.

Article 26

Record retention

1. Information on the payer and the payee or on the originator and beneficiary shall not be retained for longer than strictly necessary. Payment service providers of the payer and of the payee shall retain records of the information referred to in Articles 4 to 7, and crypto-asset service providers of the originator and beneficiary shall retain records of the information referred to in Articles 14 to 16, for a period of five years.

2. Upon expiry of the retention period referred to in paragraph 1, payment service providers and crypto-asset service providers shall ensure that the personal data is deleted, unless otherwise provided for by national law which determines under which circumstances payment service providers and crypto-asset service providers may or shall further retain such data. Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and where they consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five years.

3. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and a payment service provider holds information or documents relating to those pending proceedings, the payment service provider may retain that information or those documents in accordance with national law for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

Article 27

Cooperation among competent authorities

The exchange of information among competent authorities and with relevant third-country authorities under this Regulation shall be subject to Directive (EU) 2015/849.

CHAPTER VI

Sanctions and monitoring

Article 28

Administrative sanctions and measures

1. Without prejudice to the right to provide for and impose criminal sanctions, Member States shall lay down the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions and measures provided for shall be effective, proportionate and dissuasive and shall be consistent with those laid down in accordance with Chapter VI, Section 4, of Directive (EU) 2015/849.

Member States may decide not to lay down rules on administrative sanctions or measures for breach of the provisions of this Regulation which are subject to criminal sanctions in their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

2. Member States shall ensure that, where obligations apply to payment service providers and crypto-asset service providers, in the event of a breach of provisions of this Regulation sanctions or measures can, subject to national law, be applied to the members of the management body of the relevant service provider and to any other natural person who, under national law, is responsible for the breach.

3. Member States shall notify the rules referred to in paragraph 1 to the Commission and to the permanent internal committee on anti-money-laundering and countering terrorist financing referred to in Article 9a(7) of Regulation (EU) No 1093/2010. Member States shall notify the Commission and that permanent internal committee without undue delay of any subsequent amendments thereto.

4. In accordance with Article 58(4) of Directive (EU) 2015/849, competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely to ensure that those administrative sanctions or measures produce the desired results and to coordinate their action when dealing with cross-border cases.

5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 29 committed for their benefit by any person acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:

(a) power to represent the legal person;

(b) authority to take decisions on behalf of the legal person;

(c) authority to exercise control within the legal person.

6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 of this Article has made it possible to commit one of the breaches referred to in Article 29 for the benefit of that legal person by a person under its authority.

7. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Regulation in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such other authorities;

(d) by application to the competent judicial authorities.

In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and to coordinate their action when dealing with cross-border cases.

Article 29

Specific provisions

Member States shall ensure that their administrative sanctions and measures include at least those laid down in Article 59(2) and (3) of Directive (EU) 2015/849 in the event of the following breaches of this Regulation:

(a) repeated or systematic failure by a payment service provider to accompany the transfer of funds with the required information on the payer or the payee, in breach of Article 4, 5 or 6, or by a crypto-asset service provider to accompany the transfer of crypto-assets with the required information on the originator and beneficiary, in breach of Article 14 or 15;

(b) repeated, systematic or serious failure by a payment service provider or crypto-asset service provider to retain records, in breach of Article 26;

(c) failure by a payment service provider to implement effective risk-based procedures, in breach of Article 8 or 12, or by a crypto-asset service provider to implement effective risk-based procedures, in breach of Article 17;

(d) serious failure by an intermediary payment service provider to comply with Article 11 or 12 or by an intermediary crypto-asset service provider to comply with Article 19, 20 or 21.

Article 30

Publication of sanctions and measures

In accordance with Article 60(1), (2) and (3) of Directive (EU) 2015/849, the competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles 28 and 29 of this Regulation without undue delay, including information on the type and nature of the breach and the identity of the persons responsible for it, if necessary and proportionate after a case-by-case evaluation.

Article 31

Application of sanctions and measures by competent authorities

1. When determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including those listed in Article 60(4) of Directive (EU) 2015/849.

2. As regards administrative sanctions and measures imposed in accordance with this Regulation, Article 62 of Directive (EU) 2015/849 shall apply.

Article 32

Reporting of breaches

1. Member States shall establish effective mechanisms to encourage the reporting to competent authorities of breaches of this Regulation.

Those mechanisms shall include at least those referred to in Article 61(2) of Directive (EU) 2015/849.

2. Payment service providers and crypto-asset service providers, in cooperation with the competent authorities, shall establish appropriate internal procedures for their employees, or persons in a comparable position, to report breaches internally through a secure, independent, specific and anonymous channel, proportionate to the nature and size of the payment service provider or the crypto-asset service provider concerned.

Article 33

Monitoring

1. Member States shall require competent authorities to monitor effectively and to take the measures necessary to ensure compliance with this Regulation and encourage, through effective mechanisms, the reporting of breaches of the provisions of this Regulation to competent authorities.

2. By 31 December 2026, and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter VI, with particular regard to cross-border cases.

CHAPTER VII

Implementing powers

Article 34

Committee procedure

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER VIII

Derogations

Article 35

Agreements with countries and territories which do not form part of the territory of the Union

1. The Commission may authorise any Member State to conclude an agreement with a third country or with a territory outside the territorial scope of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) as referred to in Article 355 TFEU (the 'country or territory concerned'), which contains derogations from this Regulation, in order to allow transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.

Such agreements may be authorised only where all of the following conditions are met:

(a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a monetary convention with the Union represented by a Member State;

(b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State;

(c) the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

2. A Member State wishing to conclude an agreement as referred to in paragraph 1 shall submit a request to the Commission and provide it with all the information necessary for the appraisal of the request.

3. Upon receipt by the Commission of such a request, transfers of funds between that Member State and the country or territory concerned shall be provisionally treated as transfers of funds within that Member State until a decision is reached in accordance with this Article.

4. If, within two months of receipt of the request, the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned and specify the additional information required.

5. Within one month of receipt of all the information that it considers to be necessary for the appraisal of the request, the Commission shall notify the requesting Member State accordingly and shall transmit copies of the request to the other Member States.

6. Within three months of the notification referred to in paragraph 5 of this Article, the Commission shall decide by means of an implementing act in accordance with Article 34(2) whether to authorise the Member State concerned to conclude the agreement that is the subject of the request.

The Commission shall, in any event, adopt a decision as referred to in the first subparagraph of this paragraph within 18 months of receipt of the request.

CHAPTER IX

Other provisions

Article 36

Guidelines

EBA shall issue guidelines addressed to the competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010 on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12 of this Regulation. By 30 June 2024, EBA shall issue guidelines addressed to the competent authorities and to the crypto-asset service providers on measures to be taken as regards the implementation of Articles 14 to 17 and Articles 19 to 22 of this Regulation.

EBA shall issue guidelines specifying technical aspects of the application of this Regulation to direct debits as well as the measures to be taken by payment initiation service providers, as defined in Article 4, point (18), of Directive (EU) 2015/2366, under this Regulation, taking into account their limited role in payment transactions.

EBA shall issue guidelines, addressed to competent authorities, on the characteristics of a risk-based approach to supervision of crypto-asset service providers and the steps to be taken when conducting such supervision.

EBA shall ensure a regular dialogue with stakeholders on the development of technical interoperable solutions with the view of facilitating the implementation of the requirements laid down in this Regulation.

Article 37

Review

1. By 12 months after the entry into force of a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, the Commission shall review this Regulation and shall, if appropriate, propose amendments in order to ensure a consistent approach and alignment with the Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

2. By 1 July 2026, the Commission, after consulting EBA, shall issue a report assessing the risks posed by transfers to or from self-hosted addresses or entities not established in the Union, as well as the need for specific measures to mitigate those risks, and propose, if appropriate, amendments to this Regulation.

3. By 30 June 2027, the Commission shall submit to the European Parliament and to the Council a report on the application and enforcement of this Regulation accompanied, if appropriate, by a legislative proposal.

The report referred to in the first subparagraph shall include the following elements:

(a) an assessment of the effectiveness of the measures provided for in this Regulation and of compliance with this Regulation by payment service providers and crypto-asset service providers;

(b) an assessment of the technological solutions for complying with the obligations imposed on crypto-asset service providers under this Regulation, including of the latest development of technologically sound and interoperable solutions for complying with this Regulation and of the use of DLT analytic tools for identifying the origin and destination of transfers of crypto-assets and for performing a 'know your transaction' (KYT) assessment;

(c) an assessment of the effectiveness and suitability of the *de minimis* thresholds related to transfers of funds, in particular with respect to the scope of application and the set of information accompanying transfers, and an assessment of the need to lower or remove such thresholds;

(d) assessment of the costs and benefits of introducing *de minimis* thresholds related to the set of information accompanying transfers of crypto-assets, including an assessment of the related money laundering and terrorist financing risks;

(e) an analysis of the trends in the use of self-hosted addresses to perform transfers without the involvement of a third party, together with an assessment of the related money laundering and terrorist financing risks and an evaluation of the need, effectiveness and enforceability of additional mitigation measures, such as specific obligations on providers of hardware and software wallets and limitation, control or prohibition of transfers involving self-hosted addresses.

That report shall take into account new developments in the field of anti-money laundering and counter-terrorist financing, as well as relevant evaluations, assessments and reports in that field drawn up by international organisations and standard setters, law enforcement authorities and intelligence agencies, crypto-asset service providers or other reliable sources.

CHAPTER X

Final provisions

Article 38

Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

(1) in Article 2(1), point (3), points (g) and (h) are deleted;

(2) Article 3 is amended as follows:

(a) in point (2), the following point is added:

'(g) crypto-asset service providers;';

(b) point (8) is replaced by the following:

'(8) 'correspondent relationship' means:

(a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;

(b) the relationships between and among credit institutions and financial institutions, including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers or relationships established for transactions in crypto-assets or transfers of crypto-assets;';

(c) points 18 and 19 are replaced by the following:

'(18) "crypto-asset" means a crypto-asset as defined in Article 3(1), point (5), of Regulation (EU) 2023/1114 of the European Parliament and of the Council (*), except where falling within the categories listed in Article 2(2), (3) and (4) of that Regulation or otherwise qualifying as funds;

(19) "crypto-asset service provider" means a crypto-asset service provider as defined in Article 3(1), point (15), of Regulation (EU) 2023/1114, where performing one or more crypto-asset services as defined in Article 3 (1), point (16), of that Regulation, with the exception of providing advice on crypto-assets as referred to in Article 3(1), point (16)(h), of that Regulation;

(*) 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).';

(d) the following point is added:

'(20) "self-hosted address" means a self-hosted address as defined in Article 3, point (20), of Regulation (EU) 2023/1113 of the European Parliament and of the Council (*).

(*) Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (OJ L 150, 9.6.2023, p. 1).';

(3) in Article 18, the following paragraphs are added:

'5. By 30 December 2024, EBA shall issue guidelines on risk variables and risk factors to be taken into account by crypto-asset service providers when entering into business relationships or carrying out transactions in crypto-assets.

6. EBA shall clarify, in particular, how the risk factors listed in Annex III shall be taken into account by crypto-asset service providers including when carrying out transactions with persons and entities which are not covered by this Directive. To that end, EBA shall pay particular attention to products, transactions and technologies that have the potential to facilitate anonymity, such as privacy wallets, mixers or tumblers.

Where situations of higher risk are identified, the guidelines referred to in paragraph 5 shall include enhanced due diligence measures that obliged entities shall consider applying to mitigate such risks, including the adoption of appropriate procedures to detect the origin or destination of crypto-assets.';

(4) the following articles are inserted:

'Article 19a

1. Member States shall require crypto-asset service providers to identify and assess the risk of money laundering and terrorist financing associated with transfers of crypto-assets directed to or originating from a self-hosted address. To that end, crypto-asset service providers shall have in place internal policies, procedures and controls. Member States shall require crypto-asset service providers to apply mitigating measures commensurate with the risks identified. Those mitigating measures shall include one or more of the following:

(a) taking risk-based measures to identify, and verify the identity of, the originator or beneficiary of a transfer made to or from a self-hosted address or the beneficial owner of such originator or beneficiary, including through reliance on third parties;

(b) requiring additional information on the origin and destination of the transferred crypto-assets;

(c) conducting enhanced ongoing monitoring of those transactions;

(d) any other measure to mitigate and manage the risks of money laundering and terrorist financing as well as the risk of non-implementation and evasion of targeted financial sanctions and proliferation financing-related targeted financial sanctions.

2. By 30 December 2024, EBA shall issue guidelines to specify the measures referred to in this Article, including the criteria and means for identification and verification of the identity of the originator or beneficiary of a transfer made to or from a self-hosted address, in particular through reliance on third parties, taking into account the latest technological developments.

Article 19b

1. By way of derogation from Article 19, with respect to cross-border correspondent relationships involving the execution of crypto-asset services as defined in Article 3(1), point (16), of Regulation (EU) 2023/1114, with the exception of point (h) of that point, with a respondent entity not established in the Union and providing similar services, including transfers of crypto-assets, Member States shall, in addition to the customer due diligence measures laid down in Article 13 of this Directive, require crypto-asset service providers, when entering into a business relationship with such an entity, to:

(a) determine if the respondent entity is licensed or registered;

(b) gather sufficient information about the respondent entity to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the entity and the quality of supervision;

(c) assess the respondent entity's AML/CFT controls;

(d) obtain approval from senior management before establishing new correspondent relationships;

(e) document the respective responsibilities of each party to the correspondent relationship;

(f) with respect to payable-through crypto-asset accounts, be satisfied that the respondent entity has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent entity, and that it is able to provide relevant customer due diligence data to the correspondent entity, upon request.

Where crypto-asset service providers decide to terminate correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision.

Crypto-asset service providers shall update the due diligence information for the correspondent relationship on a regular basis or when new risks emerge in relation to the respondent entity.

2. Member States shall ensure crypto-asset service providers take into account the information referred to in paragraph 1 in order to determine, on a risk-sensitive basis, the appropriate measures to be taken to mitigate the risks associated with the respondent entity.

3. By 30 June 2024, EBA shall issue guidelines to specify the criteria and elements that crypto-asset service providers shall take into account when conducting the assessment referred to in paragraph 1 and the risk mitigating measures referred to in paragraph 2, including the minimum action to be taken by crypto-asset service providers where the respondent entity is not registered or licensed.';

(5) the following article is inserted:

'*Article 24a*

By 1 January 2024, EBA shall issue guidelines specifying how the enhanced customer due diligence measures in this Section apply when obliged entities perform crypto-asset services as defined in Article 3(1), point (16), of Regulation (EU) 2023/1114, with the exception of point (h) of that point, as well as transfers of crypto-assets as defined in Article 3, point (10), of Regulation (EU) 2023/1113. In particular, EBA shall specify how and when those obliged entities shall obtain additional information on the originator and beneficiary.';

(6) in Article 45, paragraph 9 is replaced by the following:

'9. Member States may require electronic money issuers as defined in Article 2, point (3), of Directive 2009/110/EC, payment service providers as defined in Article 4, point (11), of Directive (EU) 2015/2366 and crypto-asset service providers established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.';

(7) in Article 47, paragraph 1 is replaced by the following:

'1. Member States shall ensure that currency exchange and cheque-cashing offices and trust or company service providers are licensed or registered, and that providers of gambling services are regulated.';

(8) in Article 67, the following paragraph is added:

'3. Member States shall adopt and publish, by 30 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 2(1), point 3, Article 3, point (2)(g), Article 3, points (8), (18), (19) and (20), Article 19a(1), Article 19b(1) and (2), Article 45(9) and Article 47(1). They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from 30 December 2024.'.

Article 39

Repeal

Regulation (EU) 2015/847 is repealed with effect from the date of application of this Regulation.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 40

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*.

It shall apply from 30 December 2024.

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

Done at Brussels, 31 May 2023.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	P. KULLGREN

ANNEX I

REPEALED REGULATION WITH THE AMENDMENT THERETO

Regulation (EU) 2015/847 of the European Parliament and of the Council (OJ L 141, 5.6.2015, p. 1)	
Regulation (EU) 2019/2175 of the European Parliament and of the Council (OJ L 334, 27.12.2019, p. 1)	[Only Article 6]

ANNEX II

CORRELATION TABLE

Regulation (EU) 2015/847	This Regulation
Article 1	Article 1
Article 2(1), (2) and (3)	Article 2(1), (2) and (3)
Article 2(4), first and second subparagraphs	Article 2(4), first and second subparagraphs
—	Article 2(4), third and fourth subparagraphs
Article 2(5)	Article 2(5)
Article 3, introductory wording	Article 3, introductory wording
Article 3, points 1 to 9	Article 3, points 1 to 9
—	Article 3, point 10
Article 3, point 10	Article 3, point 11
Article 3, point 11	Article 3, point 12
Article 3, point 12	—
—	Article 3, points 13 to 24
Article 4(1), introductory wording	Article 4(1), introductory wording
Article 4(1), points (a), (b) and (c)	Article 4(1), points (a), (b) and (c)
—	Article 4(1), point (d)
Article 4(2), introductory wording	Article 4(2), introductory wording
Article 4(2), points (a) and (b)	Article 4(2), points (a) and (b)
—	Article 4(2), point (c)
Article 4(3) to (6)	Article 4(3) to (6)
Articles 5 to 13	Articles 5 to 13
—	Articles 14 to 23
Article 14	Article 24

Regulation (EU) 2015/847	This Regulation
Article 15(1), (2) and (3)	Article 25(1), (2) and (3)
Article 15(4), sole subparagraph	Article 25(4), first subparagraph
—	Article 25(4), second subparagraph
Article 16	Article 26
—	Article 27
Article 17	Article 28
Article 18	Article 29
Article 19	Article 30
Article 20	Article 31
Article 21	Article 32
Article 22	Article 33
Article 23	Article 34
Article 24(1) to (6)	Article 35(1) to (6)
Article 24(7)	—
Article 25, sole subparagraph	Article 36, first subparagraph
—	Article 36, second, third and fourth subparagraph
—	Article 37
—	Article 38
Article 26	Article 39
Article 27	Article 40
Annex	—
—	Annex I
—	Annex II

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) It is important to ensure that Union legislative acts on financial services are fit for the digital age, and contribute to a future-proof economy that works for people, including by enabling the use of innovative technologies. The Union has a policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including the uptake of distributed ledger technology (DLT). It is expected that many applications of distributed ledger technology, including blockchain technology, that have not yet been fully studied will continue to result in new types of business activity and business models that, together with the crypto-asset sector itself, will lead to economic growth and new employment opportunities for Union citizens.

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

(3) Some crypto-assets, in particular those that qualify as financial instruments as defined in Directive 2014/65/EU of the European Parliament and of the Council ([4]), fall within the scope of existing Union legislative acts on financial services. Therefore, a full set of Union rules already applies to issuers of such crypto-assets and to firms conducting activities related to such crypto-assets.

([1]) OJ C 152, 29.4.2021, p. 1.
([2]) OJ C 155, 30.4.2021, p. 31.
([3]) Position of the European Parliament of 20 April 2023 (not yet published in the Official Journal) and decision of the Council of 16 May 2023.
([4]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(4) Other crypto-assets, however, fall outside of the scope of Union legislative acts on financial services. At present, there are no rules, other than those in respect of anti-money laundering, for the provision of services related to such unregulated crypto-assets, including for the operation of trading platforms for crypto-assets, the exchange of crypto-assets for funds or other crypto-assets, and providing custody and administration of crypto-assets on behalf of clients. The absence of such rules leaves holders of those crypto-assets exposed to risks, in particular in fields not covered by consumer protection rules. The absence of such rules can also result in substantial risks to market integrity, including in terms of market abuse as well as in terms of financial crime. To address those risks, some Member States have put in place specific rules for all, or a subset of, crypto-assets that fall outside the scope of Union legislative acts on financial services, and other Member States are considering whether to legislate in the field of crypto-assets.

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

(6) A dedicated and harmonised framework for markets in crypto-assets is therefore necessary at Union level in order to provide specific rules for crypto-assets and related services and activities that are not yet covered by Union legislative acts on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of protection of retail holders and the integrity of markets in crypto-assets. A clear framework should enable crypto-asset service providers to scale up their businesses on a cross-border basis and facilitate their access to banking services to enable them to run their activities smoothly. A Union framework for markets in crypto-assets should provide for the proportionate treatment of issuers of crypto-assets and crypto-asset service providers, thereby giving rise to equal opportunities in respect of market entry and the ongoing and future development of markets in crypto-assets. It should also promote financial stability and the smooth operation of payment systems, and address monetary policy risks that could arise from crypto-assets that aim to stabilise their price in relation to a specific asset or basket of assets. Proper regulation maintains the competitiveness of the Member States on international financial and technological markets and provides clients with significant benefits in terms of access to cheaper, faster and safer financial services and asset management. The Union framework for markets in crypto-assets should not regulate the underlying technology. Union legislative acts should avoid imposing an unnecessary and disproportionate regulatory burden on the use of technology, since the Union and the Member States seek to maintain competitiveness on a global market.

(7) The consensus mechanisms used for the validation of transactions in crypto-assets might have principal adverse impacts on the climate and other environment-related adverse impacts. Such consensus mechanisms should therefore deploy more environmentally-friendly solutions and ensure that any principal adverse impact that they might have on the climate, and any other environment-related adverse impact, are adequately identified and disclosed by issuers of crypto-assets and crypto-asset service providers. When determining whether adverse impacts are principal, account should be taken of the principle of proportionality and the size and volume of the crypto-asset issued. The European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([5]), in cooperation with the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU)

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

No 1093/2010 of the European Parliament and of the Council ([6]), should therefore be mandated to develop draft regulatory technical standards to further specify the content, methodologies and presentation of information in relation to sustainability indicators with regard to adverse impacts on climate and other environment-related adverse impacts, and to outline key energy indicators. The draft regulatory technical standards should also ensure coherence of disclosures by issuers of crypto-assets and by crypto-asset service providers. When developing the draft regulatory technical standards, ESMA should take into account the various types of consensus mechanisms used for the validation of transactions in crypto-assets, their characteristics and the differences between them. ESMA should also take into account existing disclosure requirements, ensure complementarity and consistency, and avoid increasing the burden on companies.

(8) Markets in crypto-assets are global and thus inherently cross-border. Therefore, the Union should continue to support international efforts to promote convergence in the treatment of crypto-assets and crypto-asset services through international organisations or bodies such as the Financial Stability Board, the Basel Committee on Banking Supervision and the Financial Action Task Force.

(9) Union legislative acts on financial services should be guided by the principles of 'same activities, same risks, same rules' and of technology neutrality. Therefore, crypto-assets that fall under existing Union legislative acts on financial services should remain regulated under the existing regulatory framework, regardless of the technology used for their issuance or their transfer, rather than this Regulation. Accordingly, this Regulation expressly excludes from its scope crypto-assets that qualify as financial instruments as defined in Directive 2014/65/EU, those that qualify as deposits as defined in Directive 2014/49/EU of the European Parliament and of the Council ([7]), including structured deposits as defined in Directive 2014/65/EU, those that qualify as funds as defined in Directive (EU) 2015/2366 of the European Parliament and of the Council ([8]), except if they qualify as electronic money tokens ('e-money tokens'), those that qualify as securitisation positions as defined in Regulation (EU) 2017/2402 of the European Parliament and of the Council ([9]), and those that qualify as non-life or life insurance contracts, pension products or schemes and social security schemes. Having regard to the fact that electronic money and funds received in exchange for electronic money should not be treated as deposits in accordance with Directive 2009/110/EC of the European Parliament and of the Council ([10]), e-money tokens cannot be treated as deposits that are excluded from the scope of this Regulation.

(10) This Regulation should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles. The value of such unique and non-fungible crypto-assets is attributable to each crypto-asset's unique characteristics and the utility it gives to the holder of the token. Nor should this Regulation apply to crypto-assets representing services or physical assets that are unique and non-fungible, such as product guarantees or real estate. While unique and non-fungible crypto-assets might be traded on the marketplace and be accumulated speculatively, they are not readily interchangeable and the relative value of one such crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which those crypto-assets can have a financial use, thus limiting risks to holders and the financial system and justifying their exclusion from the scope of this Regulation.

(11) The fractional parts of a unique and non-fungible crypto-asset should not be considered unique and non-fungible. The issuance of crypto-assets as non-fungible tokens in a large series or collection should be considered an indicator of their fungibility. The mere attribution of a unique identifier to a crypto-asset is not, in and of itself,

([6]) 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).

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

([8]) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

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

([10]) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

sufficient to classify it as unique and non-fungible. The assets or rights represented should also be unique and non-fungible in order for the crypto-asset to be considered unique and non-fungible. The exclusion of crypto-assets that are unique and non-fungible from the scope of this Regulation is without prejudice to the qualification of such crypto-assets as financial instruments. This Regulation should also apply to crypto-assets that appear to be unique and non-fungible, but whose *de facto* features or whose features that are linked to their *de facto* uses, would make them either fungible or not unique. In that regard, when assessing and classifying crypto-assets, competent authorities should adopt a substance over form approach whereby the features of the crypto-asset in question determine the classification and not its designation by the issuer.

(12) It is appropriate to exclude certain intragroup transactions and some public entities from the scope of this Regulation as they do not pose risks to investor protection, market integrity, financial stability, the smooth operation of payment systems, monetary policy transmission or monetary sovereignty. Public international organisations that are exempt include the International Monetary Fund and the Bank for International Settlements.

(13) Digital assets issued by central banks acting in their monetary authority capacity, including central bank money in digital form, or crypto-assets issued by other public authorities, including central, regional and local administrations, should not be subject to the Union framework for markets in crypto-assets. Nor should related services provided by such central banks when acting in their monetary authority capacity or other public authorities be subject to that Union framework.

(14) For the purposes of ensuring a clear delineation between, on the one hand, crypto-assets covered by this Regulation and, on the other hand, financial instruments, ESMA should be mandated to issue guidelines on the criteria and conditions for the qualification of crypto-assets as financial instruments. Those guidelines should also allow for a better understanding of the cases where crypto-assets that are otherwise considered unique and not fungible with other crypto-assets might qualify as financial instruments. In order to promote a common approach towards the classification of crypto-assets, EBA, ESMA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([11]) (the 'European Supervisory Authorities' or 'ESAs') should promote discussions on such classification. Competent authorities should be able to request opinions from the ESAs on the classification of crypto-assets, including classifications proposed by offerors or persons seeking admission to trading. Offerors or persons seeking admission to trading are primarily responsible for the correct classification of crypto-assets, which might be challenged by the competent authorities, both before the date of publication of the offer and at any time thereafter. Where the classification of a crypto-asset appears to be inconsistent with this Regulation or other relevant Union legislative acts on financial services, the ESAs should make use of their powers under Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 in order to ensure a consistent and coherent approach to such classification.

(15) Pursuant to Article 127(2), fourth indent, of the Treaty on the Functioning of the European Union (TFEU), one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. The European Central Bank (ECB) may, pursuant to Article 22 of Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank attached to the Treaties, make regulations to ensure efficient and sound clearing and payment systems within the Union and with other countries. To that end, the ECB has adopted regulations concerning requirements for systemically important payment systems. This Regulation is without prejudice to the responsibilities of the ECB and the national central banks in the ESCB to ensure efficient and sound clearing and payment systems within the Union and with third countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, EBA, ESMA and the ECB should cooperate closely when preparing the relevant draft technical standards under this Regulation. Furthermore, it is crucial for the ECB and the national central banks to have access to information when fulfilling their tasks relating to the oversight of payment systems, including clearing of payments. In addition, this Regulation should be without prejudice to Council Regulation (EU) No 1024/2013 ([12]) and should be interpreted in such a way that it is not in conflict with that Regulation.

([11]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

([12]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

(16) Any legislative act adopted in the field of crypto-assets should be specific and future-proof, be able to keep pace with innovation and technological developments and be founded on an incentive-based approach. The terms 'crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets that currently fall outside the scope of Union legislative acts on financial services. Any legislative act adopted in the field of crypto-assets should also contribute to the objective of combating money laundering and terrorist financing. For that reason, entities offering services falling within the scope of this Regulation should also comply with applicable anti-money laundering and counter-terrorist financing rules of the Union, which integrate international standards.

(17) Digital assets that cannot be transferred to other holders do not fall within the definition of crypto-assets. Therefore, digital assets that are accepted only by the issuer or the offeror and that are technically impossible to transfer directly to other holders should be excluded from the scope of this Regulation. An example of such digital assets includes loyalty schemes where the loyalty points can be exchanged for benefits only with the issuer or offeror of those points.

(18) This Regulation classifies crypto-assets into three types, which should be distinguished from one another and subject to different requirements depending on the risks they entail. The classification is based on whether the crypto-assets seek to stabilise their value by reference to other assets. The first type consists of crypto-assets that aim to stabilise their value by referencing only one official currency. The function of such crypto-assets is very similar to the function of electronic money as defined in Directive 2009/110/EC. Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are likely to be used for making payments. Those crypto-assets should be defined in this Regulation as 'e-money tokens'. The second type of crypto-assets concerns 'asset-referenced tokens', which aim to stabilise their value by referencing another value or right, or combination thereof, including one or several official currencies. That second type covers all other crypto-assets, other than e-money tokens, whose value is backed by assets, so as to avoid circumvention and to make this Regulation future-proof. Finally, the third type consists of crypto-assets other than asset-referenced tokens and e-money tokens, and covers a wide variety of crypto-assets, including utility tokens.

(19) At present, despite their similarities, electronic money and crypto-assets referencing an official currency differ in some important aspects. Holders of electronic money as defined in Directive 2009/110/EC are always provided with a claim against the electronic money issuer and have a contractual right to redeem, at any moment and at par value, the monetary value of the electronic money held. By contrast, some crypto-assets referencing an official currency do not provide their holders with such a claim against the issuers of such crypto-assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-assets referencing an official currency do not provide a claim at par value with the currency they are referencing or they limit the redemption period. The fact that holders of such crypto-assets do not have a claim against the issuers of such crypto-assets, or that such claim is not at par value with the currency those crypto-assets are referencing, could undermine the confidence of holders of those crypto-assets. Accordingly, to avoid circumvention of the rules laid down in Directive 2009/110/EC, any definition of e-money tokens should be as wide as possible to capture all types of crypto-assets referencing a single official currency. In addition, strict conditions on the issuance of e-money tokens should be laid down, including an obligation for e-money tokens to be issued either by a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council ([13]), or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of e-money tokens should ensure that holders of such tokens can exercise their right to redeem their tokens at any time and at par value against the currency referencing those tokens. Because e-money tokens are crypto-assets and can raise new challenges in terms of protection of retail holders and market integrity that are specific to crypto-assets, they should also be subject to the rules laid down in this Regulation to address those challenges.

([13]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(20) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens and e-money tokens, as well as for issuers of asset-referenced tokens and e-money tokens. Issuers of crypto-assets are entities that have control over the creation of crypto-assets.

(21) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consists of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets for funds or other crypto-assets, providing custody and administration of crypto-assets on behalf of clients, and providing transfer services for crypto-assets on behalf of clients. A second category of such services consists of the placing of crypto-assets, the reception or transmission of orders for crypto-assets on behalf of clients, the execution of orders for crypto-assets on behalf of clients, providing advice on crypto-assets and providing portfolio management of crypto-assets. Any person that provides crypto-asset services on a professional basis in accordance with this Regulation should be deemed to be a 'crypto-asset service provider'.

(22) This Regulation should apply to natural and legal persons and certain other undertakings and to the crypto-asset services and activities performed, provided or controlled, directly or indirectly, by them, including when part of such activities or services is performed in a decentralised manner. Where crypto-asset services are provided in a fully decentralised manner without any intermediary, they should not fall within the scope of this Regulation. This Regulation covers the rights and obligations of issuers of crypto-assets, offerors, persons seeking admission to trading of crypto-assets and crypto-asset service providers. Where crypto-assets have no identifiable issuer, they should not fall within the scope of Title II, III or IV of this Regulation. Crypto-asset service providers providing services in respect of such crypto-assets should, however, be covered by this Regulation.

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

(24) In order to ensure their protection, prospective retail holders of crypto-assets should be informed of the characteristics, functions and risks of the crypto-assets that they intend to purchase. When making an offer to the public of crypto-assets other than asset-referenced tokens or e-money tokens or when seeking admission to trading of such crypto-assets in the Union, offerors or persons seeking admission to trading should draw up, notify to their competent authority and publish an information document containing mandatory disclosures ('a crypto-asset white paper'). A crypto-asset white paper should contain general information on the issuer, offeror or person seeking admission to trading, on the project to be carried out with the capital raised, on the offer to the public of crypto-assets or on their admission to trading, on the rights and obligations attached to the crypto-assets, on the underlying technology used for such crypto-assets and on the related risks. However, the crypto-asset white paper should not contain a description of risks that are unforeseeable and very unlikely to materialise. The information contained in the crypto-asset white paper as well as in the relevant marketing communications, such as advertising messages and marketing material, and including through new channels such as social media platforms, should be fair, clear and not misleading. Advertising messages and marketing material should be consistent with the information provided in the crypto-asset white paper.

(25) Crypto-asset white papers, including their summaries, and the operating rules of trading platforms for crypto-assets should be drawn up in at least one of the official languages of the home Member State and of any host Member State or, alternatively, in a language customary in the sphere of international finance. At the time of adoption of this Regulation, the English language is the language customary in the sphere of international finance but that could evolve in the future.

(26) In order to ensure a proportionate approach, no requirements of this Regulation should apply to offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens that are offered for free or that are automatically created as a reward for the maintenance of a distributed ledger or the validation of transactions in the context of a consensus mechanism. In addition, no requirements should apply to offers of utility tokens providing access to an existing good or service, enabling the holder to collect the good or use the service, or when the holder of the crypto-assets has the right to use them only in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror. Such exemptions should not include crypto-assets representing stored goods that are not intended to be collected by the purchaser

following the purchase. Neither should the limited network exemption apply to crypto-assets that are typically designed for a continuously growing network of service providers. The limited network exemption should be evaluated by the competent authority each time that an offer, or the aggregate value of more than one offer, exceeds a certain threshold, meaning that a new offer should not automatically benefit from an exemption of a previous offer. Those exemptions should cease to apply when the offeror, or another person acting on the offeror's behalf, communicates the offeror's intention of seeking admission to trading or the exempted crypto-assets are admitted to trading.

(27) In order to ensure a proportionate approach, the requirements of this Regulation to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets other than asset-referenced tokens or e-money tokens that are made to fewer than 150 persons per Member State, or that are addressed solely to qualified investors where the crypto-assets can only be held by such qualified investors. SMEs and start-ups should not be subject to excessive and disproportionate administrative burden. Accordingly, offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens in the Union whose total consideration does not exceed EUR 1 000 000 over a period of 12 months should also be exempt from the obligation to draw up a crypto-asset white paper.

(28) The mere admission to trading or the publication of bid and offer prices should not, in and of itself, be regarded as an offer to the public of crypto-assets. Such admission or publication should only constitute an offer to the public of crypto-assets where it includes a communication constituting an offer to the public under this Regulation.

(29) Even though some offers of crypto-assets other than asset-referenced tokens or e-money tokens are exempt from various obligations of this Regulation, Union legislative acts that ensure consumer protection, such as Directive 2005/29/EC of the European Parliament and of the Council ([14]) or Council Directive 93/13/EEC ([15]), including any information obligations contained therein, remain applicable to offers to the public of crypto-assets where they concern business-to-consumer relationships.

(30) Where an offer to the public concerns utility tokens for goods that do not yet exist or services that are not yet in operation, the duration of the offer to the public as described in the crypto-asset white paper should not exceed 12 months. That limitation on the duration of the offer to the public is unrelated to the moment when the goods or services come into existence or become operational and can be used by the holder of a utility token after the expiry of the offer to the public.

(31) In order to enable supervision, offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens should, before making any offer to the public of crypto-assets in the Union or before those crypto-assets are admitted to trading, notify their crypto-asset white paper and, upon request of the competent authority, their marketing communications, to the competent authority of the Member State where they have their registered office or, where they have no registered office in the Union, of the Member State where they have a branch. Offerors that are established in a third country should notify their crypto-asset white paper and, upon request of the competent authority, their marketing communications, to the competent authority of the Member State where they intend to offer the crypto-assets.

(32) The operator of a trading platform should be responsible for complying with the requirements of Title II of this Regulation where crypto-assets are admitted to trading on its own initiative and the crypto-asset white paper has not already been published in the cases required by this Regulation. The operator of a trading platform should also be responsible for complying with those requirements where it has concluded a written agreement to that end with the person seeking admission to trading. The person seeking admission to trading should remain responsible when it provides misleading information to the operator of the trading platform. The person seeking admission to trading should also remain responsible for matters not delegated to the operator of the trading platform.

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

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

(33) In order to avoid undue administrative burden, competent authorities should not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, have the power to request amendments to the crypto-asset white paper and to any marketing communications and, where necessary, to request the inclusion of additional information in the crypto-asset white paper.

(34) Competent authorities should be able to suspend or prohibit an offer to the public of crypto-assets other than asset-referenced tokens or e-money tokens, or the admission of such crypto-assets to trading, where such an offer to the public or admission to trading does not comply with the applicable requirements of this Regulation, including where the crypto-asset white paper or the marketing communications are not fair, not clear or are misleading. Competent authorities should also have the power to publish a warning that the offeror or person seeking admission to trading has failed to meet those requirements, either on its website or through a press release.

(35) Crypto-asset white papers that have been duly notified to a competent authority and marketing communications should be published. After such publication, offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens should be allowed to offer those crypto-assets throughout the Union and to seek admission to trading of such crypto-assets in the Union.

(36) Offerors of crypto-assets other than asset-referenced tokens or e-money tokens should have effective arrangements in place to monitor and safeguard the funds or other crypto-assets raised during their offer to the public. Those arrangements should also ensure that any funds or other crypto-assets collected from holders or prospective holders are duly returned as soon as possible where an offer to the public is cancelled for any reason. The offeror should ensure that the funds or other crypto-assets collected during the offer to the public are safeguarded by a third party.

(37) In order to further ensure protection of retail holders of crypto-assets, retail holders that acquire crypto-assets other than asset-referenced tokens or e-money tokens directly from the offeror, or from a crypto-asset service provider placing the crypto-assets on behalf of the offeror, should be provided with a right of withdrawal during a period of 14 days after their acquisition. In order to ensure the smooth completion of a time-limited offer to the public of crypto-assets, the right of withdrawal should not be exercised by retail holders after the end of the subscription period. Furthermore, the right of withdrawal should not apply where crypto-assets other than asset-referenced tokens or e-money tokens are admitted to trading prior to the purchase by the retail holder because, in such a case, the price of such crypto-assets depends on the fluctuations of the markets in crypto-assets. Where the retail holder has a right of withdrawal under this Regulation, the right of withdrawal under Directive 2002/65/EC of the European Parliament and of the Council ([16]) should not apply.

(38) Offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens should act honestly, fairly and professionally, should communicate with holders and prospective holders of crypto-assets in a manner that is fair, clear and not misleading, should identify, prevent, manage and disclose conflicts of interest, and should have effective administrative arrangements to ensure that their systems and security protocols meet Union standards. In order to assist competent authorities in their supervisory tasks, ESMA, in close cooperation with EBA, should be mandated to issue guidelines on those systems and security protocols in order to further specify those Union standards.

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

(40) Asset-referenced tokens could be widely adopted by holders to transfer value or as a means of exchange and thus pose increased risks in terms of protection of holders of crypto-assets, in particular retail holders, and in terms of market integrity, as compared to other crypto-assets. Issuers of asset-referenced tokens should therefore be subject to more stringent requirements than issuers of other crypto-assets.

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

(41) Where a crypto-asset falls within the definition of an asset-referenced token or e-money token, Title III or IV of this Regulation should apply, irrespective of how the issuer intends to design the crypto-asset, including the mechanism for maintaining a stable value of the crypto-asset. The same applies to so-called algorithmic 'stable-coins' that aim to maintain a stable value in relation to an official currency, or in relation to one or several assets, via protocols, that provide for the increase or decrease in the supply of such crypto-assets in response to changes in demand. Offerors or persons seeking admission to trading of algorithmic crypto-assets that do not aim to stabilise the value of the crypto-assets by referencing one or several assets should in any event comply with Title II of this Regulation.

(42) To ensure the proper supervision and monitoring of offers to the public of asset-referenced tokens, issuers of asset-referenced tokens should have a registered office in the Union.

(43) Offers to the public of asset-referenced tokens in the Union or seeking admission to trading of such crypto-assets should be permitted only where the competent authority has authorised the issuer of such crypto-assets to do so and has approved the relevant crypto-asset white paper. The authorisation requirement should however not apply where the asset-referenced tokens are addressed solely to qualified investors or where the offer to the public of the asset-referenced tokens is below EUR 5 000 000. In those cases, the issuer of the asset-referenced tokens should still be required to draw up a crypto-asset white paper to inform buyers about the characteristics and risks of the asset-referenced tokens and should also be required to notify the crypto-asset white paper to the competent authority before its publication.

(44) Credit institutions authorised under Directive 2013/36/EU should not need another authorisation under this Regulation in order to offer or seek the admission to trading of asset-referenced tokens. National procedures established under that Directive should apply but should be complemented by a requirement to notify the competent authority of the home Member State designated under this Regulation of the elements that enable that authority to verify the issuer's ability to offer or seek the admission to trading of asset-referenced tokens. Credit institutions that offer or seek the admission to trading of asset-referenced tokens should be subject to all requirements that apply to issuers of asset-referenced tokens with the exception of authorisation requirements, own funds requirements and the approval procedure with respect to qualifying shareholders, as those matters are covered by Directive 2013/36/EU and by Regulation (EU) No 575/2013 of the European Parliament and of the Council ([17]). A crypto-asset white paper drawn up by such credit institution should be approved by the competent authority of the home Member State before publication. Credit institutions authorised under the provisions of national law transposing Directive 2013/36/EU and which offer or seek the admission to trading of asset-referenced tokens should be subject to the administrative powers set out under that Directive and also those under this Regulation, including a restriction or limitation of a credit institution's business and a suspension or prohibition of an offer to the public of asset-referenced tokens. Where the obligations applying to such credit institutions under this Regulation overlap with those of Directive 2013/36/EU, the credit institutions should comply with the more specific or stricter requirements, thereby ensuring compliance with both sets of rules. The notification procedure for credit institutions intending to offer or seek the admission to trading of asset-referenced tokens under this Regulation should be without prejudice to the provisions of national law transposing Directive 2013/36/EU that set out procedures for the authorisation of credit institutions to provide the services listed in Annex I to that Directive.

(45) A competent authority should refuse authorisation on objective and demonstrable grounds, including where the business model of the applicant issuer of asset-referenced tokens might pose a serious threat to market integrity, financial stability or the smooth operation of payment systems. The competent authority should consult EBA, ESMA, the ECB and, where the issuer is established in a Member State whose official currency is not the euro or where an official currency of a Member State that is not the euro is referenced by the asset-referenced token, the central bank of that Member State before granting or refusing an authorisation. Non-binding opinions of EBA and ESMA should address the classification of the crypto-asset, while the ECB and, where applicable, the central bank of the Member State concerned should provide the competent authority with an opinion on the risks to financial stability, the smooth operation of payment systems, monetary policy transmission or monetary sovereignty. The

([17]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

competent authorities should refuse authorisation in cases where the ECB or the central bank of a Member State gives a negative opinion on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty. Where authorisation is granted to an applicant issuer of asset-referenced tokens, the crypto-asset white paper drawn up by that issuer should also be deemed approved. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer those crypto-assets on the internal market and to seek an admission to trading. In the same way, the crypto-asset white paper should also be valid for the entire Union, without any possibility for Member States to impose additional requirements.

(46) In several cases where the ECB is consulted under this Regulation, its opinion should be binding insofar as it obliges a competent authority to refuse, withdraw or limit an authorisation of the issuer of asset-referenced tokens or to impose specific measures on the issuer of asset-referenced tokens. Article 263, first paragraph, TFEU provides that the Court of Justice of the European Union (the 'Court of Justice') should review the legality of acts of the ECB other than recommendations or opinions. It should be recalled, however, that it is for the Court of Justice to interpret that provision in light of the substance and effects of an opinion of the ECB.

(47) To ensure protection of retail holders, issuers of asset-referenced tokens should always provide holders of such tokens with information that is complete, fair, clear and not misleading. Crypto-asset white papers for asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets and on the rights provided to holders.

(48) In addition to the information provided in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on an ongoing basis. In particular, they should disclose on their website the amount of asset-referenced tokens in circulation and the value and composition of the reserve assets. Issuers of asset-referenced tokens should also disclose any event that has or is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespective of whether such crypto-assets are admitted to trading.

(49) To ensure protection of retail holders, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best interests of the holders of asset-referenced tokens. Issuers of asset-referenced tokens should also put in place a clear procedure for handling complaints received from holders of asset-referenced tokens.

(50) Issuers of asset-referenced tokens should put in place a policy to identify, prevent, manage and disclose conflicts of interest that can arise from their relationships with their shareholders or members, or with any shareholder or member, whether direct or indirect, that has a qualifying holding in the issuers, or with the members of their management body, their employees, holders of asset-referenced tokens or third-party service providers.

(51) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or to which they might be exposed. The members of the management body of such issuers should be fit and proper and should, in particular, not have been convicted of any offence in the field of money laundering or terrorist financing or of any other offence that would affect their good repute. The shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in such issuers, should be of sufficiently good repute and should, in particular, not have been convicted of any offence in the field of money laundering or terrorist financing or of any other offence that would affect their good repute. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy that aims to ensure, in the case of an interruption to their systems and procedures, the performance of their core activities related to the asset-referenced tokens. Issuers of asset-referenced tokens should also have strong internal control mechanisms and effective procedures for risk management, as well as a system that guarantees the integrity and confidentiality of information received. Those obligations aim to ensure the protection of holders of asset-referenced tokens, in particular retail holders, while not creating unnecessary barriers.

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

(53) To address the risks to the financial stability of the wider financial system, issuers of asset-referenced tokens should be subject to own funds requirements. Those requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should however be able to increase the amount of own funds required based on, inter alia, the evaluation of the risk-management process and internal control mechanisms of the issuer, the quality and volatility of the reserve assets backing the asset-referenced tokens, or the aggregate value and number of transactions settled in asset-referenced tokens.

(54) In order to cover their liability against holders of asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets matching the risks reflected in such liability. The reserve of assets should be used for the benefit of the holders of the asset-referenced tokens when the issuer is not able to fulfil its obligations towards the holders, such as in insolvency. The reserve of assets should be composed and managed in such a way that market and currency risks are covered. Issuers of asset-referenced tokens should ensure the prudent management of the reserve of assets and should, in particular, ensure that the value of the reserve amounts at least to the corresponding value of tokens in circulation and that changes in the reserve are adequately managed to avoid adverse impacts on the markets of the reserve assets. Issuers of asset-referenced tokens should therefore have clear and detailed policies that describe, inter alia, the composition of the reserve of assets, the allocation of assets included therein, a comprehensive assessment of the risks raised by the reserve assets, the procedure for the issuance and redemption of the asset-referenced tokens, the procedure to increase and decrease the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuers. Issuers of asset-referenced tokens that are marketed both in the Union and in third countries should ensure that their reserve of assets is available to cover the issuers' liability towards Union holders. The requirement to hold the reserve of assets with firms subject to Union law should therefore apply in proportion to the share of asset-referenced tokens that is expected to be marketed in the Union.

(55) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets, issuers of asset-referenced tokens should have an adequate custody policy for their reserve assets. That policy should ensure that the reserve assets are fully segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be held in custody by a crypto-asset service provider, by a credit institution authorised under Directive 2013/36/EU or by an investment firm authorised under Directive 2014/65/EU. That should not exclude the possibility of delegating the holding of the physical assets to another entity. Crypto-asset service providers, credit institutions or investment firms that act as custodians of reserve assets should be responsible for the loss of such reserve assets vis-à-vis the issuer or the holders of the asset-referenced tokens, unless they prove that such loss has arisen as a result of an external event beyond their reasonable control. Concentrations of the custodians of reserve assets should be avoided. However, in certain situations, that might not be possible due to a lack of suitable alternatives. In such cases, a temporary concentration should be deemed acceptable.

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

(57) Holders of asset-referenced tokens should have a permanent right of redemption so that the issuer is required to redeem the asset-referenced tokens at any time, upon request by the holders of the asset-referenced tokens. The issuer of asset-referenced tokens should redeem either by paying an amount in funds, other than electronic money, equivalent to the market value of the assets referenced by the asset-referenced tokens, or by delivering the assets referenced by the tokens. The issuer of asset-referenced tokens should always provide the holder with the option of redeeming the asset-referenced tokens in funds other than electronic money denominated in the same official currency that the issuer accepted when selling the tokens. The issuer should provide sufficiently detailed and easily understandable information on the different forms of redemption available.

(58) To reduce the risk that asset-referenced tokens are used as a store of value, issuers of asset-referenced tokens and crypto-asset service providers, when providing crypto-asset services related to asset-referenced tokens, should not grant interest to holders of asset-referenced tokens related to the length of time during which such holders are holding those asset-referenced tokens.

(59) Asset-referenced tokens and e-money tokens should be deemed significant when they meet, or are likely to meet, certain criteria, including a large customer base, a high market capitalisation, or a large number of transactions. As such, they could be used by a large number of holders and their use could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty. Those significant asset-referenced tokens and e-money tokens should, therefore, be subject to more stringent requirements than asset-referenced tokens or e-money tokens that are not deemed significant. In particular, issuers of significant asset-referenced tokens should be subject to higher capital requirements, to interoperability requirements and they should establish a liquidity management policy. The appropriateness of the thresholds to classify an asset-referenced token or e-money token as significant should be reviewed by the Commission as part of its review of the application of this Regulation. That review should, where appropriate, be accompanied by a legislative proposal.

(60) A comprehensive monitoring of the entire ecosystem of issuers of asset-referenced tokens is important in order to determine the true size and impact of such tokens. To capture all transactions that are conducted in relation to any given asset-referenced token, the monitoring of such tokens therefore 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.

(61) It is particularly important to estimate transactions settled with asset-referenced tokens associated to uses as a means of exchange within a single currency area, namely, those associated to payments of debts including in the context of transactions with merchants. Those transactions should not include transactions associated with investment functions and services, such as a means of exchange for funds or other crypto-assets, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets. A use for settlement of transactions in other crypto-assets would be present in cases where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens. Moreover, where asset-referenced tokens are used widely as a means of exchange within a single currency area, issuers should be required to reduce the level of activity. An asset-referenced token should be considered to be used widely as a means of exchange when the average number and average aggregate value of transactions per day associated to uses as a means of exchange within a single currency area is higher than 1 million transactions and EUR 200 000 000 respectively.

(62) Where asset-referenced tokens pose a serious threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty, central banks should be able to request the competent authority to withdraw the authorisation of the issuer of those asset-referenced tokens. Where asset-referenced tokens pose a threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty, central banks should be able to request the competent authority to limit the amount of those asset-referenced tokens to be issued, or to impose a minimum denomination amount.

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

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

(65) Issuers of asset-referenced tokens should have a plan for the orderly redemption of the tokens to ensure that the rights of the holders of the asset-referenced tokens are protected where the issuers are not able to comply with their obligations, including in the event of discontinuation of issuing of the asset-referenced tokens. Where the issuer of asset-referenced tokens is a credit institution or an entity falling within the scope of Directive 2014/59/EU of the European Parliament and of the Council ([18]), the competent authority should consult the responsible resolution authority. That resolution authority should be permitted to examine the redemption plan with a view to identifying any elements in it that might adversely affect the resolvability of the issuer, the resolution strategy of the issuer, or any actions foreseen in the resolution plan of the issuer, and make recommendations to the competent authority with regard to those matters. In doing so, the resolution authority should also be permitted to consider whether any changes are required to the resolution plan or the resolution strategy, in accordance with the provisions of Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council ([19]), as applicable. Such examination by the resolution authority should not affect the powers of the prudential supervisory authority or of the resolution authority, as applicable, to take crisis prevention measures or crisis management measures.

(66) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC. E-money tokens should be deemed to be 'electronic money' as that term is defined in Directive 2009/110/EC and their issuers should, unless specified otherwise in this Regulation, comply with the relevant requirements set out in Directive 2009/110/EC for the taking up, pursuit and prudential supervision of the business of electronic money institutions and the requirements on issuance and redeemability of e-money tokens. Issuers of e-money tokens should draw up a crypto-asset white paper and notify it to their competent authority. Exemptions regarding limited networks, regarding certain transactions by providers of electronic communications networks and regarding electronic money institutions issuing only a limited maximum amount of electronic money, based on the optional exemptions specified in Directive 2009/110/EC, should also apply to e-money tokens. However, issuers of e-money tokens should still be required to draw up a crypto-asset white paper in order to inform buyers about the characteristics and risks of the e-money tokens and should also be required to notify the crypto-asset white paper to the competent authority before its publication.

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

(68) To reduce the risk that e-money tokens are used as store of value, issuers of e-money tokens and crypto-asset service providers when they provide crypto-asset services related to e-money tokens, should not grant interest to holders of e-money tokens, including interest not related to the length of time that such holders hold those e-money tokens.

([18]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([19]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(69) The crypto-asset white paper drawn up by an issuer of e-money tokens should contain all information concerning that issuer and the offer of e-money tokens or their admission to trading that is necessary to enable prospective buyers to make an informed purchase decision and understand the risks relating to the offer of e-money tokens. The crypto-asset white paper should also expressly refer to the right of holders of e-money tokens to redeem their e-money tokens for funds denominated in the official currency that the e-money tokens reference at par value and at any time.

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

(71) Significant e-money tokens could pose greater risks to financial stability than e-money tokens that are not significant and traditional electronic money. Issuers of significant e-money tokens that are electronic money institutions should therefore be subject to additional requirements. Such issuers of significant e-money tokens should in particular be subject to higher capital requirements than issuers of other e-money tokens, be subject to interoperability requirements and establish a liquidity management policy. They should also comply with some of the same requirements that apply to issuers of asset-referenced tokens with regard to reserve of assets, such as those on custody and investment of the reserve of assets. Those requirements for issuers of significant e-money tokens should apply instead of Articles 5 and 7 of Directive 2009/110/EC. As those provisions of Directive 2009/110/EC do not apply to credit institutions when issuing e-money, neither should the additional requirements for significant e-money tokens under this Regulation.

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

(73) In most Member States, the provision of crypto-asset services is not yet regulated despite the potential risks that they pose to investor protection, market integrity and financial stability. To address such risks, this Regulation provides operational, organisational and prudential requirements at Union level applicable to crypto-asset service providers.

(74) In order to enable effective supervision and to eliminate the possibility of evading or circumventing supervision, crypto-asset services should only be provided by legal persons that have a registered office in a Member State in which they carry out substantive business activities, including the provision of crypto-asset services. Undertakings that are not legal persons, such as commercial partnerships, should under certain conditions also be permitted to provide crypto-asset services. It is essential that providers of crypto-asset services maintain effective management of their activities in the Union in order to avoid undermining effective prudential supervision and to ensure the enforcement of requirements under this Regulation intended to ensure investor protection, market integrity and financial stability. Regular close direct contact between supervisors and the responsible management of crypto-asset service providers should be an essential element of such supervision. Crypto-asset service providers should therefore have their place of effective management in the Union, and at least one of the directors should be resident in the Union. The place of effective management means the place where the key management and commercial decisions that are necessary for the conduct of the business are taken.

(75) This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third-country firm on their own initiative. Where a third-country firm provides crypto-asset services on the own initiative of a person established in the Union, the crypto-asset services should not be deemed to be provided in the Union. Where a third-country firm solicits clients or prospective clients in the Union or promotes or advertises crypto-asset services or activities in the Union, its services should not be deemed to be crypto-asset services provided on the own initiative of the client. In such a case, the third-country firm should be authorised as a crypto-asset service provider.

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

(77) In order to ensure the continued protection of the financial system of the Union against the risks of money laundering and terrorist financing, it is necessary to ensure that crypto-asset service providers carry out increased checks on financial operations involving customers and financial institutions from third countries listed as high-risk third countries because they are jurisdictions which have strategic deficiencies in their national anti-money laundering and counter-terrorist financing regimes that pose significant threats to the financial system of the Union as referred to in Directive (EU) 2015/849 of the European Parliament and of the Council ([20]).

(78) Certain firms subject to Union legislative acts on financial services should be allowed to provide all or some crypto-asset services without being required to obtain an authorisation as a crypto-asset service provider under this Regulation if they notify their competent authorities with certain information before providing those services for the first time. In such cases, those firms should be deemed to be crypto-asset service providers and the relevant administrative powers provided in this Regulation, including the power to suspend or prohibit certain crypto-asset services, should apply with respect to them. Those firms should be subject to all requirements applicable to crypto-asset service providers under this Regulation with the exception of authorisation requirements, own funds requirements and the approval procedure regarding shareholders and members that have qualifying holdings, as those matters are covered by the respective Union legislative acts under which they were authorised. The notification procedure for credit institutions intending to provide crypto-asset services under this Regulation should be without prejudice to the provisions of national law transposing Directive 2013/36/EU that set out procedures for the authorisation of credit institutions to provide the services listed in Annex I to that Directive.

(79) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally and in the best interests of their clients. Crypto-asset services should be deemed 'financial services' as defined in Directive 2002/65/EC in cases where they meet the criteria of that Directive. Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to Directive 2002/65/EC as well, unless expressly stated otherwise in this Regulation. Crypto-asset service providers should provide their clients with information that is complete, fair, clear and not misleading and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should establish complaints-handling procedures and should have a robust policy for the identification, prevention, management and disclosure of conflicts of interest.

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

(81) Crypto-asset service providers should be subject to strong organisational requirements. The members of the management body of crypto-asset service providers should be fit and proper and should, in particular, not have been convicted of any offence in the field of money laundering or terrorist financing or of any other offence that would affect their good repute. The shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in crypto-asset service providers should be of sufficiently good repute and should, in particular, not have been convicted of any offence in the field of money laundering or terrorist

([20]) 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).

financing or of any other offence that would affect their good repute. In addition, where the influence exercised by shareholders and members that have qualifying holdings in crypto-asset service providers is likely to be prejudicial to the sound and prudent management of the crypto-asset service provider taking into account, amongst others, their previous activities, the risk of them engaging in illicit activities, or the influence or control by a government of a third country, competent authorities should have the power to address those risks. Crypto-asset service providers should employ management and staff with adequate knowledge, skills and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity plan. They should have sound internal control and risk assessment mechanisms as well as adequate systems and procedures to ensure the integrity and confidentiality of the information received. Crypto-asset service providers should have appropriate arrangements to keep records of all transactions, orders and services related to the crypto-asset services that they provide. They should also have systems in place to detect potential market abuse committed by clients.

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

(83) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients should conclude an agreement with their clients with certain mandatory provisions and should establish and implement a custody policy, which should be made available to clients upon their request in an electronic format. Such agreement should specify, inter alia, the nature of the service provided, which could include the holding of crypto-assets belonging to clients or the means of access to such crypto-assets, in which case the client might keep control of the crypto-assets in custody. Alternatively, the crypto-assets or the means of access to them could be transferred to the full control of the crypto-asset service provider. Crypto-asset service providers that hold crypto-assets belonging to clients, or the means of access to such crypto-assets, should ensure that those crypto-assets are not used for their own account. The crypto-asset service providers should ensure that all crypto-assets held are always unencumbered. Those crypto-asset service providers should also be held liable for any losses resulting from an incident related to information and communication technology ('ICT'), including an incident resulting from a cyber-attack, theft or any malfunctions. Hardware or software providers of non-custodial wallets should not fall within the scope of this Regulation.

(84) To ensure the orderly functioning of markets in crypto-assets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient, should be subject to pre-trade and post-trade transparency requirements adapted to the markets in crypto-assets, and should set transparent and non-discriminatory rules, based on objective criteria, governing access to their platforms. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions. Crypto-asset service providers operating a trading platform for crypto-assets should be able to settle transactions executed on trading platforms on-chain and off-chain, and should ensure a timely settlement. The settlement of transactions should be initiated within 24 hours of a transaction being executed on the trading platform. In the case of an off-chain settlement, the settlement should be initiated on the same business day whereas in the case of an on-chain settlement, the settlement might take longer as it is not controlled by the crypto-asset service provider operating the trading platform.

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

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

(87) When a crypto-asset service provider executing orders for crypto-assets on behalf of clients is the client's counterparty, there might be similarities with the services of exchanging crypto-assets for funds or other crypto-assets. However, in exchanging crypto-assets for funds or other crypto-assets, the price for such exchanges is freely determined by the crypto-asset service provider as a currency exchange. Yet in the execution of orders for crypto-assets on behalf of clients, the crypto-asset service provider should always ensure that it obtains the best possible result for its client, including when it acts as the client's counterparty, in line with its best execution policy. The exchange of crypto-assets for funds or other crypto-assets when made by the issuer or offeror should not be a crypto-asset service.

(88) Crypto-asset service providers that place crypto-assets for potential holders should, before the conclusion of a contract, communicate to those persons information on how they intend to perform their service. To ensure the protection of their clients, crypto-asset service providers that are authorised for the placing of crypto-assets should have in place specific and adequate procedures to prevent, monitor, manage and disclose any conflicts of interest arising from the placing of crypto-assets with their own clients and arising where the proposed price for the placing of crypto-assets has been overestimated or underestimated. The placing of crypto-assets on behalf of an offeror should not be deemed to be a separate offer.

(89) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a client or on their own initiative, or that provide portfolio management of crypto-assets, should make an assessment whether those crypto-asset services or crypto-assets are suitable for the clients, having regard to their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is clear that the crypto-assets are not suitable for the clients, the crypto-asset service providers should not recommend such crypto-asset services or crypto-assets to those clients, nor begin providing portfolio management of crypto-assets. When providing advice on crypto-assets, crypto-asset service providers should provide clients with a report, which should include the suitability assessment specifying the advice given and how it meets the preferences and objectives of clients. When providing portfolio management of crypto-assets, crypto-asset service providers should provide periodic statements to their clients, which should include a review of their activities and of the performance of the portfolio as well as an updated statement on the suitability assessment.

(90) Some crypto-asset services, in particular providing custody and administration of crypto-assets on behalf of clients, the placing of crypto-assets, and transfer services for crypto-assets on behalf of clients, might overlap with payment services as defined in Directive (EU) 2015/2366.

(91) The tools provided by issuers of electronic money to their clients to manage an e-money token might not be distinguishable from the activity of providing custody and administration services as regulated by this Regulation. Electronic money institutions should therefore be able to provide custody services, without prior authorisation under this Regulation to provide crypto-asset services, only in relation to the e-money tokens issued by them.

(92) The activity of traditional electronic money distributors, namely, that of distributing electronic money on behalf of issuers, would amount to the activity of placing of crypto-assets for the purposes of this Regulation. However, natural or legal persons allowed to distribute electronic money under Directive 2009/110/EC should also be able to distribute e-money tokens on behalf of issuers of e-money tokens without being required to obtain prior authorisation under this Regulation to provide crypto-asset services. Such distributors should, therefore, be exempt from the requirement to seek authorisation as a crypto-asset service provider for the activity of the placing of crypto-assets.

(93) A provider of transfer services for crypto-assets should be an entity that provides for the transfer, on behalf of a client, of crypto-assets from one distributed ledger address or account to another. Such transfer service should not include the validators, nodes or miners that might be part of confirming a transaction and updating the state of the underlying distributed ledger. Many crypto-asset service providers also offer some kind of transfer service for crypto-assets as part of, for example, the service of providing custody and administration of crypto-assets on behalf of clients, exchange of crypto-assets for funds or other crypto-assets, or execution of orders for crypto-assets on behalf of clients. Depending on the precise features of the services associated to the transfer of e-money tokens, such services could fall under the definition of payment services in Directive (EU) 2015/2366. In such cases, those transfers should be provided by an entity authorised to provide such payment services in accordance with that Directive.

(94) This Regulation should not address the lending and borrowing of crypto-assets, including e-money tokens, and therefore should not prejudice applicable national law. The feasibility and necessity of regulating such activities should be further assessed.

(95) It is important to ensure confidence in markets in crypto-assets and the integrity of those markets. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all of the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council ([21]) to them. It is therefore necessary to lay down specific rules prohibiting certain behaviours that are likely to undermine user confidence in markets in crypto-assets and the integrity of those markets, including insider dealing, unlawful disclosure of inside information and market manipulation related to crypto-assets. Those bespoke rules on market abuse committed in relation to crypto-assets should also be applied in cases where crypto-assets are admitted to trading.

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

(97) Derivatives that qualify as financial instruments as defined in Directive 2014/65/EU, and whose underlying asset is a crypto-asset, are subject to Regulation (EU) No 596/2014 when traded on a regulated market, multilateral trading facility or organised trading facility. Crypto-assets falling within the scope of this Regulation, which are underlying assets of those derivatives, should be subject to the market abuse provisions of this Regulation.

(98) Competent authorities should be conferred with sufficient powers to supervise the issuance, offer to the public and admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, as well as to supervise crypto-asset service providers. Those powers should include the power to suspend or prohibit an offer to the public or an admission to trading of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. Issuers of crypto-assets other than asset-referenced tokens or e-money tokens should not be subject to supervision under this Regulation when the issuer is not an offeror or a person seeking admission to trading.

([21]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

(99) Competent authorities should also have the power to impose penalties on issuers, offerors or persons seeking admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, and on crypto-asset service providers. When determining the type and level of an administrative penalty or other administrative measure, competent authorities should take into account all relevant circumstances, including the gravity and the duration of the infringement and whether it was committed intentionally.

(100) Given the cross-border nature of markets in crypto-assets, competent authorities should cooperate with each other to detect and deter any infringements of this Regulation.

(101) To facilitate transparency regarding crypto-assets and crypto-asset service providers, ESMA should establish a register of crypto-asset white papers, issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers.

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

(103) Competent authorities in charge of supervision under Directive 2009/110/EC should supervise issuers of e-money tokens. However, given the potential widespread use of significant e-money tokens as a means of payment and the risks they can pose to financial stability, a dual supervision both by competent authorities and by EBA of issuers of significant e-money tokens is necessary. EBA should supervise the compliance by issuers of significant e-money tokens with the specific additional requirements set out in this Regulation for such tokens. Since the specific additional requirements should apply only to electronic money institutions issuing significant e-money tokens, credit institutions issuing significant e-money tokens, to which such requirements do not apply, should remain supervised by their respective competent authorities. The dual supervision should address the very specific nature of the risks posed by e-money tokens, and should not set a precedent for any other Union legislative acts on financial services.

(104) Significant e-money tokens denominated in an official currency of a Member State other than the euro which are used as a means of exchange and in order to settle large volumes of payment transactions can, although unlikely to occur, pose specific risks to the monetary sovereignty of the Member State in whose official currency they are denominated. Where at least 80 % of the number of holders and of the volume of transactions of those significant e-money tokens are concentrated in the home Member State, the supervisory responsibilities should not be transferred to EBA.

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

(106) To supervise issuers of significant asset-referenced tokens and of significant e-money tokens, EBA should have the powers, amongst others, to carry out on-site inspections, take supervisory measures and impose fines.

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

(108) In order to ensure the effectiveness of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of further specifying technical elements of the definitions set out in this Regulation in order to adjust them to market and technological developments, further specifying certain criteria to determine whether an asset-referenced token or an e-money token should be classified as significant, determining when there is a significant investor protection concern or a threat to the proper functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union, further specifying the procedural rules for the exercise of the power of EBA to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments, and further specifying the type and amount of supervisory fees that EBA can charge to the issuers of significant asset-referenced tokens or significant e-money tokens. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([22]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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

(110) The Commission should be empowered to adopt regulatory technical standards developed by EBA and ESMA with regard to: the content, methodologies and presentation of information in a crypto-asset white paper on principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset; the procedure for approval of crypto-asset white papers submitted by credit institutions when issuing asset-referenced tokens; the information that an application for authorisation as an issuer of asset-referenced tokens should contain; the methodology to estimate the quarterly average number and average aggregate value of transactions per day associated to uses of asset-referenced tokens and e-money tokens denominated in a currency which is not an official currency of a Member State as a means of exchange in each single currency area; the requirements, templates and procedures for handling complaints of holders of asset-referenced tokens and of clients of crypto-asset service providers; the requirements for the policies and procedures to identify, prevent, manage and disclose conflicts of interest of issuers of asset-referenced tokens and the details and methodology for the content of that disclosure; the procedure and timeframe for an issuer of asset-referenced tokens and significant e-money tokens to adjust to higher own funds requirements, the criteria for requiring higher own funds, the minimum requirements for the design of stress testing programmes; the liquidity requirements for the reserve of assets; the financial instruments into which the reserve of assets can be invested; detailed content of information necessary to carry out the assessment of the proposed acquisition of the qualifying holding in an issuer of asset-referenced tokens; requirements for additional obligations for issuers of significant asset-referenced tokens; the information that credit institutions, central securities depositories, investment firms, market operators, electronic money institutions, UCITS management companies and alternative investment fund managers who intend to provide crypto-asset services notify to competent authorities; the information that an application for the authorisation of crypto-asset service provider contains; the content, methodologies and presentation of information that the crypto-assets service provider makes publicly available and that is related to principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services; measures ensuring continuity and regularity in the performance of the crypto-asset services and the records to be kept

([22]) OJ L 123, 12.5.2016, p. 1.

of all crypto-asset services, orders and transactions that they undertake; the requirements for the policies to identify, prevent, manage and disclose conflicts of interest of crypto-asset service providers and the details and methodology for the content of that disclosure; the manner in which transparency data of the operator of a trading platform is to be offered and the content and format of order book records regarding the trading platform; the detailed content of the information necessary to carry out the assessment of the proposed acquisition of the qualifying holding in a crypto-asset service provider; the appropriate arrangements, systems and procedures for monitoring and detecting market abuse; the notification template for reporting suspicions of market abuse and coordination procedures between the relevant competent authorities for the detection of market abuse; the information to be exchanged between the competent authorities; a template document for cooperation arrangements between the competent authorities of Member States and supervisory authorities of third countries; the data necessary for the classification of crypto-asset white papers in ESMA's register and the practical arrangements to ensure that such data is machine-readable; the conditions under which certain members of college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens are to be considered most relevant in their category; and the conditions under which it is considered that asset-referenced tokens or e-money tokens are used at a large scale for the purposes of qualifying certain members of that college and details of the practical arrangements for the functioning of that college. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010 and of (EU) No 1095/2010, respectively.

(111) The Commission should be empowered to adopt implementing technical standards developed by EBA and ESMA, with regard to: establishing standard forms, formats and templates for crypto-asset white papers; establishing standard forms, templates and procedures to transmit information for the purposes of the application for authorisation as an issuer of asset-referenced tokens; establishing standard forms, formats and templates for the purposes of reporting on asset-referenced tokens and e-money tokens denominated in a currency which is not an official currency of a Member State that are issued with a value higher than EUR 100 000 000; establishing standard forms, templates and procedures for the notification of information to competent authorities by credit institutions, central securities depositories, investment firms, market operators, electronic money institutions, UCITS management companies and alternative investment fund managers who intend to provide crypto-asset services; establishing standard forms, templates and procedures for the application for authorisation as crypto-asset service providers; determining the technical means for public disclosure of inside information and for delaying the public disclosure of inside information; and establishing standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and between competent authorities, EBA and ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010.

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

(113) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets other than asset-referenced tokens and e-money tokens that have been issued before the date of application of this Regulation, issuers of such crypto-assets should be exempt from the obligation to publish a crypto-asset white paper and certain other requirements of this Regulation. However, certain obligations should apply when such crypto-assets were admitted to trading before the date of application of this Regulation. In order to avoid disruption to existing market participants, transitional provisions are necessary for issuers of asset-referenced tokens that were in operation at the time of entry into application of this Regulation.

(114) Since the national regulatory frameworks applicable to crypto-asset service providers before the entry into application of this Regulation differ among Member States, it is essential that those Member States that do not, at present, have in place strong prudential requirements for crypto-asset service providers currently operating under their regulatory frameworks have the possibility of requiring such crypto-asset service providers to be subject to stricter requirements than those under the national regulatory frameworks. In such cases, Member States should be permitted to not apply, or to reduce, the 18-month transitional period that would otherwise allow crypto-asset service providers to provide services based on their existing national regulatory framework. Such an option for Member States should not set a precedent for any other Union legislative acts on financial services.

(115) Whistleblowers should be able to bring new information to the attention of competent authorities that helps them in detecting infringements of this Regulation and imposing penalties. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation. That should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council ([23]) in order to make it applicable to infringements of this Regulation.

(116) Given that EBA should be mandated with the direct supervision of issuers of significant asset-referenced tokens and of significant e-money tokens, and ESMA should be mandated to make use of its powers in relation to significant crypto-asset service providers, it is necessary to ensure that EBA and ESMA are able to exercise all of their powers and tasks in order to fulfil their objectives of protecting the public interest by contributing to the short-, medium- and long-term stability and effectiveness of the financial system for the Union economy, its citizens and businesses and to ensure that issuers of crypto-assets and crypto-asset service providers are covered by Regulations (EU) No 1093/2010 and (EU) No 1095/2010. Those Regulations should therefore be amended accordingly.

(117) The issuance, offer or seeking of admission to trading of crypto-assets and the provision of crypto-asset services could involve the processing of personal data. Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulation (EU) 2016/679 of the European Parliament and of the Council ([24]) and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([25]).

(118) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 24 June 2021 ([26]).

(119) The date of application of this Regulation should be deferred in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to further specify certain elements of this Regulation,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

1. This Regulation lays down uniform requirements for the offer to the public and admission to trading on a trading platform of crypto-assets other than asset-referenced tokens and e-money tokens, of asset-referenced tokens and of e-money tokens, as well as requirements for crypto-asset service providers.

([23]) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

([24]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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

([26]) OJ C 337, 23.8.2021, p. 4.

2. In particular, this Regulation lays down the following:

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

(b) requirements for the authorisation and supervision of crypto-asset service providers, issuers of asset-referenced tokens and issuers of e-money tokens, as well as for their operation, organisation and governance;

(c) requirements for the protection of holders of crypto-assets in the issuance, offer to the public and admission to trading of crypto-assets;

(d) requirements for the protection of clients of crypto-asset service providers;

(e) measures to prevent insider dealing, unlawful disclosure of inside information and market manipulation related to crypto-assets, in order to ensure the integrity of markets in crypto-assets.

Article 2

Scope

1. This Regulation applies to natural and legal persons and certain other undertakings that are engaged in the issuance, offer to the public and admission to trading of crypto-assets or that provide services related to crypto-assets in the Union.

2. This Regulation does not apply to:

(a) persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies;

(b) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purposes of Article 47;

(c) the ECB, central banks of the Member States when acting in their capacity as monetary authorities, or other public authorities of the Member States;

(d) the European Investment Bank and its subsidiaries;

(e) the European Financial Stability Facility and the European Stability Mechanism;

(f) public international organisations.

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

4. This Regulation does not apply to crypto-assets that qualify as one or more of the following:

(a) financial instruments;

(b) deposits, including structured deposits;

(c) funds, except if they qualify as e-money tokens;

(d) securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402;

(e) non-life or life insurance products falling within the classes of insurance listed in Annexes I and II to Directive 2009/138/EC of the European Parliament and of the Council ([27]) or reinsurance and retrocession contracts referred to in that Directive;

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

(g) officially recognised occupational pension schemes falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council ([28]) or Directive 2009/138/EC;

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

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

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

(i) a pan-European Personal Pension Product as defined in Article 2, point (2), of Regulation (EU) 2019/1238 of the European Parliament and of the Council ([29]);

(j) social security schemes covered by Regulations (EC) No 883/2004 ([30]) and (EC) No 987/2009 of the European Parliament and of the Council ([31]).

5. By 30 December 2024, ESMA shall, for the purposes of paragraph 4, point (a), of this Article issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the conditions and criteria for the qualification of crypto-assets as financial instruments.

6. This Regulation shall be without prejudice to Regulation (EU) No 1024/2013.

Article 3

Definitions

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

(1) 'distributed ledger technology' or 'DLT' means a technology that enables the operation and use of distributed ledgers;

(2) 'distributed ledger' means an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism;

(3) 'consensus mechanism' means the rules and procedures by which an agreement is reached, among DLT network nodes, that a transaction is validated;

(4) 'DLT network node' means a device or process that is part of a network and that holds a complete or partial replica of records of all transactions on a distributed ledger;

(5) 'crypto-asset' means a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology;

(6) 'asset-referenced token' means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies;

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

(8) 'official currency' means an official currency of a country that is issued by a central bank or other monetary authority;

(9) 'utility token' means a type of crypto-asset that is only intended to provide access to a good or a service supplied by its issuer;

(10) 'issuer' means a natural or legal person, or other undertaking, who issues crypto-assets;

(11) 'applicant issuer' means an issuer of asset-referenced tokens or e-money tokens who applies for authorisation to offer to the public or seeks the admission to trading of those crypto-assets;

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

(13) 'offeror' means a natural or legal person, or other undertaking, or the issuer, who offers crypto-assets to the public;

(14) 'funds' means funds as defined in Article 4, point (25), of Directive (EU) 2015/2366;

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

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

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

(15) 'crypto-asset service provider' means a legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services in accordance with Article 59;

(16) 'crypto-asset service' means any of the following services and activities relating to any crypto-asset:

(a) providing custody and administration of crypto-assets on behalf of clients;

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

(c) exchange of crypto-assets for funds;

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

(e) execution of orders for crypto-assets on behalf of clients;

(f) placing of crypto-assets;

(g) reception and transmission of orders for crypto-assets on behalf of clients;

(h) providing advice on crypto-assets;

(i) providing portfolio management on crypto-assets;

(j) providing transfer services for crypto-assets on behalf of clients;

(17) 'providing custody and administration of crypto-assets on behalf of clients' means the safekeeping or controlling, on behalf of clients, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;

(18) 'operation of a trading platform for crypto-assets' means the management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets;

(19) 'exchange of crypto-assets for funds' means the conclusion of purchase or sale contracts concerning crypto-assets with clients for funds by using proprietary capital;

(20) 'exchange of crypto-assets for other crypto-assets' means the conclusion of purchase or sale contracts concerning crypto-assets with clients for other crypto-assets by using proprietary capital;

(21) 'execution of orders for crypto-assets on behalf of clients' means the conclusion of agreements, on behalf of clients, to purchase or sell one or more crypto-assets or the subscription on behalf of clients for one or more crypto-assets, and includes the conclusion of contracts to sell crypto-assets at the moment of their offer to the public or admission to trading;

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

(23) 'reception and transmission of orders for crypto-assets on behalf of clients' means the reception from a person of an order to purchase or sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution;

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

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

(26) 'providing transfer services for crypto-assets on behalf of clients' means providing services of transfer, on behalf of a natural or legal person, of crypto-assets from one distributed ledger address or account to another;

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

(28) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 and authorised under Directive 2013/36/EU;

(29) 'investment firm' means an investment firm as defined in Article 4(1), point (2), of Regulation (EU) No 575/2013 and authorised under Directive 2014/65/EU;

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

(31) 'close links' means close links as defined in Article 4(1), point (35), of Directive 2014/65/EU;

(32) 'reserve of assets' means the basket of reserve assets securing the claim against the issuer;

(33) 'home Member State' means:

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

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

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

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

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

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

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

(35) 'competent authority' means one or more authorities:

(a) designated by each Member State in accordance with Article 93 concerning offerors, persons seeking admission to trading of crypto-assets other than asset-referenced tokens and e-money tokens, issuers of asset-referenced tokens, or crypto-asset service providers;

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

(36) 'qualifying holding' means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10 % of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council ([32]), respectively, taking into account the conditions for the aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the issuer of asset-referenced tokens or the management of the crypto-asset service provider in which that holding subsists;

(37) 'retail holder' means any natural person who is acting for purposes which are outside that person's trade, business, craft or profession;

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

(39) 'client' means any natural or legal person to whom a crypto-asset service provider provides crypto-asset services;

(40) 'matched principal trading' means matched principal trading as defined in Article 4(1), point (38), of Directive 2014/65/EU;

(41) 'payment services' means payment services as defined in Article 4, point (3), of Directive (EU) 2015/2366;

(42) 'payment service provider' means a payment service provider as defined in Article 4, point (11), of Directive (EU) 2015/2366;

(43) 'electronic money institution' means an electronic money institution as defined in Article 2, point (1), of Directive 2009/110/EC;

(44) 'electronic money' means electronic money as defined in Article 2, point (2), of Directive 2009/110/EC;

(45) 'personal data' means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;

(46) 'payment institution' means a payment institution as defined in Article 4, point (4), of Directive (EU) 2015/2366;

(47) 'UCITS management company' means a management company as defined in Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council ([33]);

(48) 'alternative investment fund manager' means an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council ([34]);

(49) 'financial instrument' means financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;

(50) 'deposit' means a deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;

(51) 'structured deposit' means a structured deposit as defined in Article 4(1), point (43), of Directive 2014/65/EU.

2. The Commission shall adopt delegated acts in accordance with Article 139 to supplement this Regulation by further specifying technical elements of the definitions laid down in paragraph 1 of this Article, and to adjust those definitions to market developments and technological developments.

([32]) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

([33]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([34]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

TITLE II

CRYPTO-ASSETS OTHER THAN ASSET-REFERENCED TOKENS OR E-MONEY TOKENS

Article 4

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

1. A person shall not make an offer to the public of a crypto-asset other than an asset-referenced token or e-money token in the Union unless that person:

(a) is a legal person;

(b) has drawn up a crypto-asset white paper in respect of that crypto-asset in accordance with Article 6;

(c) has notified the crypto-asset white paper in accordance with Article 8;

(d) has published the crypto-asset white paper in accordance with Article 9;

(e) has drafted the marketing communications, if any, in respect of that crypto-asset in accordance with Article 7;

(f) has published the marketing communications, if any, in respect of that crypto-asset in accordance with Article 9;

(g) complies with the requirements for offerors laid down in Article 14.

2. Paragraph 1, points (b), (c), (d) and (f), shall not apply to any of the following offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens:

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

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

(c) an offer of a crypto-asset addressed solely to qualified investors where the crypto-asset can only be held by such qualified investors.

3. This Title shall not apply to offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens where any of the following apply:

(a) the crypto-asset is offered for free;

(b) the crypto-asset is automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions;

(c) the offer concerns a utility token providing access to a good or service that exists or is in operation;

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

For the purposes of point (a) of the first subparagraph, a crypto-asset shall not be considered to be offered for free where purchasers are required to provide, or to undertake to provide, personal data to the offeror in exchange for that crypto-asset, or where the offeror of a crypto-asset receives from prospective holders of that crypto-asset any fees, commissions, or monetary or non-monetary benefits in exchange for that crypto-asset.

Where, for each 12-month period starting from the beginning of the initial offer to the public, the total consideration of an offer to the public of a crypto-asset in the circumstances referred to in the first subparagraph, point (d), in the Union exceeds EUR 1 000 000, the offeror shall send a notification to the competent authority containing a description of the offer and explaining why the offer is exempt from this Title pursuant to the first subparagraph, point (d).

Based on the notification referred to in the third subparagraph, the competent authority shall take a duly justified decision where it considers that the activity does not qualify for an exemption as a limited network under the first subparagraph, point (d), and shall inform the offeror accordingly.

4. The exemptions listed in paragraphs 2 and 3 shall not apply where the offeror, or another person acting on the offeror's behalf, makes known in any communication its intention to seek admission to trading of a crypto-asset other than an asset-referenced token or e-money token.

5. Authorisation as a crypto-asset service provider pursuant to Article 59 is not required for providing custody and administration of crypto-assets on behalf of clients or for providing transfer services for crypto-assets in relation to crypto-assets whose offers to the public are exempt pursuant to paragraph 3 of this Article, unless:

(a) there exists another offer to the public of the same crypto-asset and that offer does not benefit from the exemption; or

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

6. Where the offer to the public of the crypto-asset other than an asset-referenced token or e-money token concerns a utility token providing access to goods and services that do not yet exist or are not yet in operation, the duration of the offer to the public as described in the crypto-asset white paper shall not exceed 12 months from the date of publication of the crypto-asset white paper.

7. Any subsequent offer to the public of the crypto-asset other than an asset-referenced token or e-money token shall be deemed a separate offer to the public to which the requirements of paragraph 1 apply, without prejudice to the possible application of paragraph 2 or 3 to the subsequent offer to the public.

No additional crypto-asset white paper shall be required for any subsequent offer to the public of the crypto-asset other than an asset-referenced token or e-money token so long as a crypto-asset white paper has been published in accordance with Articles 9 and 12, and the person responsible for drawing up such white paper consents to its use in writing.

8. Where an offer to the public of a crypto-asset other than an asset-referenced token or e-money token is exempt from the obligation to publish a crypto-asset white paper under paragraph 2 or 3, but a white paper is nevertheless drawn up voluntarily, this Title shall apply.

Article 5

Admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens

1. A person shall not seek admission to trading of a crypto-asset other than an asset-referenced token or e-money token within the Union unless that person:

(a) is a legal person;

(b) has drawn up a crypto-asset white paper in respect of that crypto-asset in accordance with Article 6;

(c) has notified the crypto-asset white paper in accordance with Article 8;

(d) has published the crypto-asset white paper in accordance with Article 9;

(e) has drafted the marketing communications, if any, in respect of that crypto-asset in accordance with Article 7;

(f) has published the marketing communications, if any, in respect of that crypto-asset in accordance with Article 9;

(g) complies with the requirements for persons seeking admission to trading laid down in Article 14.

2. When a crypto-asset is admitted to trading on the initiative of the operator of a trading platform and a crypto-asset white paper has not been published in accordance with Article 9 in the cases required by this Regulation, the operator of that trading platform for crypto-assets shall comply with the requirements set out in paragraph 1 of this Article.

3. By way of derogation from paragraph 1, a person seeking admission to trading of a crypto-asset other than an asset-referenced token or e-money token and the respective operator of the trading platform may agree in writing that it shall be the operator of the trading platform who is required to comply with all or part of the requirements referred to in paragraph 1, points (b) to (g).

The agreement in writing referred to in the first subparagraph of this paragraph shall clearly state that the person seeking admission to trading is required to provide the operator of the trading platform with all necessary information to enable that operator to satisfy the requirements referred to in paragraph 1, points (b) to (g), as applicable.

4. Paragraph 1, points (b), (c) and (d), shall not apply where:

(a) the crypto-asset is already admitted to trading on another trading platform for crypto-assets in the Union; and

(b) the crypto-asset white paper is drawn up in accordance with Article 6, updated in accordance with Article 12, and the person responsible for drawing up such white paper consents to its use in writing.

Article 6

Content and form of the crypto-asset white paper

1. A crypto-asset white paper shall contain all of the following information, as further specified in Annex I:

(a) information about the offeror or the person seeking admission to trading;

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

(c) information about the operator of the trading platform in cases where it draws up the crypto-asset white paper;

(d) information about the crypto-asset project;

(e) information about the offer to the public of the crypto-asset or its admission to trading;

(f) information about the crypto-asset;

(g) information on the rights and obligations attached to the crypto-asset;

(h) information on the underlying technology;

(i) information on the risks;

(j) information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset.

In cases where the crypto-asset white paper is not drawn up by the persons referred to in the first subparagraph, points (a), (b) and (c), the crypto-asset white paper shall also include the identity of the person that drew up the crypto-asset white paper and the reason why that particular person drew it up.

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

3. The crypto-asset white paper shall contain the following clear and prominent statement on the first page:

'This crypto-asset white paper has not been approved by any competent authority in any Member State of the European Union. The offeror of the crypto-asset is solely responsible for the content of this crypto-asset white paper.'.

Where the crypto-asset white paper is drawn up by the person seeking admission to trading or by an operator of a trading platform, then, instead of 'offeror', a reference to 'person seeking admission to trading' or 'operator of the trading platform' shall be included in the statement referred to in the first subparagraph.

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

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

(a) the crypto-asset may lose its value in part or in full;

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

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

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

(e) the crypto-asset is not covered by the investor compensation schemes under Directive 97/9/EC of the European Parliament and of the Council ([35]);

(f) the crypto-asset is not covered by the deposit guarantee schemes under Directive 2014/49/EU.

6. The crypto-asset white paper shall contain a statement from the management body of the offeror, the person seeking admission to trading or the operator of the trading platform. That statement, which shall be inserted after the statement referred to in paragraph 3, shall confirm that the crypto-asset white paper complies with this Title and that, to the best of the knowledge of the management body, the information presented in the crypto-asset white paper is fair, clear and not misleading and the crypto-asset white paper makes no omission likely to affect its import.

7. The crypto-asset white paper shall contain a summary, inserted after the statement referred to in paragraph 6, which shall in brief and non-technical language provide key information about the offer to the public of the crypto-asset or the intended admission to trading. The summary shall be easily understandable and presented and laid out in a clear and comprehensive format, using characters of readable size. The summary of the crypto-asset white paper shall provide appropriate information about the characteristics of the crypto-asset concerned in order to help prospective holders of the crypto-asset to make an informed decision.

The summary shall contain a warning that:

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

(b) the prospective holder should base any decision to purchase the crypto-asset on the content of the crypto-asset white paper as a whole and not on the summary alone;

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

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 of the European Parliament and of the Council ([36]) or any other offer document pursuant to Union or national law.

8. The crypto-asset white paper shall contain the date of its notification and a table of contents.

9. The crypto-asset white paper shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

Where the crypto-asset is also offered in a Member State other than the home Member State, the crypto-asset white paper shall also be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

10. The crypto-asset white paper shall be made available in a machine-readable format.

11. ESMA, in cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10.

([35]) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

([36]) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

12. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards on the content, methodologies and presentation of the information referred to in paragraph 1, first subparagraph, point (j), in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall consider the various types of consensus mechanisms used to validate transactions in crypto-assets, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste and greenhouse gas emissions. ESMA shall update those regulatory technical standards in the light of regulatory and technological developments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Marketing communications

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

(a) the marketing communications are clearly identifiable as such;

(b) the information in the marketing communications is fair, clear and not misleading;

(c) the information in the marketing communications is consistent with the information in the crypto-asset white paper, where such crypto-asset white paper is required pursuant to Article 4 or 5;

(d) the marketing communications clearly state that a crypto-asset white paper has been published and clearly indicate the address of the website of the offeror, the person seeking admission to trading, or the operator of the trading platform for the crypto-asset concerned, as well as a telephone number and an email address to contact that person;

(e) the marketing communications contain the following clear and prominent statement:

'This crypto-asset marketing communication has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-asset is solely responsible for the content of this crypto-asset marketing communication.'.

Where the marketing communication is prepared by the person seeking admission to trading or the operator of a trading platform, then, instead of 'offeror', a reference to 'person seeking admission to trading' or 'operator of the trading platform' shall be included in the statement referred to in the first subparagraph, point (e).

2. Where a crypto-asset white paper is required pursuant to Article 4 or 5, no marketing communications shall be disseminated prior to the publication of the crypto-asset white paper. The ability of the offeror, the person seeking admission to trading or the operator of a trading platform, to conduct market soundings shall not be affected.

3. The competent authority of the Member State where the marketing communications are disseminated shall have the power to assess compliance with paragraph 1 in respect of those marketing communications.

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

4. The use of any of the supervisory and investigatory powers set out in Article 94 in relation to the enforcement of this Article by the competent authority of a host Member State shall be notified without undue delay to the competent authority of the home Member State of the offeror, the person seeking admission to trading or the operator of the trading platform for the crypto-assets.

Article 8

Notification of the crypto-asset white paper and of the marketing communications

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

2. Marketing communications shall, upon request, be notified to the competent authority of the home Member State and to the competent authority of the host Member State, when addressing prospective holders of crypto-assets other than asset-referenced tokens or e-money tokens in those Member States.

3. Competent authorities shall not require prior approval of crypto-asset white papers, nor of any marketing communications relating thereto, before their respective publication.

4. The notification of the crypto-asset white paper referred to in paragraph 1 shall be accompanied by an explanation of why the crypto-asset described in the crypto-asset white paper should not be considered to be:

(a) a crypto-asset excluded from the scope of this Regulation pursuant to Article 2(4);

(b) an e-money token; or

(c) an asset-referenced token.

5. The elements referred in paragraphs 1 and 4 shall be notified to the competent authority of the home Member State at least 20 working days before the date of publication of the crypto-asset white paper.

6. Offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens shall, together with the notification referred to in paragraph 1, provide the competent authority of their home Member State with a list of the host Member States, if any, where they intend to offer their crypto-assets to the public or intend to seek admission to trading. They shall also inform the competent authority of their home Member State of the starting date of the intended offer to the public or intended admission to trading and of any change to that date.

The competent authority of the home Member State shall notify the single point of contact of the host Member States of the intended offer to the public or the intended admission to trading and communicate to that single point of contact the corresponding crypto-asset white paper within five working days of receipt of the list of host Member States referred to in the first subparagraph.

7. The competent authority of the home Member State shall communicate to ESMA the information referred to in paragraphs 1, 2 and 4 as well as the starting date of the intended offer to the public or intended admission to trading and of any change to that date. It shall communicate such information within five working days of receipt thereof from the offeror or the person seeking admission to trading.

ESMA shall make the crypto-asset white paper available in the register, under Article 109(2), by the starting date of the offer to the public or admission to trading.

Article 9

Publication of the crypto-asset white paper and of the marketing communications

1. Offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens shall publish their crypto-asset white papers and, where applicable, their marketing communications, on their website, which shall be publicly accessible, at a reasonable time in advance of, and in any event before the starting date of, the offer to the public of those crypto-assets or the admission to trading of those crypto-assets. The crypto-asset white papers and, where applicable, the marketing communications, shall remain available on the website of the offerors or persons seeking admission trading for as long as the crypto-assets are held by the public.

2. The published crypto-asset white papers and, where applicable, the marketing communications, shall be identical to the version notified to the competent authority in accordance with Article 8 or, where applicable, to the version modified in accordance with Article 12.

Article 10

Result of the offer to the public and safeguarding arrangements

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

2. Offerors of crypto-assets other than asset-referenced tokens or e-money tokens that do not set a time limit on their offer to the public of those crypto-assets shall publish on their website on an ongoing basis, at least monthly, the number of units of the crypto-assets in circulation.

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

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

(b) a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients.

4. When the offer to the public has no time limit, the offeror shall comply with paragraph 3 of this Article until the right of withdrawal of the retail holder pursuant to Article 13 has expired.

Article 11

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

1. After publication of the crypto-asset white paper in accordance with Article 9 and, where applicable, of the modified crypto-asset white paper in accordance with Article 12, offerors may offer crypto-assets other than asset-referenced tokens or e-money tokens throughout the Union and such crypto-assets may be admitted to trading on a trading platform for crypto-assets in the Union.

2. Offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens that have published a crypto-asset white paper in accordance with Article 9 and, where applicable, a modified crypto-asset white paper pursuant to Article 12, shall not be subject to any further information requirements with regard to the offer to the public or the admission to trading of that crypto-asset.

Article 12

Modification of published crypto-asset white papers and of published marketing communications

1. Offerors, persons seeking admission to trading or operators of a trading platform for crypto-assets other than asset-referenced tokens or e-money tokens shall modify their published crypto-asset white papers and, where applicable, their published marketing communications, whenever there is a significant new factor, material mistake or material inaccuracy that is capable of affecting the assessment of the crypto-assets. That requirement shall apply for the duration of the offer to the public or for as long as the crypto-asset is admitted to trading.

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

3. On the date of publication, or earlier if required by the competent authority, the offeror, the person seeking admission to trading or the operator of the trading platform shall immediately inform the public on its website of the notification of a modified crypto-asset white paper with the competent authority of its home Member State and shall provide a summary of the reasons for which it has notified a modified crypto-asset white paper.

4. The order of the information in a modified crypto-asset white paper and, where applicable, in modified marketing communications, shall be consistent with that of the crypto-asset white paper or marketing communications published in accordance with Article 9.

5. Within five working days of receipt of the modified crypto-asset white paper and, where applicable, of the modified marketing communications, the competent authority of the home Member State shall notify the modified crypto-asset white paper and, where applicable, the modified marketing communications to the competent authority of the host Member States referred to in Article 8(6) and communicate the notification and the date of publication to ESMA.

ESMA shall make the modified crypto-asset white paper available in the register, under Article 109(2), upon publication.

6. Offerors, persons seeking admission to trading or operators of trading platforms for crypto-assets other than asset-referenced tokens or e-money tokens shall publish the modified crypto-asset white paper and, where applicable, the modified marketing communications, including the reasons for such modification, on their website in accordance with Article 9.

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

8. Where the offer to the public concerns a utility token providing access to goods and services that do not yet exist or are not yet in operation, changes made in the modified crypto-asset white paper and, where applicable, the modified marketing communications, shall not extend the time limit of 12 months referred to in Article 4(6).

9. Older versions of the crypto-asset white paper and the marketing communications shall remain publicly available on the website of the offerors, persons seeking admission to trading, or operators of trading platforms, for at least 10 years after the date of publication of those older versions, with a prominent warning stating that they are no longer valid and with a hyperlink to the dedicated section on the website where the most recent version of those documents is published.

Article 13

Right of withdrawal

1. Retail holders who purchase crypto-assets other than asset-referenced tokens and e-money tokens either directly from an offeror or from a crypto-asset service provider placing crypto-assets on behalf of that offeror shall have a right of withdrawal.

Retail holders shall have a period of 14 calendar days within which to withdraw from their agreement to purchase crypto-assets other than asset-referenced tokens and e-money tokens without incurring any fees or costs and without being required to give reasons. The period of withdrawal shall begin from the date of the agreement of the retail holder to purchase those crypto-assets.

2. All payments received from a retail holder including, if applicable, any charges, shall be reimbursed without undue delay and in any event no later than 14 days from the date on which the offeror or the crypto-asset service provider placing crypto-assets on behalf of that offeror is informed of the retail holder's decision to withdraw from the agreement to purchase those crypto-assets.

Such reimbursement shall be carried out using the same means of payment as that used by the retail holder for the initial transaction, unless the retail holder expressly agrees otherwise and provided that the retail holder does not incur any fees or costs as a result of such reimbursement.

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

4. The right of withdrawal referred to in paragraph 1 shall not apply where the crypto-assets have been admitted to trading prior to their purchase by the retail holder.

5. Where offerors have set a time limit on their offer to the public of such crypto-assets in accordance with Article 10, the right of withdrawal shall not be exercised after the end of the subscription period.

Article 14

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

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

(a) act honestly, fairly and professionally;

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

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

(d) maintain all of their systems and security access protocols in conformity with the appropriate Union standards.

For the purposes of point (d) of the first subparagraph, ESMA, in cooperation with EBA, shall by 30 December 2024 issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify those Union standards.

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

3. Where an offer to the public of a crypto-asset other than an asset-referenced token or e-money token is cancelled, offerors of such crypto-asset shall ensure that any funds collected from holders or prospective holders are duly returned to them no later than 25 calendar days after the date of cancellation.

Article 15

Liability for the information given in a crypto-asset white paper

1. Where an offeror, person seeking admission to trading or operator of a trading platform, has infringed Article 6 by providing in its crypto-asset white paper or in a modified crypto-asset white paper information that is not complete, fair or clear or that is misleading, that offeror, person seeking admission to trading or operator of a trading platform and the members of its administrative, management or supervisory body shall be liable to a holder of the crypto-asset for any loss incurred due to that infringement.

2. Any contractual exclusion or limitation of civil liability as referred to in paragraph 1 shall be deprived of legal effect.

3. Where the crypto-asset white paper and marketing communications are prepared by the operator of the trading platform in accordance with Article 5(3), the person seeking admission to trading shall also be held responsible when it provides information that is not complete, fair or clear, or that is misleading to the operator of the trading platform.

4. It shall be the responsibility of the holder of the crypto-asset to present evidence indicating that the offeror, person seeking admission to trading, or operator of the trading platform for crypto-assets other than asset-referenced tokens or e-money tokens has infringed Article 6 by providing information that is not complete, fair or clear, or that is misleading and that reliance on such information had an impact on the holder's decision to purchase, sell or exchange that crypto-asset.

5. The offeror, person seeking admission to trading, or operator of the trading platform and the members of its administrative, management or supervisory body shall not be liable to a holder of a crypto-asset for loss incurred as a result of reliance on the information provided in a summary as referred to in Article 6(7), including any translation thereof, except where the summary:

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

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

6. This Article is without prejudice to any other civil liability pursuant to national law.

TITLE III

ASSET-REFERENCED TOKENS

CHAPTER 1

Authorisation to offer asset-referenced tokens to the public and to seek their admission to trading

Article 16

Authorisation

1. A person shall not make an offer to the public, or seek the admission to trading, of an asset-referenced token, within the Union, unless that person is the issuer of that asset-referenced token and is:

(a) a legal person or other undertaking that is established in the Union and has been authorised in accordance with Article 21 by the competent authority of its home Member State; or

(b) a credit institution that complies with Article 17.

Notwithstanding the first subparagraph, upon the written consent of the issuer of an asset-referenced token, other persons may offer to the public or seek the admission to trading of that asset-referenced token. Those persons shall comply with Articles 27, 29 and 40.

For the purposes of point (a) of the first subparagraph, other undertakings may issue asset-referenced tokens only if their legal form ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and if they are subject to equivalent prudential supervision appropriate to their legal form.

2. Paragraph 1 shall not apply where:

(a) over a period of 12 months, calculated at the end of each calendar day, the average outstanding value of the asset-referenced token issued by an issuer never exceeds EUR 5 000 000, or the equivalent amount in another official currency, and the issuer is not linked to a network of other exempt issuers; or

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

Where this paragraph applies, issuers of asset-referenced tokens shall draw up a crypto-asset white paper as provided for in Article 19 and notify that crypto-asset white paper and, upon request, any marketing communications, to the competent authority of their home Member State.

3. The authorisation granted by the competent authority to a person referred to in paragraph 1, first subparagraph, point (a), shall be valid for the entire Union and shall allow an issuer of an asset-referenced token to offer to the public, throughout the Union, the asset-referenced token for which it has been authorised, or to seek an admission to trading of such asset-referenced token.

4. The approval granted by the competent authority of an issuer's crypto-asset white paper under Article 17(1) or Article 21(1) or of the modified crypto-asset white paper under Article 25 shall be valid for the entire Union.

Article 17

Requirements for credit institutions

1. An asset-referenced token issued by a credit institution may be offered to the public or admitted to trading if the credit institution:

(a) draws up a crypto-asset white paper as referred to in Article 19 for the asset-referenced token, submits that crypto-asset white paper for approval by the competent authority of its home Member State in accordance with the procedure set out in the regulatory technical standards adopted pursuant to paragraph 8 of this Article, and has the crypto-asset white paper approved by the competent authority;

(b) notifies the respective competent authority, at least 90 working days before issuing the asset-referenced token for the first time, by providing it with the following information:

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

(ii) a legal opinion that the asset-referenced token does not qualify as either of the following:

— a crypto-asset excluded from the scope of this Regulation pursuant to Article 2(4);

— an e-money token;

(iii) a detailed description of the governance arrangements referred to in Article 34(1);

(iv) the policies and procedures listed in Article 34(5), first subparagraph;

(v) a description of the contractual arrangements with third-party entities as referred to in Article 34(5), second subparagraph;

(vi) a description of the business continuity policy referred to in Article 34(9);

(vii) a description of the internal control mechanisms and risk management procedures referred to in Article 34 (10);

(viii) a description of the systems and procedures in place to safeguard the availability, authenticity, integrity and confidentiality of data referred to in Article 34(11).

2. A credit institution that has previously notified the competent authority in accordance with paragraph 1, point (b), when issuing another asset-referenced token shall not be required to submit any information that was previously submitted by it to the competent authority where such information would be identical. When submitting the information listed in paragraph 1, point (b), the credit institution shall expressly confirm that any information not resubmitted is still up-to-date.

3. The competent authority receiving a notification referred to in paragraph 1, point (b), shall, within 20 working days of receipt of the information listed therein, assess whether the information required under that point has been provided. Where the competent authority concludes that a notification is not complete because information is missing, it shall immediately inform the notifying credit institution thereof and set a deadline by which that credit institution is required to provide the missing information.

The deadline for providing any missing information shall not exceed 20 working days from the date of the request. Until the expiry of that deadline, the period set by paragraph 1, point (b), shall be suspended. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in a suspension of the period set by paragraph 1, point (b).

The credit institution shall not make an offer to the public or seek the admission to trading of the asset-referenced token as long as the notification is incomplete.

4. A credit institution that issues asset-referenced tokens, including significant asset-referenced tokens, shall not be subject to Articles 16, 18, 20, 21, 24, 35, 41 and 42.

5. The competent authority shall communicate to the ECB without delay the complete information received under paragraph 1 and, where the credit institution is established in a Member State whose official currency is not the euro or where an official currency of a Member State that is not the euro is referenced by the asset-referenced token, also to the central bank of that Member State.

The ECB and, where applicable, the central bank of the Member State as referred to in the first subparagraph shall, within 20 working days of receipt of the complete information, issue an opinion on that information and transmit that opinion to the competent authority.

The competent authority shall require the credit institution not to offer to the public or seek the admission to trading of the asset-referenced token in cases where the ECB or, where applicable, the central bank of the Member State as referred to in first subparagraph, gives a negative opinion on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty.

6. The competent authority shall communicate to ESMA the information specified in Article 109(3) after verifying the completeness of the information received under paragraph 1 of this Article.

ESMA shall make such information available in the register, under Article 109(3), by the starting date of the offer to the public or admission to trading.

7. The relevant competent authority shall, within two working days of withdrawing authorisation, communicate to ESMA the withdrawal of authorisation of a credit institution that issues asset-referenced tokens. ESMA shall make the information on such withdrawal available in the register, under Article 109(3), without undue delay.

8. EBA, in close cooperation with ESMA and the ECB, shall develop draft regulatory technical standards to further specify the procedure for the approval of a crypto-asset white paper referred to in paragraph 1, point (a).

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 18

Application for authorisation

1. Legal persons or other undertakings that intend to offer to the public or seek the admission to trading of asset-referenced tokens shall submit their application for an authorisation referred to in Article 16 to the competent authority of their home Member State.

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

(a) the address of the applicant issuer;

(b) the legal entity identifier of the applicant issuer;

(c) the articles of association of the applicant issuer, where applicable;

(d) a programme of operations, setting out the business model that the applicant issuer intends to follow;

(e) a legal opinion that the asset-referenced token does not qualify as either of the following:

(i) a crypto-asset excluded from the scope of this Regulation pursuant to Article 2(4); or

(ii) an e-money token;

(f) a detailed description of the applicant issuer's governance arrangements as referred to in Article 34(1);

(g) where cooperation arrangements with specific crypto-asset service providers exist, a description of their internal control mechanisms and procedures to ensure compliance with the obligations in relation to the prevention of money laundering and terrorist financing under Directive (EU) 2015/849;

(h) the identity of the members of the management body of the applicant issuer;

(i) proof that the persons referred to in point (h) are of sufficiently good repute and possess the appropriate knowledge, skills and experience to manage the applicant issuer;

(j) proof that any shareholder or member, whether direct or indirect, that has a qualifying holding in the applicant issuer is of sufficiently good repute;

(k) a crypto-asset white paper as referred to in Article 19;

(l) the policies and procedures referred to in Article 34(5), first subparagraph;

(m) a description of the contractual arrangements with the third-party entities as referred to in Article 34(5), second subparagraph;

(n) a description of the applicant issuer's business continuity policy referred to in Article 34(9);

(o) a description of the internal control mechanisms and risk management procedures referred to in Article 34(10);

(p) a description of the systems and procedures in place to safeguard the availability, authenticity, integrity and confidentiality of data as referred to in Article 34(11);

(q) a description of the applicant issuer's complaints-handling procedures as referred to in Article 31;

(r) where applicable, a list of host Member States where the applicant issuer intends to offer the asset-referenced token to the public or intends to seek admission to trading of the asset-referenced token.

3. Issuers that have already been authorised in respect of one asset-referenced token shall not be required to submit, for the purposes of authorisation in respect of another asset-referenced token, any information that was previously submitted by them to the competent authority where such information would be identical. When submitting the information listed in paragraph 2, the issuer shall expressly confirm that any information not resubmitted is still up-to-date.

4. The competent authority shall promptly, and in any event within two working days of receipt of an application pursuant to paragraph 1, acknowledge receipt thereof in writing to the applicant issuer.

5. For the purposes of paragraph 2, points (i) and (j), the applicant issuer of the asset-referenced token shall provide proof of all of the following:

(a) for all members of the management body, the absence of a criminal record in respect of convictions or the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability;

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

(c) for all shareholders and members, whether direct or indirect, that have qualifying holdings in the applicant issuer, the absence of a criminal record in respect of convictions and the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability.

6. EBA, in close cooperation with ESMA and the ECB, shall develop draft regulatory technical standards to further specify the information referred to in paragraph 2.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

7. EBA, in close cooperation with ESMA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information to be included in the application in order to ensure uniformity across the Union.

EBA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 19

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

1. A crypto-asset white paper for an asset-referenced token shall contain all of the following information, as further specified in Annex II:

(a) information about the issuer of the asset-referenced token;

(b) information about the asset-referenced token;

(c) information about the offer to the public of the asset-referenced token or its admission to trading;

(d) information on the rights and obligations attached to the asset-referenced token;

(e) information on the underlying technology;

(f) information on the risks;

(g) information on the reserve of assets;

(h) information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the asset-referenced token.

The crypto-asset white paper shall also include the identity of the person other than the issuer that offers to the public or seeks admission to trading pursuant to Article 16(1), second subparagraph, and the reason why that particular person offers that asset-referenced token or seeks its admission to trading. In cases where the crypto-asset white paper is not drawn up by the issuer, the crypto-asset white paper shall also include the identity of the person that drew up the crypto-asset white paper and the reason why that particular person drew it up.

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

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

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

(a) the asset-referenced token may lose its value in part or in full;

(b) the asset-referenced token may not always be transferable;

(c) the asset-referenced token may not be liquid;

(d) the asset-referenced token is not covered by the investor compensation schemes under Directive 97/9/EC;

(e) the asset-referenced token is not covered by the deposit guarantee schemes under Directive 2014/49/EU.

5. The crypto-asset white paper shall contain a statement from the management body of the issuer of the asset-referenced token. That statement shall confirm that the crypto-asset white paper complies with this Title and that, to the best of the knowledge of the management body, the information presented in the crypto-asset white paper is fair, clear and not misleading and the crypto-asset white paper makes no omission likely to affect its import.

6. The crypto-asset white paper shall contain a summary, inserted after the statement referred to in paragraph 5, which shall in brief and non-technical language provide key information about the offer to the public of the asset-referenced token or the intended admission to trading of the asset-referenced token. The summary shall be easily understandable and presented and laid out in a clear and comprehensive format, using characters of readable size. The summary of the crypto-asset white paper shall provide appropriate information about the characteristics of the asset-referenced token concerned in order to help prospective holders of that asset-referenced token to make an informed decision.

The summary shall contain a warning that:

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

(b) the prospective holder should base any decision to purchase the asset-referenced token on the content of the crypto-asset white paper as a whole and not on the summary alone;

(c) the offer to the public of the asset-referenced token does not constitute an offer or solicitation to purchase financial instruments and that any such offer or solicitation can be made only by means of a prospectus or other offer documents pursuant to the applicable national law;

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or any other offer document pursuant to Union or national law.

The summary shall state that the holders of asset-referenced tokens have a right of redemption at any time, and the conditions for such redemption.

7. The crypto-asset white paper shall contain the date of its notification and a table of contents.

8. The crypto-asset white paper shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

Where the asset-referenced token is also offered in a Member State other than the issuer's home Member State, the crypto-asset white paper shall also be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

9. The crypto-asset white paper shall be made available in a machine-readable format.

10. ESMA, in cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 9.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

11. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards on the content, methodologies and presentation of information referred to in paragraph 1, first subparagraph, point (h), in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall consider the various types of consensus mechanisms used to validate transactions in crypto-assets, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste and greenhouse gas emissions. ESMA shall update those regulatory technical standards in the light of regulatory and technological developments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 20

Assessment of the application for authorisation

1. Competent authorities receiving an application for authorisation as referred to in Article 18 shall, within 25 working days of receipt of such application, assess whether that application, including the crypto-asset white paper referred to in Article 19, comprises all of the required information. They shall immediately notify the applicant issuer whether the application, including the crypto-asset white paper, is missing required information. Where the application, including the crypto-asset white paper, is not complete, competent authorities shall set a deadline by which the applicant issuer is to provide any missing information.

2. Competent authorities shall, within 60 working days of receipt of a complete application, assess whether the applicant issuer complies with the requirements of this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those 60 working days, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset white paper referred in Article 19.

During the assessment process, competent authorities may cooperate with competent authorities for anti-money laundering and counter-terrorist financing, financial intelligence units or other public bodies.

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

4. Competent authorities shall, after the period of 60 working days referred to in paragraph 2, transmit their draft decision and the application to EBA, ESMA and the ECB. Where the applicant issuer is established in a Member State whose official currency is not the euro, or where an official currency of a Member State that is not the euro is referenced by the asset-referenced token, the competent authorities shall transmit their draft decision and the application also to the central bank of that Member State.

5. EBA and ESMA shall, at the request of the competent authority, and within 20 working days of receipt of the draft decision and the application, issue an opinion as regards their evaluation of the legal opinion referred to in Article 18(2), point (e), and transmit their respective opinions to the competent authority concerned.

The ECB or, where applicable, the central bank referred to in paragraph 4 shall, within 20 working days of receipt of the draft decision and the application, issue an opinion as regards its evaluation of the risks that issuing that asset-referenced token might pose to financial stability, the smooth operation of payment systems, monetary policy transmission and monetary sovereignty, and transmit its opinion to the competent authority concerned.

Without prejudice to Article 21(4), the opinions referred to in the first and second subparagraphs of this paragraph shall be non-binding.

The competent authority shall, however, duly consider the opinions referred in the first and second subparagraphs of this paragraph.

Article 21

Grant or refusal of the authorisation

1. Competent authorities shall, within 25 working days of receipt of the opinions referred to in Article 20(5), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, within five working days of taking that decision, notify it to the applicant issuer. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

2. Competent authorities shall refuse authorisation where there are objective and demonstrable grounds that:

(a) the management body of the applicant issuer might pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market;

(b) members of the management body do not meet the criteria set out in Article 34(2);

(c) shareholders and members, whether direct or indirect, that have qualifying holdings do not meet the criteria of sufficiently good repute set out in Article 34(4);

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

(e) the applicant issuer's business model might pose a serious threat to market integrity, financial stability, the smooth operation of payment systems, or exposes the issuer or the sector to serious risks of money laundering and terrorist financing.

3. EBA and ESMA shall, by 30 June 2024, jointly issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 16 of Regulation (EU) No 1095/2010, respectively, on the assessment of the suitability of the members of the management body of issuers of asset-referenced tokens and of the shareholders and members, whether direct or indirect, that have qualifying holdings in issuers of asset-referenced tokens.

4. Competent authorities shall also refuse authorisation if the ECB or, where applicable, the central bank gives a negative opinion under Article 20(5) on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty.

5. Competent authorities shall, within two working days of granting authorisation, communicate to the single point of contact of the host Member States, to ESMA, to EBA, to the ECB and, where applicable, to the central bank referred to in Article 20(4), the information specified in Article 109(3).

ESMA shall make such information available in the register, under Article 109(3), by the starting date of the offer to the public or admission to trading.

6. Competent authorities shall inform EBA, ESMA, the ECB and, where applicable, the central bank referred to in Article 20(4), of all requests for authorisations refused, and provide the underlying reasoning for the decision and, where applicable, an explanation for any deviation from the opinions referred to in Article 20(5).

Article 22

Reporting on asset-referenced tokens

1. For each asset-referenced token with an issue value that is higher than EUR 100 000 000, the issuer shall report on a quarterly basis to the competent authority the following information:

(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;

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

For the purposes of points (c) and (d) of the first subparagraph, 'transaction' shall mean any change of the natural or legal person entitled to the asset-referenced token as a result of the transfer of the asset-referenced token from one distributed ledger address or account to another.

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.

2. The competent authority may require issuers of asset-referenced tokens to comply with the reporting obligation referred to in paragraph 1 in respect of asset-referenced tokens issued with a value of less than EUR 100 000 000.

3. Crypto-asset service providers that provide services related to asset-referenced tokens shall provide the issuer of the asset-referenced token with the information necessary to prepare the report referred to in paragraph 1, including by reporting transactions outside the distributed ledger.

4. The competent authority shall share the information received with the ECB and, where applicable, the central bank referred to in Article 20(4) and the competent authorities of host Member States.

5. The ECB and, where applicable, the central bank referred to in Article 20(4) may provide to the competent authority their own estimates of the quarterly average number and average aggregate value of transactions per day that are associated to uses of the asset-referenced token as a means of exchange within a single currency area.

6. EBA, in close cooperation with the ECB, shall develop draft regulatory technical standards to specify the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of the asset-referenced token as a means of exchange within a single currency area.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

7. EBA shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of reporting referred to in paragraph 1 and the provision of the information referred to in paragraph 3.

EBA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 23

Restrictions on the issuance of asset-referenced tokens used widely as a means of exchange

1. Where, for an asset-referenced token, 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, the issuer shall:

(a) stop issuing that asset-referenced token; and

(b) within 40 working days of reaching that threshold, submit a plan to the competent authority to ensure that the estimated quarterly average number and average aggregate value of those transactions per day is kept below 1 million transactions and EUR 200 000 000 respectively.

2. The competent authority shall 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 paragraph 1 is reached.

3. Where several issuers issue the same asset-referenced token, the criteria referred in paragraph 1 shall be assessed by the competent authority after aggregating the data from all issuers.

4. The issuer shall submit the plan referred to in paragraph 1, point (b), for approval to the competent authority. Where necessary, the competent authority shall require modifications, such as imposing a minimum denomination amount, in order to ensure a timely decrease of the use as a means of exchange of the asset-referenced token.

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

Article 24

Withdrawal of the authorisation

1. Competent authorities shall withdraw the authorisation of an issuer of an asset-referenced token in any of the following situations:

(a) the issuer has ceased to engage in business for six consecutive months, or has not used its authorisation for 12 consecutive months;

(b) the issuer has obtained its authorisation by irregular means, such as by making false statements in the application for authorisation referred to in Article 18 or in any crypto-asset white paper modified in accordance with Article 25;

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

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

(e) the issuer has been subject to a redemption plan;

(f) the issuer has expressly renounced its authorisation or has decided to cease operations;

(g) the issuer's activity poses a serious threat to market integrity, financial stability, the smooth operation of payment systems or exposes the issuer or the sector to serious risks of money laundering and terrorist financing.

The issuer of the asset-referenced token shall notify its competent authority of any of the situations referred to in the first subparagraph, points (e) and (f).

2. Competent authorities shall also withdraw the authorisation of an issuer of an 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 serious threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty.

3. 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, and specify the applicable limit or minimum denomination amount.

4. The relevant competent authorities shall notify the competent authority of an issuer of an asset-referenced token, without delay, of the following situations:

(a) a third-party entity as referred to in Article 34(5), first subparagraph, point (h), of this Regulation has lost its authorisation as a credit institution as referred to in Article 8 of Directive 2013/36/EU, as a crypto-asset service provider as referred to in Article 59 of this Regulation, as a payment institution, or as an electronic money institution;

(b) the members of the issuer's management body or shareholders or members, whether direct or indirect, that have qualifying holdings in the issuer have infringed the provisions of national law transposing Directive (EU) 2015/849.

5. Competent authorities shall withdraw the authorisation of an issuer of an asset-referenced token where they are of the opinion that the situations referred to in paragraph 4 of this Article affect the good repute of the members of the management body of that issuer or the good repute of any shareholders or members, whether direct or indirect, that have qualifying holdings in the issuer, or if there is an indication of a failure of the governance arrangements or internal control mechanisms as referred to in Article 34.

When the authorisation is withdrawn, the issuer of the asset-referenced token shall implement the procedure under Article 47.

6. Competent authorities shall, within two working days of withdrawing authorisation, communicate to ESMA the withdrawal of the authorisation of the issuer of the asset-referenced token. ESMA shall make the information on such withdrawal available in the register referred to in Article 109 without undue delay.

Article 25

Modification of published crypto-asset white papers for asset-referenced tokens

1. Issuers of asset-referenced tokens shall notify the competent authority of their home Member State of any intended change of their business model likely to have a significant influence on the purchase decision of any holders or prospective holders of asset-referenced tokens, which occurs after the authorisation pursuant to Article 21 or after the approval of the crypto-asset white paper pursuant to Article 17, as well as in the context of Article 23. Such changes include, amongst others, any material modifications to:

(a) the governance arrangements, including reporting lines to the management body and risk management framework;

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

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

(d) the mechanism through which an asset-referenced token is issued and redeemed;

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

(f) the functioning of issuers' proprietary distributed ledger technology, where the asset-referenced tokens are issued, transferred and stored using such a distributed ledger technology;

(g) the mechanisms to ensure the liquidity of asset-referenced tokens, including the liquidity management policy and procedures for issuers of significant asset-referenced tokens referred to in Article 45;

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

(i) the complaints-handling procedures;

(j) the money laundering and terrorist financing risk assessment and general policies and procedures related thereto.

Issuers of asset-referenced tokens shall notify the competent authority of their home Member State at least 30 working days before the intended changes take effect.

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

The issuer of the asset-referenced token shall notify the draft modified crypto-asset white paper to the competent authority of the home Member State.

The competent authority shall electronically acknowledge receipt of the draft modified crypto-asset white paper as soon as possible, and at the latest five working days from receipt thereof.

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

3. Where the competent authority considers that the modifications to a crypto-asset white paper are potentially relevant for the smooth operation of payment systems, monetary policy transmission and monetary sovereignty, it shall consult the ECB and, where applicable, the central bank referred to in Article 20(4). The competent authority may also consult EBA and ESMA in such cases.

The ECB or the relevant central bank and, where applicable, EBA and ESMA, shall provide an opinion within 20 working days of receipt of the consultation referred to in the first subparagraph.

4. Where the competent authority approves the modified crypto-asset white paper, it may require the issuer of the asset-referenced token:

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

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

The competent authority shall require the issuer of the asset-referenced token to take any appropriate corrective measures to address concerns related to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty, if such corrective measures are proposed by the ECB or, where applicable, the central bank referred to in Article 20(4) in the consultations referred to in paragraph 3 of this Article.

Where the ECB or the central bank referred to in Article 20(4) has proposed different measures than the ones required by the competent authority, the measures proposed shall be combined or, if not possible, the more stringent measure shall be required.

5. The competent authority shall communicate the modified crypto-asset white paper to ESMA, the single points of contact of the host Member States, EBA, the ECB and, where applicable, the central bank of the Member State concerned within two working days of granting approval.

ESMA shall make the modified crypto-asset white paper available in the register referred to in Article 109 without undue delay.

Article 26

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

1. Where an issuer has infringed Article 19 by providing in its crypto-asset white paper or in a modified crypto-asset white paper information that is not complete, fair or clear, or that is misleading, that issuer and the members of its administrative, management or supervisory body shall be liable to a holder of such asset-referenced token for any loss incurred due to that infringement.

2. Any contractual exclusion or limitation of civil liability as referred to in paragraph 1 shall be deprived of legal effect.

3. It shall be the responsibility of the holder of the asset-referenced token to present evidence indicating that the issuer of that asset-referenced token has infringed Article 19 by providing in its crypto-asset white paper or in a modified crypto-asset white paper information that is not complete, fair or clear, or that is misleading and that reliance on such information had an impact on the holder's decision to purchase, sell or exchange that asset-referenced token.

4. The issuer and the members of its administrative, management or supervisory body shall not be liable for loss suffered as a result of reliance on the information provided in a summary pursuant to Article 19, including any translation thereof, except where the summary:

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

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

5. This Article is without prejudice to any other civil liability pursuant to national law.

CHAPTER 2

Obligations of issuers of asset-referenced tokens

Article 27

Obligation to act honestly, fairly and professionally in the best interest of the holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall act honestly, fairly and professionally and shall communicate with the holders and prospective holders of asset-referenced tokens in a fair, clear and not misleading manner.

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

Article 28

Publication of the crypto-asset white paper

An issuer of an asset-referenced token shall publish on its website the approved crypto-asset white paper referred to in Article 17(1) or Article 21(1) and, where applicable, the modified crypto-asset white paper referred to in Article 25. The approved crypto-asset white paper shall be publicly accessible by the starting date of the offer to the public of the asset-referenced token or the admission to trading of that token. The approved crypto-asset white paper and, where applicable, the modified crypto-asset white paper shall remain available on the issuer's website for as long as the asset-referenced token is held by the public.

Article 29

Marketing communications

1. Any marketing communications relating to an offer to the public of an asset-referenced token, or to the admission to trading of such asset-referenced token, shall comply with all of the following requirements:

(a) the marketing communications are clearly identifiable as such;

(b) the information in the marketing communications is fair, clear and not misleading;

(c) the information in the marketing communications is consistent with the information in the crypto-asset white paper;

(d) the marketing communications clearly state that a crypto-asset white paper has been published and clearly indicate the address of the website of the issuer of the asset-referenced token, as well as a telephone number and an email address to contact the issuer.

2. Marketing communications shall contain a clear and unambiguous statement that the holders of the asset-referenced token have a right of redemption against the issuer at any time.

3. Marketing communications and any modifications thereto shall be published on the issuer's website.

4. Competent authorities shall not require prior approval of marketing communications before their publication.

5. Marketing communications shall be notified to competent authorities upon request.

6. No marketing communications shall be disseminated prior to the publication of the crypto-asset white paper. Such restriction does not affect the ability of the issuer of the asset-referenced token to conduct market soundings.

Article 30

Ongoing information to holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall in a clear, accurate and transparent manner disclose, in a publicly and easily accessible place on their website, the amount of asset-referenced tokens in circulation, and the value and composition of the reserve of assets referred to in Article 36. Such information shall be updated at least monthly.

2. Issuers of asset-referenced tokens shall publish as soon as possible in a publicly and easily accessible place on their website a brief, clear, accurate and transparent summary of the audit report, as well as the full and unredacted audit report, in relation to the reserve of assets referred to in Article 36.

3. Without prejudice to Article 88, issuers of asset-referenced tokens shall as soon as possible and in a clear, accurate and transparent manner disclose, in a publicly and easily accessible place, on their website any event that has or is likely to have a significant effect on the value of the asset-referenced tokens or on the reserve of assets referred to in Article 36.

Article 31

Complaints-handling procedures

1. Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens and other interested parties, including consumer associations that represent holders of asset-referenced tokens, and shall publish descriptions of those procedures. Where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 34(5), first subparagraph, point (h), issuers of the asset-referenced tokens shall establish procedures to also facilitate the handling of such complaints between holders of the asset-referenced tokens and such third-party entities.

2. Holders of asset-referenced tokens shall be able to file complaints free of charge with the issuers of their asset-referenced tokens or, where applicable, with the third-party entities as referred to in paragraph 1.

3. Issuers of asset-referenced tokens and, where applicable, the third-party entities as referred to in paragraph 1, shall develop and make available to holders of asset-referenced tokens a template for filing complaints and shall keep a record of all complaints received and any measures taken in response thereto.

4. Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to the holders of their asset-referenced tokens within a reasonable period.

5. EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards to further specify the requirements, templates and procedures for handling complaints.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 32

Identification, prevention, management and disclosure of conflicts of interest

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

(a) their shareholders or members;

(b) any shareholder or member, whether direct or indirect, that has a qualifying holding in the issuers;

(c) the members of their management body;

(d) their employees;

(e) the holders of asset-referenced tokens; or

(f) any third party providing one of the functions as referred in Article 34(5), first subparagraph, point (h).

2. Issuers of asset-referenced tokens shall, in particular, take all appropriate steps to identify, prevent, manage and disclose conflicts of interest arising from the management and investment of the reserve of assets referred to in Article 36.

3. Issuers of asset-referenced tokens shall, in a prominent place on their website, disclose to the holders of their asset-referenced tokens the general nature and sources of conflicts of interest referred to in paragraph 1 and the steps taken to mitigate them.

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

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

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

(b) the details and methodology for the content of the disclosure referred to in paragraph 3.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 33

Notification of changes to management body

Issuers of asset-referenced tokens shall notify immediately their competent authority of any changes to their management body, and shall provide their competent authority with all of the necessary information to assess compliance with Article 34(2).

Article 34

Governance arrangements

1. Issuers of asset-referenced tokens shall have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which they are or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

2. Members of the management body of issuers of asset-referenced tokens shall be of sufficiently good repute and possess the appropriate knowledge, skills and experience, both individually and collectively, to perform their duties. In particular, they shall not have been convicted of offences relating to money laundering or terrorist financing or of any other offences that would affect their good repute. They shall also demonstrate that they are capable of committing sufficient time to effectively perform their duties.

3. The management body of issuers of asset-referenced tokens shall assess and periodically review the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2, 3, 5 and 6 of this Title and take appropriate measures to address any deficiencies in that respect.

4. Shareholders or members, whether direct or indirect, that have qualifying holdings in issuers of asset-referenced tokens shall be of sufficiently good repute and, in particular, shall not have been convicted of offences relating to money laundering or terrorist financing or of any other offences that would affect their good repute.

5. Issuers of asset-referenced tokens shall adopt policies and procedures that are sufficiently effective to ensure compliance with this Regulation. Issuers of asset-referenced tokens shall establish, maintain and implement, in particular, policies and procedures on:

(a) the reserve of assets referred to in Article 36;

(b) the custody of the reserve assets, including the segregation of assets, as specified in Article 37;

(c) the rights granted to the holders of asset-referenced tokens, as specified in Article 39;

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

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

(f) the functioning of the issuers' proprietary distributed ledger technology, where the asset-referenced tokens are issued, transferred and stored using such distributed ledger technology or similar technology that is operated by the issuers or a third party acting on their behalf;

(g) the mechanisms to ensure the liquidity of asset-referenced tokens, including the liquidity management policy and procedures for issuers of significant asset-referenced tokens referred to in Article 45;

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

(i) the written consent of the issuers of asset-referenced tokens given to other persons that might offer or seek the admission to trading of the asset-referenced tokens;

(j) complaints-handling, as specified in Article 31;

(k) conflicts of interest, as specified in Article 32.

Where issuers of asset-referenced tokens enter into arrangements as referred to in the first subparagraph, point (h), those arrangements shall be set out in a contract with the third-party entities. Those contractual arrangements shall set out the roles, responsibilities, rights and obligations both of the issuers of asset-referenced tokens and of the third-party entities. Any contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of applicable law.

6. Unless they have initiated a redemption plan referred to in Article 47, issuers of asset-referenced tokens shall employ appropriate and proportionate systems, resources and procedures to ensure the continued and regular performance of their services and activities. To that end, issuers of asset-referenced tokens shall maintain all of their systems and security access protocols in conformity with the appropriate Union standards.

7. If the issuer of an asset-referenced token decides to discontinue the provision of its services and activities, including by discontinuing the issue of that asset-referenced token, it shall submit a plan to the competent authority for approval of such discontinuation.

8. Issuers of asset-referenced tokens shall identify sources of operational risk and minimise those risks through the development of appropriate systems, controls and procedures.

9. Issuers of asset-referenced tokens shall establish a business continuity policy and plans to ensure, in the case of an interruption of their ICT systems and procedures, the preservation of essential data and functions and the maintenance of their activities or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

10. Issuers of asset-referenced tokens shall have in place internal control mechanisms and effective procedures for risk management, including effective control and safeguard arrangements for managing ICT systems as required by Regulation (EU) 2022/2554 of the European Parliament and of the Council [37]. The procedures shall provide for a comprehensive assessment relating to the reliance on third-party entities as referred to in paragraph 5, first subparagraph, point (h), of this Article. Issuers of asset-referenced tokens shall monitor and evaluate on a regular basis the adequacy and effectiveness of the internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies in that respect.

11. Issuers of asset-referenced tokens shall have systems and procedures in place that are adequate to safeguard the availability, authenticity, integrity and confidentiality of data as required by Regulation (EU) 2022/2554 and in line with Regulation (EU) 2016/679. Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities.

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

13. By 30 June 2024, EBA, in close cooperation with ESMA and the ECB, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 specifying the minimum content of the governance arrangements on:

(a) the monitoring tools for the risks referred to in paragraph 8;

(b) the business continuity plan referred to in paragraph 9;

(c) the internal control mechanism referred to in paragraph 10;

(d) the audits referred to in paragraph 12, including the minimum documentation to be used in the audit.

When issuing the guidelines referred to in the first subparagraph, EBA shall take into account the provisions on governance requirements in other Union legislative acts on financial services, including Directive 2014/65/EU.

Article 35

Own funds requirements

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

(a) EUR 350 000;

(b) 2 % of the average amount of the reserve of assets referred to in Article 36;

(c) a quarter of the fixed overheads of the preceding year.

For the purposes of point (b) of the first subparagraph, the average amount of the reserve of assets shall mean the average amount of the reserve assets at the end of each calendar day, calculated over the preceding six months.

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

The amount referred to in point (c) of the first subparagraph shall be reviewed annually and calculated in accordance with Article 67(3).

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

[37] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, p. 1).

3. The competent authority of the home Member State may require an issuer of an asset-referenced token to hold an amount of own funds which is up to 20 % higher than the amount resulting from the application of paragraph 1, first subparagraph, point (b), where an assessment of any of the following indicates a higher degree of risk:

(a) the evaluation of the risk-management processes and internal control mechanisms of the issuer of the asset-referenced token as referred to in Article 34(1), (8) and (10);

(b) the quality and volatility of the reserve of assets referred to in Article 36;

(c) the types of rights granted by the issuer of the asset-referenced token to holders of the asset-referenced token in accordance with Article 39;

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

(e) the aggregate value and number of transactions settled in the asset-referenced token;

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

(g) where applicable, the market capitalisation of the asset-referenced token.

4. The competent authority of the home Member State may require an issuer of an asset-referenced token that is not significant to comply with any requirement set out in Article 45, where necessary to address the higher degree of risks identified in accordance with paragraph 3 of this Article, or any other risks that Article 45 aims to address, such as liquidity risks.

5. Without prejudice to paragraph 3, issuers of asset-referenced tokens shall conduct, on a regular basis, stress testing that takes into account severe but plausible financial stress scenarios, such as interest rate shocks, and non-financial stress scenarios, such as operational risk. Based on the outcome of such stress testing, the competent authority of the home Member State shall require the issuer of the asset-referenced token to hold an amount of own funds that is between 20 % and 40 % higher than the amount resulting from the application of paragraph 1, first subparagraph, point (b), in certain circumstances having regard to the risk outlook and stress testing results.

6. EBA, in close cooperation with ESMA and the ECB, shall develop draft regulatory technical standards further specifying:

(a) the procedure and timeframe for an issuer of an asset-referenced token to adjust to higher own funds requirements as set out in paragraph 3;

(b) the criteria for requiring a higher amount of own funds as set out in paragraph 3;

(c) the minimum requirements for the design of stress testing programmes, taking into account the size, complexity and nature of the asset-referenced token, including but not limited to:

(i) the types of stress testing and their main objectives and applications;

(ii) the frequency of the different stress testing exercises;

(iii) the internal governance arrangements;

(iv) the relevant data infrastructure;

(v) the methodology and the plausibility of assumptions;

(vi) the application of the proportionality principle to all of the minimum requirements, whether quantitative or qualitative; and

(vii) the minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

CHAPTER 3

Reserve of assets

Article 36

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

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

The reserve of assets shall be composed and managed in such a way that:

(a) the risks associated to the assets referenced by the asset-referenced tokens are covered; and

(b) the liquidity risks associated to the permanent rights of redemption of the holders are addressed.

2. The reserve of assets shall be legally segregated from the issuers' estate, as well as from the reserve of assets of other asset-referenced tokens, in the interests of the holders of asset-referenced tokens in accordance with applicable law, so that creditors of the issuers have no recourse to the reserve of assets, in particular in the event of insolvency.

3. Issuers of asset-referenced tokens shall ensure that the reserve of assets is operationally segregated from their estate, as well as from the reserve of assets of other tokens.

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

The regulatory technical standards shall establish in particular:

(a) the relevant percentage of the reserve of assets according to daily maturities, including the percentage of reverse repurchase agreements that are able to be terminated by giving prior notice of one working day, or the percentage of cash that is able to be withdrawn by giving prior notice of one working day;

(b) the relevant percentage of the reserve of assets according to weekly maturities, including the percentage of reverse repurchase agreements that are able to be terminated by giving prior notice of five working days, or the percentage of cash that is able to be withdrawn by giving prior notice of five working days;

(c) other relevant maturities, and overall techniques for liquidity management;

(d) the minimum amounts in each official currency referenced to be held as deposits in credit institutions, which cannot be lower than 30 % of the amount referenced in each official currency.

For the purposes of points (a), (b) and (c) of the second subparagraph, EBA shall take into account, amongst others, the relevant thresholds laid down in Article 52 of Directive 2009/65/EC.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

5. Issuers that offer two or more asset-referenced tokens to the public shall operate and maintain segregated pools of reserves of assets for each asset-referenced token. Each of those pools of reserves of assets shall be managed separately.

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

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

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

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

(a) list the assets referenced by the asset-referenced tokens and the composition of those assets;

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

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

(d) describe the procedure by which the asset-referenced tokens are issued and redeemed, and the procedure by which such issuance and redemption will result in a corresponding increase and decrease in the reserve of assets;

(e) mention whether a part of the reserve of assets is invested as provided in Article 38;

(f) where issuers of asset-referenced tokens invest a part of the reserve of assets as provided in Article 38, describe in detail the investment policy and contain an assessment of how that investment policy can affect the value of the reserve of assets;

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

9. Without prejudice to Article 34(12), issuers of asset-referenced tokens shall mandate an independent audit of the reserve of assets every six months, assessing compliance with the rules of this Chapter, as of the date of their authorisation pursuant to Article 21 or as of the date of approval of the crypto-asset white paper pursuant to Article 17.

10. The issuer shall notify the results of the audit referred to in paragraph 9 to the competent authority without delay, and at the latest within six weeks of the reference date of the valuation. The issuer shall publish the result of the audit within two weeks of the date of notification to the competent authority. The competent authority may instruct an issuer to delay the publication of the results of the audit in the event that:

(a) the issuer has been required to implement a recovery arrangement or measures in accordance with Article 46(3);

(b) the issuer has been required to implement a redemption plan in accordance with Article 47;

(c) it is deemed necessary to protect the economic interests of holders of the asset-referenced token;

(d) it is deemed necessary to avoid a significant adverse effect on the financial system of the home Member State or another Member State.

11. The valuation at market prices referred to in paragraph 7 of this Article shall be made by using mark-to-market, as defined in Article 2, point (8), of Regulation (EU) 2017/1131 of the European Parliament and of the Council [38] whenever possible.

[38] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

When using mark-to-market valuation the reserve asset shall be valued at the more prudent side of the bid and offer unless the reserve asset can be closed out at mid-market. Only market data of good quality shall be used, and such data shall be assessed based on all of the following factors:

(a) the number and quality of the counterparties;

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

(c) the size of the reserve of assets.

12. Where use of mark-to-market as referred to in paragraph 11 of this Article is not possible or the market data is not of sufficiently good quality, the reserve asset shall be valued conservatively by using mark-to-model, as defined in Article 2, point (9), of Regulation (EU) 2017/1131.

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

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

(b) the size of the reserve of assets;

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

When using mark-to-model, the amortised cost method, as defined in Article 2, point (10), of Regulation (EU) 2017/1131, shall not be used.

Article 37

Custody of reserve assets

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

(a) the reserve assets are not encumbered nor pledged as a financial collateral arrangement as defined in Article 2(1), point (a), of Directive 2002/47/EC of the European Parliament and of the Council ([39]);

(b) the reserve assets are held in custody in accordance with paragraph 6 of this Article;

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

(d) concentrations of the custodians of reserve assets are avoided;

(e) risk of concentration of reserve assets is avoided.

2. Issuers of asset-referenced tokens that issue two or more asset-referenced tokens in the Union shall have a custody policy in place for each pool of reserve of assets. Different issuers of asset-referenced tokens that have issued the same asset-referenced token shall operate and maintain a single custody policy.

3. The reserve assets shall be held in custody by no later than five working days after the date of issuance of the asset-referenced token by one or more of the following:

(a) a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients, where the reserve assets take the form of crypto-assets;

(b) a credit institution, for all types of reserve assets;

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

(c) an investment firm that provides the ancillary service of safekeeping and administration of financial instruments for the account of clients as referred to in Section B, point (1), of Annex I to Directive 2014/65/EU, where the reserve assets take the form of financial instruments.

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

Issuers of asset-referenced tokens shall ensure that the crypto-asset service providers, credit institutions and investment firms appointed as custodians of the reserve assets as referred to in paragraph 3 have the necessary expertise and market reputation to act as custodians of such reserve assets, taking into account the accounting practices, safekeeping procedures and internal control mechanisms of those crypto-asset service providers, credit institutions and investment firms. The contractual arrangements between the issuers of asset-referenced tokens and the custodians shall ensure that the reserve assets held in custody are protected against claims of the custodians' creditors.

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

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

6. Custodians of the reserve assets as referred to in paragraph 4 shall ensure that the custody of those reserve assets is carried out in the following manner:

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

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

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

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

For the purposes of point (a) of the first subparagraph, credit institutions shall ensure that funds are registered in the credit institutions' books on a segregated account in accordance with the provisions of national law transposing Article 16 of Commission Directive 2006/73/EC ([40]). That account shall be opened in the name of the issuer of the asset-referenced tokens for the purposes of managing the reserve assets of each asset-referenced token, so that the funds held in custody can be clearly identified as belonging to each reserve of assets.

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

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

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

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

7. The appointment of crypto-asset service providers, credit institutions or investment firms as custodians of the reserve assets as referred to in paragraph 4 of this Article shall be evidenced by a contractual arrangement as referred to in Article 34(5), second subparagraph. Those contractual arrangements shall, amongst others, regulate the flow of information necessary to enable the issuers of the asset-referenced tokens and the crypto-asset service providers, credit institutions and investment firms to perform their functions as custodians.

8. The crypto-asset service providers, credit institutions and investment firms appointed as custodians in accordance with paragraph 4 shall act honestly, fairly, professionally, independently and in the interest of the issuers of the asset-referenced tokens and the holders of such tokens.

9. The crypto-asset service providers, credit institutions and investment firms appointed as custodians in accordance with paragraph 4 shall not carry out activities with regard to the issuers of the asset-referenced tokens that might create conflicts of interest between those issuers, the holders of the asset-referenced tokens and themselves unless all of the following conditions are met:

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

(b) the potential conflicts of interest have been properly identified, monitored, managed and disclosed by the issuers of the asset-referenced tokens to the holders of the asset-referenced tokens, in accordance with Article 32.

10. In the case of a loss of a financial instrument or a crypto-asset held in custody pursuant to paragraph 6, the crypto-asset service provider, credit institution or investment firm that lost that financial instrument or crypto-asset shall compensate, or make restitution, to the issuer of the asset-referenced token with a financial instrument or a crypto-asset of an identical type or the corresponding value without undue delay. The crypto-asset service provider, credit institution or investment firm concerned shall not be liable for compensation or restitution where it can prove that the loss has occurred as a result of an external event beyond its reasonable control, the consequences of which were unavoidable despite all reasonable efforts to the contrary.

Article 38

Investment of the reserve of assets

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

2. Units in an undertaking for collective investment in transferable securities (UCITS) shall be deemed to be assets with minimal market risk, credit risk and concentration risk for the purposes of paragraph 1, where that UCITS invests solely in assets as further specified by EBA in accordance with paragraph 5 and where the issuer of the asset-referenced token ensures that the reserve of assets is invested in such a way that the concentration risk is minimised.

3. The financial instruments in which the reserve of assets is invested shall be held in custody in accordance with Article 37.

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

5. EBA, in cooperation with ESMA and the ECB, shall develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal market risk, credit risk and concentration risk as referred to in paragraph 1. When specifying those financial instruments, EBA shall take into account:

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

(b) the correlation between the assets referenced by the asset-referenced token and the highly liquid financial instruments that the issuer might invest in;

(c) the liquidity coverage requirement as referred to in Article 412 of Regulation (EU) No 575/2013 and as further specified in Commission Delegated Regulation (EU) 2015/61 ([41]);

(d) constraints on concentration preventing the issuer from:

(i) investing more than a certain percentage of reserve assets in highly liquid financial instruments with minimal market risk, credit risk and concentration risk issued by a single entity;

(ii) holding in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers or credit institutions which belong to the same group, as defined in Article 2, point (11), of Directive 2013/34/EU of the European Parliament and of the Council ([42]), or investment firms.

For the purposes of point (d)(i) of the first subparagraph, EBA shall devise suitable limits to determine concentration requirements. Those limits shall take into account, amongst others, the relevant thresholds laid down in Article 52 of Directive 2009/65/EC.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 39

Right of redemption

1. Holders of asset-referenced tokens shall have a right of redemption at all times against the issuers of the asset-referenced tokens, and in respect of the reserve assets when issuers are not able to meet their obligations as referred to in Chapter 6 of this Title. Issuers shall establish, maintain and implement clear and detailed policies and procedures in respect of such permanent right of redemption.

2. Upon request by a holder of an asset-referenced token, an issuer of such token shall redeem either by paying an amount in funds, other than electronic money, equivalent to the market value of the assets referenced by the asset-referenced token held or by delivering the assets referenced by the token. Issuers shall establish a policy on such permanent right of redemption setting out:

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

(b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, as well as in the context of the implementation of the recovery plan set out in Article 46 or, in the case of an orderly redemption of asset-referenced tokens, under Article 47;

([41]) Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

([42]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when the right of redemption is exercised by the holder of asset-referenced tokens, including by using the valuation methodology set out in Article 36(11);

(d) the conditions for settlement of the redemption; and

(e) measures that the issuers take to adequately manage increases or decreases in the reserve of assets in order to avoid any adverse impacts on the market of the reserve assets.

Where issuers, when selling an asset-referenced token, accept a payment in funds other than electronic money, denominated in an official currency, they shall always provide an option to redeem the token in funds other than electronic money, denominated in the same official currency.

3. Without prejudice to Article 46, the redemption of asset-referenced tokens shall not be subject to a fee.

Article 40

Prohibition of granting interest

1. Issuers of asset-referenced tokens shall not grant interest in relation to asset-referenced tokens.

2. Crypto-asset service providers shall not grant interest when providing crypto-asset services related to asset-referenced tokens.

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

CHAPTER 4

Acquisitions of issuers of asset-referenced tokens

Article 41

Assessment of proposed acquisitions of issuers of asset-referenced tokens

1. Any natural or legal persons or such persons acting in concert who intend to acquire, directly or indirectly (the 'proposed acquirer'), a qualifying holding in an issuer of an asset-referenced token or to increase, directly or indirectly, such a qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 %, or so that the issuer of the asset-referenced token would become its subsidiary, shall notify the competent authority of that issuer thereof in writing, indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 42(4).

2. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an issuer of an asset-referenced token shall, prior to disposing of that holding, notify in writing the competent authority of its decision and indicate the size of such holding. That person shall also notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 %, or so that the issuer of the asset-referenced token would cease to be that person's subsidiary.

3. The competent authority shall promptly and in any event within two working days following receipt of a notification pursuant to paragraph 1 acknowledge receipt thereof in writing.

4. The competent authority shall assess the proposed acquisition referred to in paragraph 1 of this Article and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 42(4), within 60 working days of the date of the written acknowledgement of receipt referred to in paragraph 3 of this Article. When acknowledging receipt of the notification, the competent authority shall inform the proposed acquirer of the date of expiry of the assessment period.

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

The competent authority shall suspend the assessment period referred to in paragraph 4 until it has received the additional information referred to in the first subparagraph of this paragraph. The suspension shall not exceed 20 working days. Any further requests by the competent authority for additional information or for clarification of the information received shall not result in an additional suspension of the assessment period.

The competent authority may extend the suspension referred to in the second subparagraph of this paragraph by up to 30 working days if the proposed acquirer is situated outside the Union or regulated under the law of a third country.

6. A competent authority that, upon completion of the assessment referred to in paragraph 4, decides to oppose the proposed acquisition referred to in paragraph 1 shall notify the proposed acquirer thereof within two working days, and in any event before the date referred to in paragraph 4 extended, where applicable, in accordance with paragraph 5, second and third subparagraphs. The notification shall provide the reasons for such a decision.

7. Where the competent authority does not oppose the proposed acquisition referred to in paragraph 1 before the date referred to in paragraph 4 extended, where applicable, in accordance with paragraph 5, second and third subparagraphs, the proposed acquisition shall be deemed to be approved.

8. The competent authority may set a maximum period for concluding the proposed acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 42

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

1. When performing the assessment referred to in Article 41(4), the competent authority shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition referred to in Article 41(1) against all of the following criteria:

(a) the reputation of the proposed acquirer;

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

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business envisaged and pursued in respect of the issuer of the asset-referenced token in which the acquisition is proposed;

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

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of, respectively, Article 1(3) and (5) of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authority may oppose the proposed acquisition only where there are reasonable grounds for doing so based on the criteria set out in paragraph 1 of this Article or where the information provided in accordance with Article 41(4) is incomplete or false.

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

4. EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying the detailed content of the information that is necessary to carry out the assessment referred to in Article 41(4), first subparagraph. The information required shall be relevant for a prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition referred to in Article 41(1).

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

CHAPTER 5

Significant asset-referenced tokens

Article 43

Classification of asset-referenced tokens as significant asset-referenced tokens

1. The criteria for classifying asset-referenced tokens as significant asset-referenced tokens shall be the following, as further specified by the delegated acts adopted pursuant to paragraph 11:

(a) the number of holders of the asset-referenced token is larger than 10 million;

(b) the value of the asset-referenced token issued, its market capitalisation or the size of the reserve of assets of the issuer of the asset-referenced token is higher than EUR 5 000 000 000;

(c) the average number and average aggregate value of transactions in that asset-referenced token per day during the relevant period, is higher than 2,5 million transactions and EUR 500 000 000 respectively;

(d) the issuer of the asset-referenced token is a provider of core platform services designated as a gatekeeper in accordance with Regulation (EU) 2022/1925 of the European Parliament and of the Council ([43]);

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

(f) the interconnectedness of the asset-referenced token or its issuers with the financial system;

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

2. EBA shall classify asset-referenced tokens as significant asset-referenced tokens where at least three of the criteria set out in paragraph 1 of this Article are met:

(a) during the period covered by the first report of information as referred to in paragraph 4 of this Article, following authorisation pursuant to Article 21 or after approval of the crypto-asset white paper pursuant to Article 17; or

(b) during the period covered by at least two consecutive reports of information as referred to in paragraph 4 of this Article.

3. Where several issuers issue the same asset-referenced token, the fulfilment of the criteria set out in paragraph 1 shall be assessed after aggregating the data from those issuers.

4. Competent authorities of the issuer's home Member State shall report to EBA and the ECB information relevant for the assessment of the fulfilment of the criteria set out in paragraph 1 of this Article, including, if applicable, the information received under Article 22, at least twice a year.

Where the issuer is established in a Member State whose official currency is not the euro, or where an official currency of a Member State that is not the euro is referenced by the asset-referenced token, competent authorities shall transmit the information referred to in the first subparagraph also to the central bank of that Member State.

5. Where EBA concludes that an asset-referenced token fulfils the criteria set out in paragraph 1 in accordance with paragraph 2, EBA shall prepare a draft decision to classify the asset-referenced token as a significant asset-referenced token and notify that draft decision to the issuer of that asset-referenced token, to the competent authority of the issuer's home Member State, to the ECB and, in the cases referred to in paragraph 4, second subparagraph, to the central bank of the Member State concerned.

([43]) Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

Issuers of such asset-referenced tokens, their competent authorities, the ECB and, where applicable, the central bank of the Member State concerned shall have 20 working days from the date of notification of EBA's draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

6. EBA shall take its final decision on whether to classify an asset-referenced token as a significant asset-referenced token within 60 working days of the date of notification referred to in paragraph 5 and immediately notify that decision to the issuer of such asset-referenced token and its competent authority.

7. Where an asset-referenced token has been classified as significant pursuant to a decision of EBA taken in accordance with paragraph 6, the supervisory responsibilities with respect to the issuer of that significant asset-referenced token shall be transferred from the competent authority of the issuer's home Member State to EBA within 20 working days of the date of notification of that decision.

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

8. EBA shall annually reassess the classification of significant asset-referenced tokens on the basis of the available information, including from the reports referred to in paragraph 4 or the information received under Article 22.

Where EBA concludes that certain asset-referenced tokens no longer fulfil the criteria set out in paragraph 1 in accordance with paragraph 2, EBA shall prepare a draft decision to no longer classify the asset-referenced tokens as significant and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of their home Member State, to the ECB and, in the cases referred to in paragraph 4, second subparagraph, to the central bank of the Member State concerned.

Issuers of such asset-referenced tokens, their competent authorities, the ECB and the central bank referred in paragraph 4 shall have 20 working days from the date of notification of that draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

9. EBA shall take its final decision on whether to no longer classify an asset-referenced token as significant within 60 working days from the date of the notification referred to in paragraph 8 and immediately notify that decision to the issuer of such asset-referenced tokens and its competent authority.

10. Where an asset-referenced token is no longer classified as significant pursuant to a decision of EBA taken in accordance with paragraph 9, the supervisory responsibilities with respect to the issuer of that asset-referenced token shall be transferred from EBA to the competent authority of the issuer's home Member State within 20 working days from the date of notification of that decision.

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

11. The Commission shall adopt delegated acts in accordance with Article 139 to supplement this Regulation by further specifying the criteria set out in paragraph 1 for an asset-referenced token to be classified as significant and determine:

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

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

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

Article 44

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

1. Applicant issuers of asset-referenced tokens may indicate in their application for authorisation pursuant to Article 18, or in their notification pursuant to Article 17, that they wish for their asset-referenced tokens to be classified as significant asset-referenced tokens. In that case, the competent authority shall immediately notify such request of the applicant issuer to EBA, to the ECB and, in the cases referred to in Article 43(4), to the central bank of the Member State concerned.

In order for an asset-referenced token to be classified as significant under this Article, the applicant issuer of the asset-referenced token shall demonstrate, through a detailed programme of operations referred to in Article 17(1), point (b)(i), and Article 18(2), point (d), that it is likely to fulfil at least three of the criteria set out in Article 43(1).

2. EBA shall, within 20 working days of the notification referred to in paragraph 1 of this Article, prepare a draft decision containing its opinion based on the programme of operations whether the asset-referenced token fulfils or is likely to fulfil at least three of the criteria set out in Article 43(1) and notify that draft decision to the competent authority of the applicant issuer's home Member State, to the ECB and, in the cases referred to in Article 43(4), second subparagraph, to the central bank of the Member State concerned.

Competent authorities of issuers of such asset-referenced tokens, the ECB and, where applicable, the central bank of the Member State concerned, shall have 20 working days from the date of notification of that draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

3. EBA shall take its final decision on whether to classify an asset-referenced token as a significant asset-referenced token within 60 working days of the notification referred to in paragraph 1 and immediately notify that decision to the applicant issuer of such asset-referenced token and its competent authority.

4. Where asset-referenced tokens have been classified as significant pursuant to a decision of EBA taken in accordance with paragraph 3 of this Article, the supervisory responsibilities with respect to issuers of those asset-referenced tokens shall be transferred from the competent authority to EBA on the date of the decision of the competent authority to grant the authorisation referred to in Article 21(1) or on the date of approval of the crypto-asset white paper pursuant to Article 17.

Article 45

Specific additional obligations for issuers of significant asset-referenced tokens

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

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

3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet requests for redemption of asset-referenced tokens by their holders. For that purpose, issuers of significant asset-referenced tokens shall establish, maintain and implement a liquidity management policy and procedures. That policy and those procedures shall ensure that the reserve assets have a resilient liquidity profile that enables issuers of significant asset-referenced tokens to continue operating normally, including under scenarios of liquidity stress.

4. Issuers of significant asset-referenced tokens shall, on a regular basis, conduct liquidity stress testing. Depending on the outcome of such tests, EBA may decide to strengthen the liquidity requirements referred to in paragraph 7, first subparagraph, point (b), of this Article and in Article 36(6).

Where issuers of significant asset-referenced tokens offer two or more asset-referenced tokens or provide crypto-asset services, those stress tests shall cover all of those activities in a comprehensive and holistic manner.

5. The percentage referred to in Article 35(1), first subparagraph, point (b), shall be set at 3 % of the average amount of the reserve assets for issuers of significant asset-referenced tokens.

6. Where several issuers offer the same significant asset-referenced token, paragraphs 1 to 5 shall apply to each issuer.

Where an issuer offers two or more asset-referenced tokens in the Union and at least one of those asset-referenced tokens is classified as significant, paragraphs 1 to 5 shall apply to that issuer.

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

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

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

(c) the procedure and timeframe for an issuer of a significant asset-referenced token to adjust the amount of its own funds as required by paragraph 5.

In the case of credit institutions, EBA shall calibrate the technical standards taking into consideration any possible interactions between the regulatory requirements established by this Regulation and the regulatory requirements established by other Union legislative acts.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

8. EBA, in close cooperation with ESMA and the ECB, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 with a view to establishing the common reference parameters of the stress test scenarios to be included in the stress tests referred to in paragraph 4 of this Article. Those guidelines shall be updated periodically taking into account the latest market developments.

CHAPTER 6

Recovery and redemption plans

Article 46

Recovery plan

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

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

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

(a) liquidity fees on redemptions;

(b) limits on the amount of the asset-referenced token that can be redeemed on any working day;

(c) suspension of redemptions.

2. The issuer of the asset-referenced token shall notify the recovery plan to the competent authority within six months of the date of authorisation pursuant to Article 21 or within six months of the date of approval of the crypto-asset white paper pursuant to Article 17. The competent authority shall require amendments to the recovery plan where necessary to ensure its proper implementation and shall notify its decision requesting those amendments to the issuer within 40 working days of the date of notification of that plan. That decision shall be implemented by the issuer within 40 working days of the date of notification of that decision. The issuer shall regularly review and update the recovery plan.

Where applicable, the issuer shall also notify the recovery plan to its resolution and prudential supervisory authorities in parallel to the competent authority.

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

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

5. Where applicable, the competent authority shall notify the issuer's resolution and prudential supervisory authorities of any measure taken pursuant to paragraphs 3 and 4.

6. EBA, after consultation with ESMA, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the format of the recovery plan and the information to be provided in the recovery plan.

Article 47

Redemption plan

1. An issuer of an asset-referenced token shall draw up and maintain an operational plan to support the orderly redemption of each asset-referenced token, which is to be implemented upon a decision by the competent authority that the issuer is unable or likely to be unable to fulfil its obligations, including in the case of insolvency or, where applicable, resolution or in the case of withdrawal of authorisation of the issuer, without prejudice to the commencement of a crisis prevention measure or crisis management measure as defined in Article 2(1), points (101) and (102), respectively, of Directive 2014/59/EU or a resolution action as defined in Article 2, point (11), of Regulation (EU) 2021/23 of the European Parliament and of the Council ([44]).

2. The redemption plan shall demonstrate the ability of the issuer of the asset-referenced token to carry out the redemption of the outstanding asset-referenced token issued without causing undue economic harm to its holders or to the stability of the markets of the reserve assets.

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

The redemption plan shall ensure the continuity of any critical activities that are necessary for the orderly redemption and that are performed by issuers or by any third-party entity.

3. The issuer of the asset-referenced token shall notify the redemption plan to the competent authority within six months of the date of authorisation pursuant to Article 21 or within six months of the date of approval of the crypto-asset white paper pursuant to Article 17. The competent authority shall require amendments to the redemption plan where necessary to ensure its proper implementation and shall notify its decision requesting those amendments to the issuer within 40 working days of the date of notification of that plan. That decision shall be implemented by the issuer within 40 working days of the date of notification of that decision. The issuer shall regularly review and update the redemption plan.

4. Where applicable, the competent authority shall notify the redemption plan to the resolution authority and prudential supervisory authority of the issuer.

The resolution authority may examine the redemption plan with a view to identifying any actions in the redemption plan that might adversely impact the resolvability of the issuer, and may make recommendations to the competent authority in respect thereof.

([44]) Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

5. EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify:

(a) the content of the redemption plan and the periodicity for review, taking into account the size, complexity and nature of the asset-referenced token and the business model of its issuer; and

(b) the triggers for implementation of the redemption plan.

TITLE IV

E-MONEY TOKENS

CHAPTER 1

Requirements to be fulfilled by all issuers of e-money tokens

Article 48

Requirements for the offer to the public or admission to trading of e-money tokens

1. A person shall not make an offer to the public or seek the admission to trading of an e-money token, within the Union, unless that person is the issuer of such e-money token and:

(a) is authorised as a credit institution or as an electronic money institution; and

(b) has notified a crypto-asset white paper to the competent authority and has published that crypto-asset white paper in accordance with Article 51.

Notwithstanding the first subparagraph, upon the written consent of the issuer, other persons may offer to the public or seek the admission to trading of the e-money token. Those persons shall comply with Articles 50 and 53.

2. E-money tokens shall be deemed to be electronic money.

An e-money token that references an official currency of a Member State shall be deemed to be offered to the public in the Union.

3. Titles II and III of Directive 2009/110/EC shall apply with respect to e-money tokens unless otherwise stated in this Title.

4. Paragraph 1 of this Article shall not apply to issuers of e-money tokens exempted in accordance with Article 9(1) of Directive 2009/110/EC.

5. This Title, with the exception of paragraph 7 of this Article and Article 51, shall not apply in respect of e-money tokens exempt pursuant to Article 1(4) and (5) of Directive 2009/110/EC.

6. Issuers of e-money tokens shall, at least 40 working days before the date on which they intend to offer to the public those e-money tokens or seek their admission to trading, notify their competent authority of that intention.

7. Where paragraph 4 or 5 applies, the issuers of e-money tokens shall draw up a crypto-asset white paper and notify such crypto-asset white paper to the competent authority in accordance with Article 51.

Article 49

Issuance and redeemability of e-money tokens

1. By way of derogation from Article 11 of Directive 2009/110/EC, in respect of the issuance and redeemability of e-money tokens only the requirements set out in this Article shall apply to issuers of e-money tokens.

2. Holders of e-money tokens shall have a claim against the issuers of those e-money tokens.

3. Issuers of e-money tokens shall issue e-money tokens at par value and on the receipt of funds.

4. Upon request by a holder of an e-money token, the issuer of that e-money token shall redeem it, at any time and at par value, by paying in funds, other than electronic money, the monetary value of the e-money token held to the holder of the e-money token.

5. Issuers of e-money tokens shall prominently state the conditions for redemption in the crypto-asset white paper as referred to in Article 51(1), first subparagraph, point (d).

6. Without prejudice to Article 46, the redemption of e-money tokens shall not be subject to a fee.

Article 50

Prohibition of granting interest

1. Notwithstanding Article 12 of Directive 2009/110/EC, issuers of e-money tokens shall not grant interest in relation to e-money tokens.

2. Crypto-asset service providers shall not grant interest when providing crypto-asset services related to e-money tokens.

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

Article 51

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

1. A crypto-asset white paper for an e-money token shall contain all of the following information, as further specified in Annex III:

(a) information about the issuer of the e-money token;

(b) information about the e-money token;

(c) information about the offer to the public of the e-money token or its admission to trading;

(d) information on the rights and obligations attached to the e-money token;

(e) information on the underlying technology;

(f) information on the risks;

(g) information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the e-money token.

The crypto-asset white paper shall also include the identity of the person other than the issuer that offers the e-money token to the public or seeks its admission to trading pursuant to Article 48(1), second subparagraph, and the reason why that particular person offers that e-money token or seeks its admission to trading.

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

3. The crypto-asset white paper shall contain the following clear and prominent statement on the first page:

'This crypto-asset white paper has not been approved by any competent authority in any Member State of the European Union. The issuer of the crypto-asset is solely responsible for the content of this crypto-asset white paper.'.

4. The crypto-asset white paper shall contain a clear warning that:

(a) the e-money token is not covered by the investor compensation schemes under Directive 97/9/EC;

(b) the e-money token is not covered by the deposit guarantee schemes under Directive 2014/49/EU.

5. The crypto-asset white paper shall contain a statement from the management body of the issuer of the e-money token. That statement, which shall be inserted after the statement referred to in paragraph 3, shall confirm that the crypto-asset white paper complies with this Title and that, to the best of the knowledge of the management body, the information presented in the crypto-asset white paper is complete, fair, clear and not misleading and that the crypto-asset white paper makes no omission likely to affect its import.

6. The crypto-asset white paper shall contain a summary, inserted after the statement referred to in paragraph 5, which shall in brief and non-technical language provide key information about the offer to the public of the e-money token or the intended admission to trading of such e-money token. The summary shall be easily understandable and presented and laid out in a clear and comprehensive format, using characters of readable size. The summary of the crypto-asset white paper shall provide appropriate information about the characteristics of the crypto-assets concerned in order to help prospective holders of the crypto-assets to make an informed decision.

The summary shall contain a warning that:

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

(b) the prospective holder should base any decision to purchase the e-money token on the content of the crypto-asset white paper as a whole and not on the summary alone;

(c) the offer to the public of the e-money token does not constitute an offer or solicitation to purchase financial instruments and that any such offer or solicitation can be made only by means of a prospectus or other offer documents pursuant to the applicable national law;

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or any other offer document pursuant to Union or national law.

The summary shall state that holders of the e-money token have a right of redemption at any time and at par value as well as the conditions for redemption.

7. The crypto-asset white paper shall contain the date of its notification and a table of contents.

8. The crypto-asset white paper shall be drawn up in an official language of the home Member State or in a language customary in the sphere of international finance.

Where the e-money token is also offered in a Member State other than the home Member State, the crypto-asset white paper shall also be drawn up in an official language of the host Member State or in a language customary in the sphere of international finance.

9. The crypto-asset white paper shall be made available in a machine-readable format.

10. ESMA, in cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 9.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

11. Issuers of e-money tokens shall notify their crypto-asset white paper to their competent authority at least 20 working days before the date of their publication.

Competent authorities shall not require prior approval of crypto-asset white papers before their publication.

12. Any significant new factor, any material mistake or any material inaccuracy that is capable of affecting the assessment of the e-money token shall be described in a modified crypto-asset white paper drawn up by the issuers, notified to the competent authorities and published on the issuers' websites.

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

14. The issuer of the e-money token shall together with the notification of the crypto-asset white paper pursuant to paragraph 11 of this Article provide the competent authority with the information referred to in Article 109(4). The competent authority shall communicate to ESMA, within five working days of receipt of the information from the issuer, the information specified in Article 109(4).

The competent authority shall also communicate to ESMA any modified crypto-asset white paper and any withdrawal of the authorisation of the issuer of the e-money token.

ESMA shall make such information available in the register, under Article 109(4), by the starting date of the offer to the public or admission to trading or, in the case of a modified crypto-asset white paper, or withdrawal of the authorisation, without undue delay.

15. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards on the content, methodologies and presentation of the information referred to in paragraph 1, point (g), in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall consider the various types of consensus mechanisms used to validate transactions in crypto-assets, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste, and greenhouse gas emissions. ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 52

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

1. Where an issuer of an e-money token has infringed Article 51, by providing in its crypto-asset white paper or in a modified crypto-asset white paper, information that is not complete, fair or clear, or that is misleading, that issuer and the members of its administrative, management or supervisory body shall be liable to a holder of such e-money token for any loss incurred due to that infringement.

2. Any contractual exclusion or limitation of civil liability as referred to in paragraph 1 shall be deprived of legal effect.

3. It shall be the responsibility of the holder of the e-money token to present evidence indicating that the issuer of that e-money token has infringed Article 51 by providing in its crypto-asset white paper or in a modified crypto-asset white paper information that is not complete, fair or clear, or that is misleading and that reliance on such information had an impact on the holder's decision to purchase, sell or exchange that e-money token.

4. The issuer and the members of its administrative, management or supervisory bodies shall not be liable for loss suffered as a result of reliance on the information provided in a summary pursuant to Article 51(6), including any translation thereof, except where the summary:

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

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

5. This Article is without prejudice to any other civil liability pursuant to national law.

Article 53

Marketing communications

1. Marketing communications relating to an offer to the public of an e-money token, or to the admission to trading of such e-money token, shall comply with all the following requirements:

(a) the marketing communications are clearly identifiable as such;

(b) the information in the marketing communications is fair, clear and not misleading;

(c) the information in the marketing communications is consistent with the information in the crypto-asset white paper;

(d) the marketing communications clearly state that a crypto-asset white paper has been published and clearly indicate the address of the website of the issuer of the e-money token, as well as a telephone number and an email address to contact the issuer.

2. Marketing communications shall contain a clear and unambiguous statement that the holders of the e-money token have a right of redemption against the issuer at any time and at par value.

3. Marketing communications and any modifications thereto shall be published on the issuer's website.

4. Competent authorities shall not require prior approval of marketing communications before their publication.

5. Marketing communications shall be notified to the competent authorities upon request.

6. No marketing communications shall be disseminated prior to the publication of the crypto-asset white paper. Such restriction does not affect the ability of the issuer of the e-money token to conduct market soundings.

Article 54

Investment of funds received in exchange for e-money tokens

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

(a) at least 30 % of the funds received is always deposited in separate accounts in credit institutions;

(b) the remaining funds received are invested in secure, low-risk assets that qualify as highly liquid financial instruments with minimal market risk, credit risk and concentration risk, in accordance with Article 38(1) of this Regulation, and are denominated in the same official currency as the one referenced by the e-money token.

Article 55

Recovery and redemption plans

Title III, Chapter 6 shall apply *mutatis mutandis* to issuers of e-money tokens.

By way of derogation from Article 46(2), the date by which the recovery plan is to be notified to the competent authority shall, in respect of issuers of e-money tokens, be within six months of the date of the offer to the public or admission to trading.

By way of derogation from Article 47(3), the date by which the redemption plan is to be notified to the competent authority shall, in respect of issuers of e-money tokens, be within six months of the date of the offer to the public or admission to trading.

CHAPTER 2

Significant e-money tokens

Article 56

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

1. EBA shall classify e-money tokens as significant e-money tokens where at least three of the criteria set out in Article 43(1) are met:

(a) during the period covered by the first report of information as referred to in paragraph 3 of this Article, following the offer to the public or the seeking admission to trading of those tokens; or

(b) during the period covered by at least two consecutive reports of information as referred to in paragraph 3 of this Article.

2. Where several issuers issue the same e-money token, the fulfilment of the criteria set out in Article 43(1) shall be assessed after aggregating the data from those issuers.

3. Competent authorities of the issuer's home Member State shall report to EBA and the ECB information relevant for the assessment of the fulfilment of the criteria set out in Article 43(1), including, if applicable, the information received under Article 22, at least twice a year.

Where the issuer is established in a Member State whose official currency is not the euro, or where an official currency of a Member State that is not the euro is referenced by the e-money token, competent authorities shall transmit the information referred to in the first subparagraph also to the central bank of that Member State.

4. Where EBA concludes that an e-money token fulfils the criteria set out in Article 43(1) in accordance with paragraph 1 of this Article, EBA shall prepare a draft decision to classify the e-money token as a significant e-money token and notify that draft decision to the issuer of the e-money token, the competent authority of the issuer's home Member State, to the ECB and, in the cases referred to in paragraph 3, second subparagraph, of this Article, to the central bank of the Member State concerned.

Issuers of such e-money tokens, their competent authorities, the ECB and, where applicable, the central bank of the Member State concerned shall have 20 working days from the date of notification of that draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

5. EBA shall take its final decision on whether to classify an e-money token as a significant e-money token within 60 working days from the date of notification referred to in paragraph 4 and immediately notify that decision to the issuer of such e-money token and its competent authority.

6. Where an e-money token has been classified as significant pursuant to a decision of EBA taken in accordance with paragraph 5, the supervisory responsibilities with respect to the issuer of that e e-money token shall be transferred from the competent authority of the issuer's home Member State to EBA in accordance with Article 117(4) within 20 working days from the date of notification of that decision.

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

7. By way of derogation from paragraph 6, the supervisory responsibilities with respect to the issuers of significant e-money tokens denominated in an official currency of a Member State other than the euro, where at least 80 % of the number of holders and of the volume of transactions of those significant e-money tokens are concentrated in the home Member State, shall not be transferred to EBA.

The competent authority of the issuer's home Member State shall provide EBA annually with information on any cases where the derogation referred to in the first subparagraph is applied.

For the purposes of the first subparagraph, a transaction shall be considered to take place in the home Member State when the payer or the payee is established in that Member State.

8. EBA shall annually reassess the classification of significant e-money tokens on the basis of the available information, including from the reports referred to in paragraph 3 of this Article or the information received under Article 22.

Where EBA concludes that certain e-money tokens no longer meet the criteria set out in Article 43(1), in accordance with paragraph 1 of this Article, EBA shall prepare a draft decision to no longer classify the e-money token as significant and notify that draft decision to the issuers of those e-money tokens, to the competent authorities of their home Member State, to the ECB and, in the cases referred to in paragraph 3, second subparagraph, of this Article, to the central bank of the Member State concerned.

Issuers of such e-money tokens, their competent authorities, the ECB and the central bank of the Member State concerned shall have 20 working days from the date of notification of that draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

9. EBA shall take its final decision on whether to no longer classify an e-money token as significant within 60 working days from the date of the notification referred to in paragraph 8 and immediately notify that decision to the issuer of that e-money token and its competent authority.

10. Where an e-money token is no longer classified as significant pursuant to a decision of EBA taken in accordance with paragraph 9, the supervisory responsibilities with respect to the issuer of that e-money token shall be transferred from EBA to the competent authority of the issuer's home Member State within 20 working days from the date of notification of that decision.

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

Article 57

Voluntary classification of e-money tokens as significant e-money tokens

1. An issuer of an e-money token, authorised as a credit institution or as an electronic money institution, or applying for such authorisation, may indicate that it wishes for its e-money token to be classified as a significant e-money token. In that case, the competent authority shall immediately notify such request of the issuer to EBA, to the ECB and, in the cases referred to in Article 56(3), second subparagraph, to the central bank of the Member State concerned.

In order for the e-money token to be classified as significant under this Article, the issuer of the e-money token shall demonstrate, through a detailed programme of operations, that it is likely to meet at least three of the criteria set out in Article 43(1).

2. EBA shall, within 20 working days from the date of notification referred to in paragraph 1 of this Article, prepare a draft decision containing its opinion based on the issuer's programme of operations whether the e-money token fulfils or is likely to fulfil at least three of the criteria set out in Article 43(1) and notify that draft decision to the competent authority of the issuer's home Member State, to the ECB and, in the cases referred to in Article 56(3), second subparagraph, to the central bank of the Member State concerned.

The competent authorities of issuers of such e-money tokens, the ECB and, where applicable, the central bank of the Member State concerned shall have 20 working days from the date of notification of that draft decision to provide observations and comments in writing. EBA shall duly consider those observations and comments before adopting a final decision.

3. EBA shall take its final decision on whether to classify an e-money token as a significant e-money token within 60 working days of the date of notification referred to in paragraph 1 and immediately notify that decision to the issuer of such e-money token and its competent authority.

4. Where an e-money token has been classified as significant pursuant to a decision of EBA taken in accordance with paragraph 3 of this Article, the supervisory responsibilities with respect to issuers of those e-money tokens shall be transferred from the competent authority to EBA in accordance with Article 117(4) within 20 working days from the date of notification of that decision.

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

5. By way of derogation from paragraph 4, the supervisory responsibilities with respect to issuers of significant e-money tokens denominated in an official currency of a Member State other than the euro shall not be transferred to EBA, where at least 80 % of the number of holders and of the volume of transactions of those significant e-money tokens are or are expected to be concentrated in the home Member State.

The competent authority of the issuer's home Member State shall provide EBA annually with information on the application of the derogation referred to in the first subparagraph.

For the purposes of the first subparagraph, a transaction shall be considered to take place in the home Member State when the payer or the payee are established in that Member State.

Article 58

Specific additional obligations for issuers of e-money tokens

1. Electronic money institutions issuing significant e-money tokens shall be subject to:

(a) the requirements referred to in Articles 36, 37, 38 and Article 45, (1) to (4) of this Regulation, instead of Article 7 of Directive 2009/110/EC;

(b) the requirements referred to in Article 35(2), (3) and (5) and Article 45(5) of this Regulation, instead of Article 5 of Directive 2009/110/EC.

By way of derogation from Article 36(9), the independent audit shall, in respect of issuers of significant e-money tokens, be mandated every six months as of the date of the decision to classify the e-money tokens as significant pursuant to Article 56 or 57, as applicable.

2. Competent authorities of the home Member States may require electronic money institutions issuing e-money tokens that are not significant to comply with any requirement referred to in paragraph 1 where necessary to address the risks that those provisions aim to address, such as liquidity risks, operational risks, or risks arising from non-compliance with requirements for management of reserve of assets.

3. Articles 22, 23 and 24(3) shall apply to e-money tokens denominated in a currency that is not an official currency of a Member State.

TITLE V

AUTHORISATION AND OPERATING CONDITIONS FOR CRYPTO-ASSET SERVICE PROVIDERS

CHAPTER 1

Authorisation of crypto-asset service providers

Article 59

Authorisation

1. A person shall not provide crypto-asset services, within the Union, unless that person is:

(a) a legal person or other undertaking that has been authorised as crypto-asset service provider in accordance with Article 63; or

(b) a credit institution, central securities depository, investment firm, market operator, electronic money institution, UCITS management company, or an alternative investment fund manager that is allowed to provide crypto-asset services pursuant to Article 60.

2. Crypto-asset service providers authorised in accordance with Article 63 shall have a registered office in a Member State where they carry out at least part of their crypto-asset services. They shall have their place of effective management in the Union and at least one of the directors shall be resident in the Union.

3. For the purposes of paragraph 1, point (a), other undertakings that are not legal persons shall only provide crypto-asset services if their legal form ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and if they are subject to equivalent prudential supervision appropriate to their legal form.

4. Crypto-asset service providers authorised in accordance with Article 63 shall at all times meet the conditions for their authorisation.

5. A person who is not a crypto-asset service provider shall not use a name, or a corporate name, or issue marketing communications or undertake any other process suggesting that it is a crypto-asset service provider or that is likely to create confusion in that respect.

6. Competent authorities that grant authorisations in accordance with Article 63 shall ensure that such authorisations specify the crypto-asset services that crypto-asset service providers are authorised to provide.

7. Crypto-asset service providers shall be allowed to provide crypto-asset services throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services. Crypto-asset service providers that provide crypto-asset services on a cross-border basis shall not be required to have a physical presence in the territory of a host Member State.

8. Crypto-asset service providers seeking to add crypto-asset services to their authorisation as referred to in Article 63 shall request the competent authorities that granted their initial authorisation for an extension of their authorisation by complementing and updating the information referred to in Article 62. The request for extension shall be processed in accordance with Article 63.

Article 60

Provision of crypto-asset services by certain financial entities

1. A credit institution may provide crypto-asset services if it notifies the information referred to in paragraph 7 to the competent authority of its home Member State at least 40 working days before providing those services for the first time.

2. A central securities depository authorised under Regulation (EU) No 909/2014 of the European Parliament and of the Council ([45]) shall only provide custody and administration of crypto-assets on behalf of clients if it notifies the information referred to in paragraph 7 of this Article to the competent authority of the home Member State, at least 40 working days before providing that service for the first time.

For the purposes of the first subparagraph of this paragraph, providing custody and administration of crypto-assets on behalf of clients is deemed equivalent to providing, maintaining or operating securities accounts in relation to the settlement service referred to in Section B, point (3), of the Annex to Regulation (EU) No 909/2014.

3. An investment firm may provide crypto-asset services in the Union equivalent to the investment services and activities for which it is specifically authorised under Directive 2014/65/EU if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.

For the purposes of this paragraph:

(a) providing custody and administration of crypto-assets on behalf of clients is deemed equivalent to the ancillary service referred to in Section B, point (1), of Annex I to Directive 2014/65/EU;

(b) the operation of a trading platform for crypto-assets is deemed equivalent to the operation of a multilateral trading facility and operation of an organised trading facility referred to in Section A, points (8) and (9), respectively, of Annex I to Directive 2014/65/EU;

([45]) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(c) the exchange of crypto-assets for funds and other crypto-assets is deemed equivalent to dealing on own account referred to in Section A, point (3), of Annex I to Directive 2014/65/EU;

(d) the execution of orders for crypto-assets on behalf of clients is deemed equivalent to the execution of orders on behalf of clients referred to in Section A, point (2), of Annex I to Directive 2014/65/EU;

(e) the placing of crypto-assets is deemed equivalent to the underwriting or placing of financial instruments on a firm commitment basis and placing of financial instruments without a firm commitment basis referred to in Section A, points (6) and (7), respectively, of Annex I to Directive 2014/65/EU;

(f) the reception and transmission of orders for crypto-assets on behalf of clients is deemed equivalent to the reception and transmission of orders in relation to one or more financial instruments referred to in Section A, point (1), of Annex I to Directive 2014/65/EU;

(g) providing advice on crypto-assets is deemed equivalent to investment advice referred to in Section A, point (5), of Annex I to Directive 2014/65/EU;

(h) providing portfolio management on crypto-assets is deemed equivalent to portfolio management referred to in Section A, point (4), of Annex I to Directive 2014/65/EU.

4. An electronic money institution authorised under Directive 2009/110/EC shall only provide custody and administration of crypto-assets on behalf of clients and transfer services for crypto-assets on behalf of clients with regard to the e-money tokens it issues if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.

5. A UCITS management company or an alternative investment fund manager may provide crypto-asset services equivalent to the management of portfolios of investment and non-core services for which it is authorised under Directive 2009/65/EC or Directive 2011/61/EU if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.

For the purposes of this paragraph:

(a) the reception and transmission of orders for crypto-assets on behalf of clients is deemed equivalent to the reception and transmission of orders in relation to financial instruments referred in Article 6(4), point (b)(iii), of Directive 2011/61/EU;

(b) providing advice on crypto-assets is deemed equivalent to investment advice referred to in Article 6(4), point (b)(i), of Directive 2011/61/EU and in Article 6(3), point (b)(i), of Directive 2009/65/EC;

(c) providing portfolio management on crypto-assets is deemed equivalent to the services referred to in Article 6(4), point (a), of Directive 2011/61/EU and in Article 6(3), point (a), of Directive 2009/65/EC.

6. A market operator authorised under Directive 2014/65/EU may operate a trading platform for crypto-assets if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.

7. For the purposes of paragraphs 1 to 6, the following information shall be notified:

(a) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider intends to provide, including where and how those services are to be marketed;

(b) a description of:

(i) the internal control mechanisms, policies and procedures to ensure compliance with the provisions of national law transposing Directive (EU) 2015/849;

(ii) the risk assessment framework for the management of money laundering and terrorist financing risks; and

(iii) the business continuity plan;

(c) the technical documentation of the ICT systems and security arrangements, and a description thereof in non-technical language;

(d) a description of the procedure for the segregation of clients' crypto-assets and funds;

(e) a description of the custody and administration policy, where it is intended to provide custody and administration of crypto-assets on behalf of clients;

(f) a description of the operating rules of the trading platform and of the procedures and system to detect market abuse, where it is intended to operate a trading platform for crypto-assets;

(g) a description of the non-discriminatory commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose to exchange for funds or other crypto-assets, where it is intended to exchange crypto-assets for funds or other crypto-assets;

(h) a description of the execution policy, where it is intended to execute orders for crypto-assets on behalf of clients;

(i) evidence that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations, where it is intended to provide advice on crypto-assets or provide portfolio management on crypto-assets;

(j) whether the crypto-asset service relates to asset-referenced tokens, e-money tokens or other crypto-assets;

(k) information on the manner in which such transfer services will be provided, where it is intended to provide transfer services for crypto-assets on behalf of clients.

8. A competent authority receiving a notification as referred to in paragraphs 1 to 6 shall, within 20 working days of receipt of such notification, assess whether all required information has been provided. Where the competent authority concludes that a notification is not complete, it shall immediately inform the notifying entity thereof and set a deadline by which that entity is required to provide the missing information.

The deadline for providing any missing information shall not exceed 20 working days from the date of the request. Until the expiry of that deadline, each period as set out in paragraphs 1 to 6 shall be suspended. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in a suspension of any period set out in paragraphs 1 to 6.

The crypto-asset service provider shall not begin providing the crypto-asset services as long as the notification is incomplete.

9. The entities referred to in paragraphs 1 to 6 shall not be required to submit any information referred to in paragraph 7 that was previously submitted by them to the competent authority where such information would be identical. When submitting the information referred to in paragraph 7, the entities referred to in paragraphs 1 to 6 shall expressly state that any information that was submitted previously is still up-to-date.

10. Where the entities referred to in paragraphs 1 to 6 of this Article provide crypto-asset services, they shall not be subject to Articles 62, 63, 64, 67, 83 and 84.

11. The right to provide crypto-asset services referred to in paragraphs 1 to 6 of this Article shall be revoked upon the withdrawal of the relevant authorisation that enabled the respective entity to provide the crypto-asset services without being required to obtain an authorisation pursuant to Article 59.

12. Competent authorities shall communicate to ESMA the information specified in Article 109(5), after verifying the completeness of the information referred to in paragraph 7.

ESMA shall make such information available in the register referred to in Article 109 by the starting date of the intended provision of crypto-asset services.

13. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify the information referred to in paragraph 7.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

14. ESMA, in close cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the notification pursuant to paragraph 7.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 61

Provision of crypto-asset services at the exclusive initiative of the client

1. Where a client established or situated in the Union initiates at its own exclusive initiative the provision of a crypto-asset service or activity by a third-country firm, the requirement for authorisation under Article 59 shall not apply to the provision of that crypto-asset service or activity by the third-country firm to that client, including a relationship specifically relating to the provision of that crypto-asset service or activity.

Without prejudice to intragroup relationships, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or prospective clients in the Union, regardless of the means of communication used for the solicitation, promotion or advertising in the Union, it shall not be deemed to be a service provided on the client's own exclusive initiative.

The second subparagraph shall apply notwithstanding any contractual clause or disclaimer purporting to state otherwise, including any clause or disclaimer that the provision of services by a third-country firm is deemed to be a service provided on the client's own exclusive initiative.

2. A client's own exclusive initiative as referred to in paragraph 1 shall not entitle a third-country firm to market new types of crypto-assets or crypto-asset services to that client.

3. ESMA shall by 30 December 2024 issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify the situations in which a third-country firm is deemed to solicit clients established or situated in the Union.

In order to foster convergence and promote consistent supervision in respect of the risk of abuse of this Article, ESMA shall also issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on supervision practices to detect and prevent circumvention of this Regulation.

Article 62

Application for authorisation as a crypto-asset service provider

1. Legal persons or other undertakings that intend to provide crypto-asset services shall submit their application for an authorisation as a crypto-asset service provider to the competent authority of their home Member State.

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

(a) the name, including the legal name and any other commercial name used, the legal entity identifier of the applicant crypto-asset service provider, the website operated by that provider, a contact email address, a contact telephone number and its physical address;

(b) the legal form of the applicant crypto-asset service provider;

(c) the articles of association of the applicant crypto-asset service provider, where applicable;

(d) a programme of operations, setting out the types of crypto-asset services that the applicant crypto-asset service provider intends to provide, including where and how those services are to be marketed;

(e) proof that the applicant crypto-asset service provider meets the requirements for prudential safeguards set out in Article 67;

(f) a description of the applicant crypto-asset service provider's governance arrangements;

(g) proof that members of the management body of the applicant crypto-asset service provider are of sufficiently good repute and possess the appropriate knowledge, skills and experience to manage that provider;

(h) the identity of any shareholders and members, whether direct or indirect, that have qualifying holdings in the applicant crypto-asset service provider and the amounts of those holdings, as well as proof that those persons are of sufficiently good repute;

(i) a description of the applicant crypto-asset service provider's internal control mechanisms, policies and procedures to identify, assess and manage risks, including money laundering and terrorist financing risks, and business continuity plan;

(j) the technical documentation of the ICT systems and security arrangements, and a description thereof in non-technical language;

(k) a description of the procedure for the segregation of clients' crypto-assets and funds;

(l) a description of the applicant crypto-asset service provider's complaints-handling procedures;

(m) where the applicant crypto-asset service provider intends to provide custody and administration of crypto-assets on behalf of clients, a description of the custody and administration policy;

(n) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform and of the procedure and system to detect market abuse;

(o) where the applicant crypto-asset service provider intends to exchange crypto-assets for funds or other crypto-assets, a description of the commercial policy, which shall be non-discriminatory, governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets that the applicant crypto-asset service provider proposes to exchange for funds or other crypto-assets;

(p) where the applicant crypto-asset service provider intends to execute orders for crypto-assets on behalf of clients, a description of the execution policy;

(q) where the applicant crypto-asset service provider intends to provide advice on crypto-assets or portfolio management of crypto-assets, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations;

(r) where the applicant crypto-asset service provider intends to provide transfer services for crypto-assets on behalf of clients, information on the manner in which such transfer services will be provided;

(s) the type of crypto-asset to which the crypto-asset service relates.

3. For the purposes of paragraph 2, points (g) and (h), an applicant crypto-asset service provider shall provide proof of all of the following:

(a) for all members of the management body of the applicant crypto-asset service provider, the absence of a criminal record in respect of convictions and the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering, and counter-terrorist financing, to fraud or to professional liability;

(b) that the members of the management body of the applicant crypto-asset service provider collectively possess the appropriate knowledge, skills and experience to manage the crypto-asset service provider and that those persons are required to commit sufficient time to perform their duties;

(c) for all shareholders and members, whether direct or indirect, that have qualifying holdings in the applicant crypto-asset service provider, the absence of a criminal record in respect of convictions or the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability.

4. Competent authorities shall not require an applicant crypto-asset service provider to provide any information referred to in paragraphs 2 and 3 of this Article that they have already received under the respective authorisation procedures in accordance with Directive 2009/110/EC, 2014/65/EU or (EU) 2015/2366, or pursuant to national law applicable to crypto-asset services prior to 29 June 2023, provided that such previously submitted information or documents are still up-to-date.

5. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify the information referred to in paragraphs 2 and 3.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA, in close cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 63

Assessment of the application for authorisation and grant or refusal of authorisation

1. Competent authorities shall promptly, and in any event within five working days of receipt of an application under Article 62(1), acknowledge receipt thereof in writing to the applicant crypto-asset service provider.

2. Competent authorities shall, within 25 working days of receipt of an application under Article 62(1), assess whether that application is complete by checking that the information listed in Article 62(2) has been submitted.

Where the application is not complete, competent authorities shall set a deadline by which the applicant crypto-asset service provider is to provide any missing information.

3. Competent authorities may refuse to review applications where such applications remain incomplete after the expiry of the deadline set by them in accordance with paragraph 2, second subparagraph.

4. Once an application is complete, competent authorities shall promptly notify the applicant crypto-asset service provider thereof.

5. Before granting or refusing authorisation as a crypto-asset service provider, competent authorities shall consult the competent authorities of another Member State where the applicant crypto-asset service provider is in one of the following positions in relation to a credit institution, a central securities depository, an investment firm, a market operator, a UCITS management company, an alternative investment fund manager, a payment institution, an insurance undertaking, an electronic money institution or an institution for occupational retirement provision, authorised in that other Member State:

(a) it is its subsidiary;

(b) it is a subsidiary of the parent undertaking of that entity; or

(c) it is controlled by the same natural or legal persons who control that entity.

6. Before granting or refusing an authorisation as a crypto-asset service provider, competent authorities:

(a) may consult the competent authorities for anti-money laundering and counter-terrorist financing, and financial intelligence units, in order to verify that the applicant crypto-asset service provider has not been the subject of an investigation into conduct relating to money laundering or terrorist financing;

(b) shall ensure that the applicant crypto-asset service provider that operates establishments or relies on third parties established in high-risk third countries identified pursuant to Article 9 of Directive (EU) 2015/849 complies with the provisions of national law transposing Articles 26(2), 45(3) and 45(5) of that Directive;

(c) shall, where appropriate, ensure that the applicant crypto-asset service provider has put in place appropriate procedures to comply with the provisions of national law transposing Article 18a(1) and (3) of Directive (EU) 2015/849.

7. Where close links exist between the applicant crypto-asset service provider and other natural or legal persons, competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

8. Competent authorities shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the applicant crypto-asset service provider has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

9. Competent authorities shall, within 40 working days from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. Competent authorities shall notify the applicant of their decision within five working days of the date of that decision. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.

10. Competent authorities shall refuse authorisation as a crypto-asset service provider where there are objective and demonstrable grounds that:

(a) the management body of the applicant crypto-asset service provider poses a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market, or exposes the applicant crypto-asset service provider to a serious risk of money laundering or terrorist financing;

(b) the members of the management body of the applicant crypto-asset service provider do not meet the criteria set out in Article 68(1);

(c) the shareholders or members, whether direct or indirect, that have qualifying holdings in the applicant crypto-asset service provider do not meet the criteria of sufficiently good repute set out in Article 68(2);

(d) the applicant crypto-asset service provider fails to meet or is likely to fail to meet any of the requirements of this Title.

11. ESMA and EBA shall jointly issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 and Article 16 of Regulation (EU) No 1093/2010, respectively, on the assessment of the suitability of the members of the management body of the applicant crypto-asset service provider and of the shareholders or members, whether direct or indirect, that have qualifying holdings in the applicant crypto-asset service provider.

ESMA and EBA shall issue the guidelines referred to in the first subparagraph by 30 June 2024.

12. Competent authorities may, during the assessment period provided for in paragraph 9, and no later than on the 20th working day of that period, request any further information that is necessary to complete the assessment. Such request shall be made in writing to the applicant crypto-asset service provider and shall specify the additional information needed.

The assessment period under paragraph 9 shall be suspended for the period between the date of request for missing information by the competent authorities and the receipt by them of a response thereto from the applicant crypto-asset service provider. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period under paragraph 9.

13. Competent authorities shall, within two working days of granting authorisation, communicate to ESMA the information specified in Article 109(5). Competent authorities shall also inform ESMA of any refusals of authorisations. ESMA shall make the information referred to in Article 109(5) available in the register referred to in that Article by the starting date of the provision of crypto-asset services.

Article 64

Withdrawal of authorisation of a crypto-asset service provider

1. Competent authorities shall withdraw the authorisation of a crypto-asset service provider if the crypto-asset service provider does any of the following:

(a) has not used its authorisation within 12 months of the date of the authorisation;

(b) has expressly renounced its authorisation;

(c) has not provided crypto-asset services for nine consecutive months;

(d) has obtained its authorisation by irregular means, such as by making false statements in its application for authorisation;

(e) no longer meets the conditions under which the authorisation was granted and has not taken the remedial action requested by the competent authority within the specified timeframe;

(f) fails to have in place effective systems, procedures and arrangements to detect and prevent money laundering and terrorist financing in accordance with Directive (EU) 2015/849;

(g) has seriously infringed this Regulation, including the provisions relating to the protection of holders of crypto-assets or of clients of crypto-asset service providers, or market integrity.

2. Competent authorities may withdraw authorisation as a crypto-asset service provider in any of the following situations:

(a) the crypto-asset service provider has infringed the provisions of national law transposing Directive (EU) 2015/849;

(b) the crypto-asset service provider has lost its authorisation as a payment institution or its authorisation as an electronic money institution, and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.

3. Where a competent authority withdraws an authorisation as a crypto-asset service provider, it shall notify ESMA and the single points of contact of the host Member States without undue delay. ESMA shall make such information available in the register referred to in Article 109.

4. Competent authorities may limit the withdrawal of authorisation to a particular crypto-asset service.

5. Before withdrawing an authorisation as a crypto-asset service provider, competent authorities shall consult the competent authority of another Member State where the crypto-asset service provider concerned is:

(a) a subsidiary of a crypto-asset service provider authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;

(c) controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.

6. Before withdrawing an authorisation as a crypto-asset service provider, competent authorities may consult the authority competent for supervising compliance of the crypto-asset service provider with the rules on anti-money laundering and counter-terrorist financing.

7. EBA, ESMA and any competent authority of a host Member State may at any time request that the competent authority of the home Member State examine whether the crypto-asset service provider still complies with the conditions under which the authorisation was granted, when there are grounds to suspect it may no longer be the case.

8. Crypto-asset service providers shall establish, implement and maintain adequate procedures ensuring the timely and orderly transfer of their clients' crypto-assets and funds to another crypto-asset service provider when an authorisation is withdrawn.

Article 65

Cross-border provision of crypto-asset services

1. A crypto-asset service provider that intends to provide crypto-asset services in more than one Member State shall submit the following information to the competent authority of the home Member State:

(a) a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services;

(b) the crypto-asset services that the crypto-asset service provider intends to provide on a cross-border basis;

(c) the starting date of the intended provision of the crypto-asset services;

(d) a list of all other activities provided by the crypto-asset service provider not covered by this Regulation.

2. The competent authority of the home Member State shall, within 10 working days of receipt of the information referred to in paragraph 1, communicate that information to the single points of contact of the host Member States, to ESMA and to EBA.

3. The competent authority of the Member State that granted authorisation shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.

4. The crypto-asset service provider may begin to provide crypto-asset services in a Member State other than its home Member State from the date of receipt of the communication referred to in paragraph 3 or at the latest from the 15th calendar day after having submitted the information referred to in paragraph 1.

CHAPTER 2

Obligations for all crypto-asset service providers

Article 66

Obligation to act honestly, fairly and professionally in the best interests of clients

1. Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.

2. Crypto-asset service providers shall provide their clients with information that is fair, clear and not misleading, including in marketing communications, which shall be identified as such. Crypto-asset service providers shall not, deliberately or negligently, mislead a client in relation to the real or perceived advantages of any crypto-assets.

3. Crypto-asset service providers shall warn clients of the risks associated with transactions in crypto-assets.

When operating a trading platform for crypto-assets, exchanging crypto-assets for funds or other crypto-assets, providing advice on crypto-assets or providing portfolio management on crypto-assets, crypto-asset service providers shall provide their clients with hyperlinks to any crypto-asset white papers for the crypto-assets in relation to which they are providing those services.

4. Crypto-asset service providers shall make their policies on pricing, costs and fees publicly available, in a prominent place on their website.

5. Crypto-asset service providers shall make publicly available, in a prominent place on their website, information related to the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services. That information may be obtained from the crypto-asset white papers.

6. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards on the content, methodologies and presentation of information referred to in paragraph 5 in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste and greenhouse gas emissions. ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 67

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

(a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the type of the crypto-asset services provided;

(b) one quarter of the fixed overheads of the preceding year, reviewed annually.

2. Crypto-asset service providers that have not been in business for one year from the date on which they began providing services shall use, for the calculation referred to in paragraph 1, point (b), the projected fixed overheads included in their projections for the first 12 months of service provision, as submitted with their application for authorisation.

3. For the purposes of paragraph 1, point (b), crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders or members in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:

(a) staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the crypto-asset service providers in the relevant year;

(b) employees', directors' and partners' shares in profits;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) non-recurring expenses from non-ordinary activities.

4. The prudential safeguards referred to in paragraph 1 shall take any of the following forms or a combination thereof:

(a) own funds, consisting of Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;

(b) an insurance policy covering the territories of the Union where crypto-asset services are provided or a comparable guarantee.

5. The insurance policy referred to in paragraph 4, point (b), shall be disclosed to the public on the crypto-asset service provider's website and shall have at least the following characteristics:

(a) it has an initial term of not less than one year;

(b) the notice period for its cancellation is at least 90 days;

(c) it is taken out from an undertaking authorised to provide insurance, in accordance with Union or national law;

(d) it is provided by a third-party entity.

6. The insurance policy referred to in paragraph 4, point (b), shall include coverage against the risk of all of the following:

(a) loss of documents;

(b) misrepresentations or misleading statements made;

(c) acts, errors or omissions resulting in a breach of:

(i) legal and regulatory obligations;

(ii) the obligation to act honestly, fairly and professionally towards clients;

(iii) obligations of confidentiality;

(d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;

(e) losses arising from business disruption or system failures;

(f) where applicable to the business model, gross negligence in the safeguarding of clients' crypto-assets and funds;

(g) liability of the crypto-asset service providers towards clients pursuant to Article 75(8).

Article 68

Governance arrangements

1. Members of the management body of crypto-asset service providers shall be of sufficiently good repute and possess the appropriate knowledge, skills and experience, both individually and collectively, to perform their duties. In particular, members of the management body of crypto-asset service providers shall not have been convicted of offences relating to money laundering or terrorist financing or of any other offences that would affect their good repute. They shall also demonstrate that they are capable of committing sufficient time to effectively perform their duties.

2. Shareholders and members, whether direct or indirect, that have qualifying holdings in crypto-asset service providers shall be of sufficiently good repute and, in particular, shall not have been convicted of offences relating to money laundering or terrorist financing or of any other offences that would affect their good repute.

3. Where the influence exercised by the shareholders or members, whether direct or indirect, that have qualifying holdings in a crypto-asset service provider is likely to be prejudicial to the sound and prudent management of that crypto-asset service provider, competent authorities shall take appropriate measures to address those risks.

Such measures may include applications for judicial orders or the imposition of penalties against directors and those responsible for management, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members, whether direct or indirect, that have the qualifying holdings.

4. Crypto-asset service providers shall adopt policies and procedures that are sufficiently effective to ensure compliance with this Regulation.

5. Crypto-asset service providers shall employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them, taking into account the scale, nature and range of crypto-asset services provided.

6. The management body of crypto-asset service providers shall assess and periodically review the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of this Title and take appropriate measures to address any deficiencies in that respect.

7. Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems as required by Regulation (EU) 2022/2554.

Crypto-asset service providers shall establish a business continuity policy, which shall include ICT business continuity plans as well as ICT response and recovery plans set up pursuant to Articles 11 and 12 of Regulation (EU) 2022/2554 that aim to ensure, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

8. Crypto-asset service providers shall have in place mechanisms, systems and procedures as required by Regulation (EU) 2022/2554, as well as effective procedures and arrangements for risk assessment, to comply with the provisions of national law transposing Directive (EU) 2015/849. They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of those mechanisms, systems and procedures, taking into account the scale, the nature and range of crypto-asset services provided, and shall take appropriate measures to address any deficiencies in that respect.

Crypto-asset service providers shall have systems and procedures to safeguard the availability, authenticity, integrity and confidentiality of data pursuant to Regulation (EU) 2022/2554.

9. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to take enforcement measures, and in particular to ascertain whether crypto-asset service providers have complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market.

The records kept pursuant to the first subparagraph shall be provided to clients upon request and shall be kept for a period of five years and, where requested by the competent authority before five years have elapsed, for a period of up to seven years.

10. ESMA shall develop draft regulatory technical standards to further specify:

(a) the measures ensuring continuity and regularity in the performance of the crypto-asset services referred to in paragraph 7;

(b) the records to be kept of all crypto-asset services, activities, orders and transactions undertaken referred to in paragraph 9.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 69

Information to competent authorities

Crypto-asset service providers shall notify their competent authority without delay of any changes to their management body, prior to the exercise of activities by any new members, and shall provide their competent authority with all of the necessary information to assess compliance with Article 68.

Article 70

Safekeeping of clients' crypto-assets and funds

1. Crypto-asset service providers that hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and to prevent the use of clients' crypto-assets for their own account.

2. Where their business models or the crypto-asset services require holding clients' funds other than e-money tokens, crypto-asset service providers shall have adequate arrangements in place to safeguard the ownership rights of clients and prevent the use of clients' funds for their own account.

3. Crypto-asset service providers shall, by the end of the business day following the day on which clients' funds other than e-money tokens were received, place those funds with a credit institution or a central bank.

Crypto-asset service providers shall take all necessary steps to ensure that clients' funds other than e-money tokens held with a credit institution or a central bank are held in an account separately identifiable from any accounts used to hold funds belonging to the crypto-asset service providers.

4. Crypto-asset service providers may themselves, or through a third party, provide payment services related to the crypto-asset service they offer provided that the crypto-asset service provider itself, or the third party, is authorised to provide those services under Directive (EU) 2015/2366.

Where payment services are provided, crypto-asset service providers shall inform their clients of all of the following:

(a) the nature and terms and conditions of those services, including references to the applicable national law and to the rights of clients;

(b) whether those services are provided by them directly or by a third party.

5. Paragraphs 2 and 3 of this Article shall not apply to crypto-asset service providers that are electronic money institutions, payment institutions or credit institutions.

Article 71

Complaints-handling procedures

1. Crypto-asset service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and shall publish descriptions of those procedures.

2. Clients shall be able to file complaints free of charge with crypto-asset service providers.

3. Crypto-asset service providers shall inform clients of the possibility of filing a complaint. Crypto-asset service providers shall make available to clients a template for filing complaints and shall keep a record of all complaints received and any measures taken in response thereto.

4. Crypto-asset service providers shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to their clients within a reasonable period.

5. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify the requirements, templates and procedures for handling complaints.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 72

Identification, prevention, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall implement and maintain effective policies and procedures, taking into account the scale, the nature and range of crypto-asset services provided, to identify, prevent, manage and disclose conflicts of interest between:

(a) themselves and:

(i) their shareholders or members;

(ii) any person directly or indirectly linked to the crypto-asset service providers or their shareholders or members by control;

(iii) members of their management body;

(iv) their employees; or

(v) their clients; or

(b) two or more clients whose mutual interests conflict.

2. Crypto-asset service providers shall, in a prominent place on their website, disclose to their clients and prospective clients the general nature and sources of conflicts of interest referred to in paragraph 1 and the steps taken to mitigate them.

3. The disclosure referred to in paragraph 2 shall be made in an electronic format and shall include sufficient detail, taking into account the nature of each client, in order to enable each client to take an informed decision about the crypto-asset service in the context of which the conflicts of interest arise.

4. Crypto-asset service providers shall assess and, at least annually, review their policy on conflicts of interest and take all appropriate measures to address any deficiencies in that respect.

5. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify:

(a) the requirements for the policies and procedures referred to in paragraph 1, taking into account the scale, the nature and the range of crypto-asset services provided;

(b) the details and methodology for the content of the disclosure referred to in paragraph 2.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 73

Outsourcing

1. Crypto-asset service providers that outsource services or activities to third parties for the performance of operational functions shall take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of their obligations pursuant to this Title and shall ensure at all times that the following conditions are met:

(a) outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;

(b) outsourcing does not alter the relationship between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service providers towards their clients;

(c) outsourcing does not alter the conditions for the authorisation of the crypto-asset service providers;

(d) third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of the supervisory functions of competent authorities, including on-site access to acquire any relevant information needed to fulfil those functions;

(e) crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;

(f) crypto-asset service providers have direct access to the relevant information of the outsourced services;

(g) crypto-asset service providers ensure that third parties involved in the outsourcing meet the data protection standards of the Union.

For the purposes of point (g) of the first subparagraph, crypto-asset service providers are responsible for ensuring that the data protection standards are set out in the written agreements referred to in paragraph 3.

2. Crypto-asset service providers shall have a policy on their outsourcing, including on contingency plans and exit strategies, taking into account the scale, the nature and the range of crypto-asset services provided.

3. Crypto-asset service providers shall define in a written agreement their rights and obligations and those of the third parties to which they are outsourcing services or activities. Outsourcing agreements shall give crypto-asset service providers the right to terminate those agreements.

4. Crypto-asset service providers and third parties shall, upon request, make available to the competent authorities and other relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.

Article 74

Orderly wind-down of crypto-asset service providers

Crypto-asset service providers that provide the services referred to in Articles 75 to 79 shall have in place a plan that is appropriate to support an orderly wind-down of their activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers. That plan shall demonstrate the ability of crypto-asset service providers to carry out an orderly wind-down without causing undue economic harm to their clients.

CHAPTER 3

Obligations in respect of specific crypto-asset services

Article 75

Providing custody and administration of crypto-assets on behalf of clients

1. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall conclude an agreement with their clients to specify their duties and their responsibilities. Such an agreement shall include at least the following:

(a) the identity of the parties to the agreement;

(b) the nature of the crypto-asset service provided and a description of that service;

(c) the custody policy;

(d) the means of communication between the crypto-asset service provider and the client, including the client's authentication system;

(e) a description of the security systems used by the crypto-asset service provider;

(f) the fees, costs and charges applied by the crypto-asset service provider;

(g) the applicable law.

2. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. Where relevant, crypto-asset service providers shall record as soon as possible in that register any movements following instructions from their clients. In such cases, their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's register of positions.

3. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall establish a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets.

The custody policy referred to in the first subparagraph shall minimise the risk of a loss of clients' crypto-assets or the rights related to those crypto-assets or the means of access to the crypto-assets due to fraud, cyber threats or negligence.

A summary of the custody policy shall be made available to clients at their request in an electronic format.

4. Where applicable, crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the rights of a client shall immediately be recorded in the client's register of positions.

Where there are changes to the underlying distributed ledger technology or any other event likely to create or modify a client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the occurrence of that change or event, except when a valid agreement signed with the crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients pursuant to paragraph 1 prior to that change or event expressly provides otherwise.

5. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall provide their clients, at least once every three months and at the request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in an electronic format. The statement of position shall identify the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall provide their clients as soon as possible with any information about operations on crypto-assets that require a response from those clients.

6. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall ensure that necessary procedures are in place to return crypto-assets held on behalf of their clients, or the means of access, as soon as possible to those clients.

7. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall segregate holdings of crypto-assets on behalf of their clients from their own holdings and ensure that the means of access to crypto-assets of their clients is clearly identified as such. They shall ensure that, on the distributed ledger, their clients' crypto-assets are held separately from their own crypto-assets.

The crypto-assets held in custody shall be legally segregated from the crypto-asset service provider's estate in the interest of the clients of the crypto-asset service provider in accordance with applicable law, so that creditors of the crypto-asset service provider have no recourse to crypto-assets held in custody by the crypto-asset service provider, in particular in the event of insolvency.

Crypto-asset service provider shall ensure that the crypto-assets held in custody are operationally segregated from the crypto-asset service provider's estate.

8. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall be liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result of an incident that is attributable to them. The liability of the crypto-asset service provider shall be capped at the market value of the crypto-asset that was lost, at the time the loss occurred.

Incidents not attributable to the crypto-asset service provider include any event in respect of which the crypto-asset service provider demonstrates that it occurred independently of the provision of the relevant service, or independently of the operations of the crypto-asset service provider, such as a problem inherent in the operation of the distributed ledger that the crypto-asset service provider does not control.

9. If crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients make use of other crypto-asset service providers of that service, they shall only make use of crypto-asset service providers authorised in accordance with Article 59.

Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients and that make use of other crypto-asset service providers of that service shall inform their clients thereof.

Article 76

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers operating a trading platform for crypto-assets shall lay down, maintain and implement clear and transparent operating rules for the trading platform. Those operating rules shall at least:

(a) set the approval processes, including customer due diligence requirements commensurate to the money laundering or terrorist financing risk presented by the applicant in accordance with Directive (EU) 2015/849, that are applied before admitting crypto-assets to the trading platform;

(b) define exclusion categories, if any, of the types of crypto-assets that are not admitted to trading;

(c) set out the policies, procedures and the level of fees, if any, for the admission to trading;

(d) set objective, non-discriminatory rules and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;

(e) set non-discretionary rules and procedures to ensure fair and orderly trading and objective criteria for the efficient execution of orders;

(f) set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;

(g) set conditions under which trading of crypto-assets can be suspended;

(h) set procedures to ensure efficient settlement of both crypto-assets and funds.

For the purposes of point (a) of the first subparagraph, the operating rules shall clearly state that a crypto-asset is not to be admitted to trading where no corresponding crypto-asset white paper has been published in the cases required by this Regulation.

2. Before admitting a crypto-asset to trading, crypto-asset service providers operating a trading platform for crypto-assets shall ensure that the crypto-asset complies with the operating rules of the trading platform and shall assess the suitability of the crypto-asset concerned. When assessing the suitability of a crypto-asset, the crypto-asset service providers operating a trading platform shall evaluate, in particular, the reliability of the technical solutions used and the potential association to illicit or fraudulent activities, taking into account the experience, track record and reputation of the issuer of those crypto-assets and its development team. The crypto-asset service providers operating a trading platform shall also assess the suitability of the crypto-assets other than asset-referenced tokens or e-money tokens referred to in Article 4(3), first subparagraph, points (a) to (d).

3. The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of crypto-assets that have an inbuilt anonymisation function unless the holders of those crypto-assets and their transaction history can be identified by the crypto-asset service providers operating a trading platform for crypto-assets.

4. The operating rules referred to in paragraph 1 shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

If the operation of a trading platform for crypto-assets is provided in another Member State, the operating rules referred to in paragraph 1 shall be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

5. Crypto-asset service providers operating a trading platform for crypto-assets shall not deal on own account on the trading platform for crypto-assets they operate, including where they provide the exchange of crypto-assets for funds or other crypto-assets.

6. Crypto-asset service providers operating a trading platform for crypto-assets shall only be allowed to engage in matched principal trading where the client has consented to that process. Crypto-asset service providers shall provide the competent authority with information explaining their use of matched principal trading. The competent authority shall monitor the engagement of crypto-asset service providers in matched principal trading, and ensure that their engagement in matched principal trading continues to fall within the definition of such trading and does not give rise to conflicts of interest between the crypto-asset service providers and their clients.

7. Crypto-asset service providers operating a trading platform for crypto-assets shall have in place effective systems, procedures and arrangements to ensure that their trading systems:

(a) are resilient;

(b) have sufficient capacity to deal with peak order and message volumes;

(c) are able to ensure orderly trading under conditions of severe market stress;

(d) are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

(e) are fully tested to ensure that the conditions under points (a) to (d) are met;

(f) are subject to effective business continuity arrangements to ensure the continuity of their services if there is any failure of the trading system;

(g) are able to prevent or detect market abuse;

(h) are sufficiently robust to prevent their abuse for the purposes of money laundering or terrorist financing.

8. Crypto-asset service providers operating a trading platform for crypto-assets shall inform their competent authority when they identify cases of market abuse or attempted market abuse occurring on or through their trading systems.

9. Crypto-asset service providers operating a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through their trading platforms. The crypto-asset service providers concerned shall make that information available to the public on a continuous basis during trading hours.

10. Crypto-asset service providers operating a trading platform for crypto-assets shall make public the price, volume and time of the transactions executed in respect of crypto-assets traded on their trading platforms. They shall make those details for all such transactions public as close to real-time as is technically possible.

11. Crypto-asset service providers operating a trading platform for crypto-assets shall make the information published in accordance with paragraphs 9 and 10 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine-readable format and it shall remain published for at least two years.

12. Crypto-asset service providers operating a trading platform for crypto-assets shall initiate the final settlement of a crypto-asset transaction on the distributed ledger within 24 hours of the transaction being executed on the trading platform or, in the case of transactions settled outside the distributed ledger, by the closing of the day at the latest.

13. Crypto-asset service providers operating a trading platform for crypto-assets shall ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

14. Crypto-asset service providers operating a trading platform for crypto-assets shall maintain resources and have back-up facilities in place to enable them to report to their competent authority at all times.

15. Crypto-asset service providers operating a trading platform shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in crypto-assets that are advertised through their systems, or give the competent authority access to the order book so that the competent authority is able to monitor the trading activity. That relevant data shall contain the characteristics of the order, including those that link an order with the executed transactions that stem from that order.

16. ESMA shall develop draft regulatory technical standards to further specify:

(a) the manner in which transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraphs 1, 9 and 10, is to be presented;

(b) the content and format of order book records to be maintained as specified in paragraph 15.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 77

Exchange of crypto-assets for funds or other crypto-assets

1. Crypto-asset service providers exchanging crypto-assets for funds or other crypto-assets shall establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they agree to transact with and the conditions that shall be met by such clients.

2. Crypto-asset service providers exchanging crypto-assets for funds or other crypto-assets shall publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets that they propose to exchange for funds or other crypto-assets, and any applicable limit determined by that crypto-asset service provider on the amount to be exchanged.

3. Crypto-asset service providers exchanging crypto-assets for funds or other crypto-assets shall execute client orders at the prices displayed at the time when the order for exchange is final. Crypto-asset service providers shall inform their clients of the conditions for their order to be deemed final.

4. Crypto-asset service providers exchanging crypto-assets for funds or other crypto-assets shall publish information about the transactions concluded by them, such as transaction volumes and prices.

Article 78

Execution of orders for crypto-assets on behalf of clients

1. Crypto-asset service providers executing orders for crypto-assets on behalf of clients shall take all necessary steps to obtain, while executing orders, the best possible result for their clients taking into account factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other consideration relevant to the execution of the order.

Notwithstanding the first subparagraph, crypto-asset service providers executing orders for crypto-assets on behalf of clients shall not be required to take the necessary steps as referred to in the first subparagraph in cases where they execute orders for crypto-assets following specific instructions given by its clients.

2. To ensure compliance with paragraph 1, crypto-asset service providers executing orders for crypto-assets on behalf of clients shall establish and implement effective execution arrangements. In particular, they shall establish and implement an order execution policy to allow them to comply with paragraph 1. The order execution policy shall, amongst others, provide for the prompt, fair and expeditious execution of client orders and prevent the misuse by the crypto-asset service providers' employees of any information relating to client orders.

3. Crypto-asset service providers executing orders for crypto-assets on behalf of clients shall provide appropriate and clear information to their clients on their order execution policy referred to in paragraph 2 and any significant change thereto. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how client orders are to be executed by crypto-asset service providers. Crypto-asset service providers shall obtain prior consent from each client regarding the order execution policy.

4. Crypto-asset service providers executing orders for crypto-assets on behalf of clients shall be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with their order execution policy and shall be able to demonstrate to the competent authority, at the latter's request, their compliance with this Article.

5. Where the order execution policy provides for the possibility that client orders might be executed outside a trading platform, crypto-asset service providers executing orders for crypto-assets on behalf of clients shall inform their clients about that possibility and shall obtain the prior express consent of their clients before proceeding to execute their orders outside a trading platform, either in the form of a general agreement or with respect to individual transactions.

6. Crypto-asset service providers executing orders for crypto-assets on behalf of clients shall monitor the effectiveness of their order execution arrangements and order execution policy in order to identify and, where appropriate, correct any deficiencies in that respect. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for clients or whether they need to make changes to their order execution arrangements. Crypto-asset service providers executing orders for crypto-assets on behalf of clients shall notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or order execution policy.

Article 79

Placing of crypto-assets

1. Crypto-asset service providers placing crypto-assets shall communicate the following information to the offeror, to the person seeking admission to trading, or to any third party acting on their behalf, before entering into an agreement with them:

(a) the type of placement under consideration, including whether a minimum amount of purchase is guaranteed or not;

(b) an indication of the amount of transaction fees associated with the proposed placing;

(c) the likely timing, process and price for the proposed operation;

(d) information about the targeted purchasers.

Crypto-asset service providers placing crypto-assets shall, before placing those crypto-assets, obtain the agreement of the issuers of those crypto-assets or any third party acting on their behalf as regards the information listed in the first subparagraph.

2. Crypto-asset service providers' rules on conflicts of interest referred to in Article 72(1) shall have specific and adequate procedures in place to identify, prevent, manage and disclose any conflicts of interest arising from the following situations:

(a) crypto-asset service providers place the crypto-assets with their own clients;

(b) the proposed price for placing of crypto-assets has been overestimated or underestimated;

(c) incentives, including non-monetary incentives, are paid or granted by the offeror to crypto-asset service providers.

Article 80

Reception and transmission of orders for crypto-assets on behalf of clients

1. Crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall establish and implement procedures and arrangements that provide for the prompt and proper transmission of client orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.

2. Crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not receive any remuneration, discount or non-monetary benefit in return for routing orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.

3. Crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of their employees.

Article 81

Providing advice on crypto-assets and providing portfolio management of crypto-assets

1. Crypto-asset service providers providing advice on crypto-assets or providing portfolio management of crypto-assets shall assess whether the crypto-asset services or crypto-assets are suitable for their clients or prospective clients, taking into consideration their knowledge and experience in investing in crypto-assets, their investment objectives, including risk tolerance, and their financial situation including their ability to bear losses.

2. Crypto-asset service providers providing advice on crypto-assets shall, in good time before providing advice on crypto-assets, inform prospective clients whether the advice is:

(a) provided on an independent basis;

(b) based on a broad or on a more restricted analysis of different crypto-assets, including whether the advice is limited to crypto-assets issued or offered by entities having close links with the crypto-asset service provider or any other legal or economic relationships, such as contractual relationships, that risk impairing the independence of the advice provided.

3. Where a crypto-asset service provider providing advice on crypto-assets informs the prospective client that advice is provided on an independent basis, it shall:

(a) assess a sufficient range of crypto-assets available on the market which must be sufficiently diverse to ensure that the client's investment objectives can be suitably met and which must not be limited to crypto-assets issued or provided by:

  (i) that same crypto-asset service provider;

  (ii) entities having close links with that same crypto-asset service provider; or

  (iii) other entities with which that same crypto-asset service provider has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;

(b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Notwithstanding point (b) of the first subparagraph, minor non-monetary benefits that are capable of enhancing the quality of crypto-asset services provided to a client and that are of such a scale and nature that they do not impair compliance with a crypto-asset service provider's obligation to act in the best interests of its client shall be permitted in cases where they are clearly disclosed to the client.

4. Crypto-asset service providers providing advice on crypto-assets shall also provide prospective clients with information on all costs and related charges, including the cost of advice, where applicable, the cost of crypto-assets recommended or marketed to the client and how the client is permitted to pay for the crypto-assets, also encompassing any third-party payments.

5. Crypto-asset service providers providing portfolio management of crypto-assets shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by an issuer, offeror, person seeking admission to trading, or any third party, or a person acting on behalf of a third party, in relation to the provision of portfolio management of crypto-assets to their clients.

6. Where a crypto-asset service provider informs a prospective client that its advice is provided on a non-independent basis, that provider may receive inducements subject to the conditions that the payment or benefit:

(a) is designed to enhance the quality of the relevant service to the client; and

(b) does not impair compliance with the crypto-asset service provider's obligation to act honestly, fairly and professionally in accordance with the best interests of its clients.

The existence, nature and amount of the payment or benefit referred to in paragraph 4, or, where the amount cannot be ascertained, the method of calculating that amount, shall be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant crypto-asset service.

7. Crypto-asset service providers providing advice on crypto-assets shall ensure that natural persons giving advice or information about crypto-assets, or a crypto-asset service, on their behalf possess the necessary knowledge and competence to fulfil their obligations. Member States shall publish the criteria to be used for assessing such knowledge and competence.

8. For the purposes of the suitability assessment referred to in paragraph 1, crypto-asset service providers providing advice on crypto-assets or providing portfolio management of crypto-assets shall obtain from their clients or prospective clients the necessary information regarding their knowledge of, and experience in, investing, including in crypto-assets, their investment objectives, including risk tolerance, their financial situation including their ability to bear losses, and their basic understanding of the risks involved in purchasing crypto-assets, so as to enable crypto-asset service providers to recommend to clients or prospective clients whether or not the crypto-assets are suitable for them and, in particular, are in accordance with their risk tolerance and ability to bear losses.

9. Crypto-asset service providers providing advice on crypto-assets or portfolio management of crypto-assets shall warn clients or prospective clients that:

(a) the value of crypto-assets might fluctuate;

(b) the crypto-assets might be subject to full or partial losses;

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

(d) where applicable, the crypto-assets are not covered by the investor compensation schemes under Directive 97/9/EC;

(e) the crypto-assets are not covered by the deposit guarantee schemes under Directive 2014/49/EU.

10. Crypto-asset service providers providing advice on crypto-assets or portfolio management of crypto-assets shall establish, maintain and implement policies and procedures to enable them to collect and assess all information necessary to conduct the assessment referred to in paragraph 1 for each client. They shall take all reasonable steps to ensure that the information collected about their clients or prospective clients is reliable.

11. Where clients do not provide the information required pursuant to paragraph 8, or where crypto-asset service providers providing advice on crypto-assets or portfolio management of crypto-assets consider that the crypto-asset services or crypto-assets are not suitable for their clients, they shall not recommend such crypto-asset services or crypto-assets, nor begin the provision of portfolio management of such crypto-assets.

12. Crypto-asset service providers providing advice on crypto-assets or portfolio management of crypto-assets shall regularly review for each client the suitability assessment referred to in paragraph 1 at least every two years after the initial assessment made in accordance with that paragraph.

13. Once the suitability assessment referred to in paragraph 1 or its review under paragraph 12 has been performed, crypto-asset service providers providing advice on crypto-assets shall provide clients with a report on suitability specifying the advice given and how that advice meets the preferences, objectives and other characteristics of clients. That report shall be made and communicated to clients in an electronic format. That report shall, as a minimum:

(a) include an updated information on the assessment referred to in paragraph 1; and

(b) provide an outline of the advice given.

The report on suitability referred to in the first subparagraph shall make clear that the advice is based on the client's knowledge and experience in investing in crypto-assets, the client's investment objectives, risk tolerance, financial situation and ability to bear losses.

14. Crypto-asset service providers providing portfolio management of crypto-assets shall provide periodic statements to their clients, in an electronic format, of the portfolio management activities carried out on their behalf. Those periodic statements shall contain a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period, an updated statement of how the activities undertaken meet the preferences, objectives and other characteristics of the client, as well as an updated information on the suitability assessment referred to in paragraph 1 or its review under paragraph 12.

The periodic statement referred to in the first subparagraph of this paragraph shall be provided every three months, except in cases where a client has access to an online system where up-to-date valuations of the client's portfolio and updated information on the suitability assessment referred to in paragraph 1 can be accessed, and the crypto-asset service provider has evidence that the client has accessed a valuation at least once during the relevant quarter. Such online system shall be deemed an electronic format.

15. ESMA shall, by 30 December 2024, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 specifying:

(a) the criteria for the assessment of client's knowledge and competence in accordance with paragraph 2;

(b) the information referred to in paragraph 8; and

(c) the format of the periodic statement referred to in paragraph 14.

Article 82

Providing transfer services for crypto-assets on behalf of clients

1. Crypto-asset service providers providing transfer services for crypto-assets on behalf of clients shall conclude an agreement with their clients to specify their duties and their responsibilities. Such agreement shall include at least the following:

(a) the identity of the parties to the agreement;

(b) a description of the modalities of the transfer service provided;

(c) a description of the security systems used by the crypto-asset service provider;

(d) fees applied by the crypto-asset service provider;

(e) the applicable law.

2. ESMA, in close cooperation with EBA, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 for crypto-asset service providers providing transfer services for crypto-assets on behalf of clients as regards procedures and policies, including the rights of clients, in the context of transfer services for crypto-assets.

CHAPTER 4

Acquisition of crypto-asset service providers

Article 83

Assessment of proposed acquisitions of crypto-asset service providers

1. Any natural or legal person or such persons acting in concert who have taken a decision either to acquire, directly or indirectly, (the ' proposed acquirer') a qualifying holding in a crypto-asset service provider or to increase, directly or indirectly, such a qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the crypto-asset service provider would become its subsidiary, shall notify the competent authority of that crypto-asset service provider thereof in writing indicating the size of the intended holding and the information required pursuant to the regulatory technical standards adopted by the Commission in accordance with Article 84(4).

2. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a crypto-asset service provider shall, prior to disposing of that holding, notify in writing the competent authority of its decision and indicate the size of such holding. That person shall also notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the crypto-asset service provider would cease to be that person's subsidiary.

3. The competent authority shall, promptly and in any event within two working days following receipt of a notification pursuant to paragraph 1, acknowledge receipt thereof in writing.

4. The competent authority shall assess the proposed acquisition referred to in paragraph 1 of this Article and the information required pursuant to the regulatory technical standards adopted by the Commission in accordance with Article 84(4) within 60 working days of the date of the written acknowledgement of receipt referred to in paragraph 3 of this Article. When acknowledging receipt of the notification, the competent authority shall inform the proposed acquirer of the date of expiry of the assessment period.

5. For the purposes of the assessment referred to in paragraph 4, the competent authority may consult the competent authorities for anti-money laundering and counter-terrorist financing and financial intelligence units and shall duly consider their views.

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

The competent authority shall suspend the assessment period referred to in paragraph 4, until they have received the additional information referred to in the first subparagraph of this paragraph. The suspension shall not exceed 20 working days. Any further requests by the competent authority for additional information or for clarification of the information received shall not result in an additional suspension of the assessment period.

The competent authority may extend the suspension referred to in the second subparagraph of this paragraph by up to 30 working days if the proposed acquirer is situated outside the Union or regulated under the law of a third country.

7. A competent authority that, upon completion of the assessment referred to in paragraph 4 decides to oppose the proposed acquisition referred to in paragraph 1, shall notify the proposed acquirer thereof within two working days and in any event before the date referred to in paragraph 4 extended, where applicable, in accordance with paragraph 6, second and third subparagraphs. The notification shall provide the reasons for such a decision.

8. Where the competent authority does not oppose the proposed acquisition referred to in paragraph 1 before the date referred to in paragraph 4 extended, where applicable, in accordance with paragraph 6, second and third subparagraphs, the proposed acquisition shall be deemed to be approved.

9. The competent authority may set a maximum period for concluding the proposed acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 84

Content of the assessment of proposed acquisitions of crypto-asset service providers

1. When performing the assessment referred to in Article 83(4), the competent authority shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition referred to in Article 83(1) against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation, knowledge, skills and experience of any person who will direct the business of the crypto-asset service provider as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business envisaged and pursued in respect of the crypto-asset service provider in which the acquisition is proposed;

(d) whether the crypto-asset service provider will be able to comply and continue to comply with the provisions of this Title;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of, respectively, Article 1(3) and (5) of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authority may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 of this Article or where the information provided in accordance with Article 83(4) is incomplete or false.

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

4. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards specifying the detailed content of the information that is necessary to carry out the assessment referred to in Article 83(4), first subparagraph. The information required shall be relevant for a prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition referred to in Article 83(1).

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 5

Significant crypto-asset service providers

Article 85

Identification of significant crypto-asset service providers

1. A crypto-asset service provider shall be deemed significant if it has in the Union at least 15 million active users, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year.

2. Crypto-asset service providers shall notify their competent authorities within two months of reaching the number of active users as set out in paragraph 1. Where the competent authority agrees that the threshold set out in paragraph 1 is met, it shall notify ESMA thereof.

3. Without prejudice to the responsibilities of competent authorities under this Regulation, the competent authorities of the home Member States shall provide ESMA's Board of Supervisors with annual updates on the following supervisory developments in relation to significant crypto-asset service providers:

(a) ongoing or concluded authorisations as referred to in Article 59;

(b) ongoing or concluded processes of withdrawal of authorisations as referred to in Article 64;

(c) the exercise of supervisory powers set out in Article 94(1), first subparagraph, points (b), (c), (e), (f), (g), (y) and (aa).

The competent authority of the home Member State may provide ESMA's Board of Supervisors with more frequent updates, or notify it prior to any decision taken by the competent authority of the home Member State with regard to the first subparagraph, point (a), (b) or (c).

4. The update referred to in paragraph 3, second subparagraph, may be followed by an exchange of views at ESMA's Board of Supervisors.

5. Where appropriate, ESMA may make use of its powers under Articles 29, 30, 31 and 31b of Regulation (EU) No 1095/2010.

TITLE VI

PREVENTION AND PROHIBITION OF MARKET ABUSE INVOLVING CRYPTO-ASSETS

Article 86

Scope of the rules on market abuse

1. This Title shall apply to acts carried out by any person concerning crypto-assets that are admitted to trading or in respect of which a request for admission to trading has been made.

2. This Title shall also apply to any transaction, order or behaviour concerning crypto-assets as referred to in paragraph 1, irrespective of whether such transaction, order or behaviour takes place on a trading platform.

3. This Title shall apply to actions and omissions, in the Union and in third countries, concerning crypto-assets as referred to in paragraph 1.

Article 87

Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading, or to one or more crypto-assets, and which, if it were made public, would likely have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset;

(b) for persons charged with the execution of orders for crypto-assets on behalf of clients, it also means information of a precise nature conveyed by a client and relating to the client's pending orders in crypto-assets, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would likely have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of crypto-assets. In that respect, in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, in and of itself, it satisfies the criteria of inside information referred to in paragraph 2.

4. For the purposes of paragraph 1, information which, if it were made public, would likely have a significant effect on the prices of crypto-assets shall mean information that a reasonable holder of crypto-assets would likely use as part of the basis of the holder's investment decisions.

Article 88

Public disclosure of inside information

1. Issuers, offerors and persons seeking admission to trading shall inform the public as soon as possible of inside information referred to in Article 87 that directly concerns them, in a manner that enables fast access as well as complete, correct and timely assessment of the information by the public. Issuers, offerors and persons seeking admission to trading shall not combine the disclosure of inside information to the public with the marketing of their activities. Issuers, offerors and persons seeking admission to trading shall post and maintain on their website, for a period of at least five years, all inside information that they are required to disclose publicly.

2. Issuers, offerors and persons seeking admission to trading may, on their own responsibility, delay disclosure to the public of inside information referred to in Article 87 provided that all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuers, offerors or persons seeking admission to trading;

(b) delay of disclosure is not likely to mislead the public;

(c) issuers, offerors or persons seeking admission to trading are able to ensure the confidentiality of that information.

3. Where an issuer, offeror or a person seeking admission to trading has delayed the disclosure of inside information in accordance with paragraph 2, it shall inform the competent authority that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in paragraph 2 were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority.

4. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the technical means for:

(a) appropriate public disclosure of inside information as referred to in paragraph 1; and

(b) delaying the public disclosure of inside information as referred to in paragraphs 2 and 3.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 89

Prohibition of insider dealing

1. For the purposes of this Regulation, insider dealing shall be deemed to arise where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates. The use of inside information by cancelling or amending an order concerning a crypto-asset to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. The use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

2. No person shall engage or attempt to engage in insider dealing or use inside information about crypto-assets to acquire, or dispose of, those crypto-assets, directly or indirectly, whether for that person's own account or for the account of a third party. No person shall recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

3. No person in the possession of inside information about crypto-assets shall, based on that inside information, recommend or induce another person:

(a) to acquire or dispose of those crypto-assets; or

(b) to cancel or amend an order concerning those crypto-assets.

4. The use of a recommendation or inducement as referred to in paragraph 3 amounts to insider dealing within the meaning of this Article where the person using that recommendation or inducement knows or ought to know that it is based on inside information.

5. This Article applies to any person who possesses inside information as a result of:

(a) being a member of the administrative, management or supervisory bodies of the issuer, the offeror, or the person seeking admission to trading;

(b) having a holding in the capital of the issuer, the offeror, or the person seeking admission to trading;

(c) having access to the information through the exercise of an employment, profession or duties or in relation to its role in the distributed ledger technology or similar technology; or

(d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

6. Where person as referred to in paragraph 1 is a legal person, this Article shall apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 90

Prohibition of unlawful disclosure of inside information

1. No person in possession of inside information shall unlawfully disclose inside information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

2. The onward disclosure of recommendations or inducements referred to in Article 89(4) amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 91

Prohibition of market manipulation

1. No person shall engage in or attempt to engage in market manipulation.

2. For the purposes of this Regulation, market manipulation shall comprise any of the following activities:

(a) unless carried out for legitimate reasons, entering into a transaction, placing an order to trade or engaging in any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a crypto-asset;

(ii) secures, or is likely to secure, the price of one or several crypto-assets at an abnormal or artificial level;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several crypto-assets, while employing a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of one or several crypto-assets, or secures or is likely to secure, the price of one or several crypto-assets, at an abnormal or artificial level, including the dissemination of rumours, where the person who engaged in the dissemination knew, or ought to have known, that the information was false or misleading.

3. The following behaviour shall, inter alia, be considered market manipulation:

(a) securing a dominant position over the supply of, or demand for, a crypto-asset, which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the placing of orders to a trading platform for crypto-assets, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 2, point (a), by:

(i) disrupting or delaying the functioning of the trading platform for crypto-assets or engaging into any activities that are likely to have that effect;

(ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or engaging into any activities that are likely to have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

(iii) creating a false or misleading signal about the supply of, or demand for, or price of, a crypto-asset, in particular by entering orders to initiate or exacerbate a trend, or engaging into any activities that are likely to have that effect;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a crypto-asset, while having previously taken positions on that crypto-asset, and profiting subsequently from the impact of the opinions voiced on the price of that crypto-asset, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Article 92

Prevention and detection of market abuse

1. Any person professionally arranging or executing transactions in crypto-assets shall have in place effective arrangements, systems and procedures to prevent and detect market abuse. That person shall be subject to the rules of notification of the Member State where it is registered or has its head office or, in the case of a branch, the Member State where the branch is situated, and shall without delay report to the competent authority of that Member State any reasonable suspicion regarding an order or transaction, including any cancellation or modification thereof, and other aspects of the functioning of the distributed ledger technology such as the consensus mechanism, where there might exist circumstances indicating that market abuse has been committed, is being committed or is likely to be committed.

The competent authorities receiving a report of suspicious orders or transactions shall transmit such information immediately to the competent authorities of the trading platforms concerned.

2. ESMA shall develop draft regulatory technical standards to further specify:

(a) appropriate arrangements, systems and procedures for persons to comply with paragraph 1;

(b) the template to be used by persons to comply with paragraph 1;

(c) for cross-border market abuse situations, coordination procedures between the relevant competent authorities for the detection and sanctioning of market abuse.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 December 2024.

3. In order to ensure consistency of supervisory practices under this Article, ESMA shall by 30 June 2025 issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on supervisory practices among the competent authorities to prevent and detect market abuse, if not already covered by the regulatory technical standards referred to in paragraph 2.

TITLE VII

COMPETENT AUTHORITIES, EBA AND ESMA

CHAPTER 1

Powers of competent authorities and cooperation between competent authorities, EBA and ESMA

Article 93

Competent authorities

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation. Member States shall notify those competent authorities to EBA and ESMA.

2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one competent authority as the single point of contact for cross-border administrative cooperation between competent authorities as well as with EBA and ESMA. Member States may designate a different single point of contact for each of those types of administrative cooperation.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.

Article 94

Powers of competent authorities

1. In order to perform their duties under Titles II to VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

(a) to require any person to provide information and documents which the competent authorities consider could be relevant for the performance of their duties;

(b) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(c) to prohibit the provision of crypto-asset services where they find that this Regulation has been infringed;

(d) to disclose, or to require a crypto-asset servicer provider to disclose, all material information which might have an effect on the provision of the crypto-asset services concerned, in order to ensure the protection of the interests of clients, in particular retail holders, or the smooth operation of the market;

(e) to make public the fact that a crypto-asset service provider fails to fulfil its obligations;

(f) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services where the competent authorities consider that the crypto-asset service provider's situation is such that the provision of the crypto-asset service would be detrimental to the interests of clients, in particular retail holders;

(g) to require the transfer of existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 64, subject to the agreement of the clients and the crypto-asset service provider to which the contracts are to be transferred;

(h) where there is a reason to assume that a person is providing crypto-asset services without authorisation, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(i) to require offerors, persons seeking admission to trading of crypto-assets, or issuers of asset-referenced tokens or e-money tokens to amend their crypto-asset white paper or further amend their modified crypto-asset white paper, where they find that the crypto-asset white paper or the modified crypto-asset white paper does not contain the information required by Article 6, 19 or 51;

(j) to require offerors, persons seeking admission to trading of crypto-assets, or issuers of asset-referenced tokens or e-money tokens, to amend their marketing communications, where they find that the marketing communications do not comply with the requirements set out in Article 7, 29 or 53 of this Regulation;

(k) to require offerors, persons seeking admission to trading of crypto-assets, or issuers of asset-referenced tokens or e-money tokens, to include additional information in their crypto-asset white papers, where necessary for financial stability or the protection of the interests of the holders of crypto-assets, in particular retail holders;

(l) to suspend an offer to the public or an admission to trading of crypto-assets for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(m) to prohibit an offer to the public or an admission to trading of crypto-assets where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it will be infringed;

(n) to suspend, or require a crypto-asset service provider operating a trading platform for crypto-assets to suspend, trading of the crypto-assets for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(o) to prohibit trading of crypto-assets on a trading platform for crypto-assets where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it will be infringed;

(p) to suspend or prohibit marketing communications where there are reasonable grounds for suspecting that this Regulation has been infringed;

(q) to require offerors, persons seeking admission to trading of crypto-assets, issuers of asset-referenced tokens or e-money tokens or relevant crypto-asset service providers to cease or suspend marketing communications for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(r) to make public the fact that an offeror, a person seeking admission to trading of a crypto-asset or an issuer of an asset-referenced token or e-money token, fails to fulfil its obligations under this Regulation;

(s) to disclose, or to require the offeror, the person seeking admission to trading of a crypto-asset or the issuer of the asset-referenced token or e-money token, to disclose all material information which may have an effect on the assessment of the crypto-asset offered to the public or admitted to trading in order to ensure the protection of the interests of holders of crypto-assets, in particular retail holders, or the smooth operation of the market;

(t) to suspend, or require the relevant crypto-asset service provider operating the trading platform for crypto-assets to suspend, the crypto-assets from trading where they consider that the situation of the offeror, the person seeking admission to trading of a crypto-asset or the issuer of an asset-referenced token or an e-money token is such that trading would be detrimental to the interests of the holders of crypto-assets, in particular retail holders;

(u) where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation or a person is offering or seeking admission to trading of crypto-assets other than asset-referenced tokens or e-money tokens without a crypto-asset white paper notified in accordance with Article 8, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(v) to take any type of measure to ensure that an offeror or a person seeking admission to trading of crypto-assets, an issuer of an asset-referenced token or an e-money token or a crypto-asset service provider comply with this Regulation including to require the cessation of any practice or conduct that the competent authorities consider contrary to this Regulation;

(w) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form;

(x) to outsource verifications or investigations to auditors or experts;

(y) to require the removal of a natural person from the management body of an issuer of an asset-referenced token or of a crypto-asset service provider;

(z) to request any person to take steps to reduce the size of its position or exposure to crypto-assets;

(aa) where no other effective means are available to bring about the cessation of the infringement of this Regulation and in order to avoid the risk of serious harm to the interests of clients or holders of crypto-assets to take all necessary measures, including by requesting a third party or a public authority to implement such measures, to:

(i) remove content or restrict access to an online interface or to order the explicit display of a warning to clients and holders of crypto-assets when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface; or

(iii) order domain registries or registrars to delete a fully qualified domain name and allow the competent authority concerned to register it;

(ab) to require an issuer of an asset-referenced token or e-money token, in accordance with Article 23(4), 24(3) or 58(3), to introduce a minimum denomination amount or to limit the amount issued.

2. Supervisory and investigative powers exercised in relation to offerors, persons seeking admission to trading, issuers and crypto-asset service providers, are without prejudice to powers granted to the same or other supervisory authorities regarding those entities, including powers granted to relevant competent authorities under the provisions of national law transposing Directive 2009/110/EC and prudential supervisory powers granted to the ECB under Regulation (EU) No 1024/2013.

3. In order to fulfil their duties under Title VI, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers in addition to the powers referred to in paragraph 1:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation might be relevant to prove a case of insider dealing or market manipulation;

(d) to refer matters for criminal prosecution;

(e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 88 to 91;

(f) to request the freezing or sequestration of assets, or both;

(g) to impose a temporary prohibition on the exercise of professional activity;

(h) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an offeror, person seeking admission to trading or issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

4. Where necessary under national law, the competent authority may ask the relevant court to decide on the use of the powers referred to in paragraphs 1 and 2.

5. Competent authorities shall exercise the powers referred to in paragraphs 1 and 2 in any of the following ways:

(a) directly;

(b) in collaboration with other authorities, including authorities competent for the prevention and fight against money laundering and terrorist financing;

(c) under their responsibility, by delegation to the authorities referred to in point (b);

(d) by application to the competent courts.

6. Member States shall ensure that appropriate measures are in place so that competent authorities can exercise the supervisory and investigatory powers that are necessary to perform their duties.

7. A person making information available to the competent authority in accordance with this Regulation shall not be considered to infringe any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

Article 95

Cooperation between competent authorities

1. Competent authorities shall cooperate with each other for the purposes of this Regulation. Competent authorities shall render assistance to competent authorities of other Member States, and to EBA and ESMA. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Where Member States have, in accordance with Article 111(1), second subparagraph, laid down criminal penalties for the infringements of this Regulation referred to in Article 111(1), first subparagraph, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for infringements of this Regulation and to provide the same information to other competent authorities as well as to EBA and ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following cases:

(a) communication of relevant information could adversely affect the security of the Member State addressed, in particular with regard to the fight against terrorism and other serious crimes;

(b) where complying with the request is likely to adversely affect its own investigation, enforcement activities or, where applicable, a criminal investigation;

(c) where proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the courts of the Member State addressed;

(d) where a final judgment has already been delivered in respect of the same action and against the same natural or legal person in the Member State addressed.

3. Competent authorities shall, upon request, without undue delay provide any information required for the purposes of this Regulation.

4. A competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

A requesting competent authority shall inform EBA and ESMA of any request made pursuant to the first subparagraph. Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or investigation, it may:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) share specific tasks related to supervisory activities with the other competent authorities.

5. In the case of an on-site inspection or investigation referred to in paragraph 4, ESMA shall coordinate the inspection or investigation, where requested to do so by one of the competent authorities.

Where the on-site inspection or investigation referred to in paragraph 4 concerns an issuer of an asset-referenced token or e-money token or concerns crypto-asset services related to asset-referenced tokens or e-money tokens, EBA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

6. The competent authorities may bring the matter to the attention of ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Article 19(4) of Regulation (EU) No 1095/2010 shall apply in such situations *mutatis mutandis*.

7. By way of derogation from paragraph 6 of this Article, the competent authorities may bring the matter to the attention of EBA in situations where a request for cooperation, in particular for information concerning an issuer of an asset-referenced token or e-money token or concerning crypto-asset services related to asset-referenced tokens or e-money tokens, has been rejected or has not been acted upon within a reasonable time. Article 19(4) of Regulation (EU) No 1093/2010 shall apply in such situations *mutatis mutandis*.

8. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation, and provide cross-jurisdictional assessments in the event of any disagreements.

For the purposes of the first subparagraph of this paragraph, EBA and ESMA shall fulfil a coordination role between competent authorities and across supervisory colleges as referred to in Article 119 with a view to building a common supervisory culture and consistent supervisory practices and ensuring uniform procedures.

9. Where a competent authority finds that any of the requirements under this Regulation has not been met or has reason to believe that to be the case, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner.

10. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify the information to be exchanged between competent authorities pursuant to paragraph 1.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

11. ESMA, in close cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 96

Cooperation with EBA and ESMA

1. For the purposes of this Regulation, the competent authorities shall cooperate closely with ESMA in accordance with Regulation (EU) No 1095/2010 and with EBA in accordance with Regulation (EU) No 1093/2010. They shall exchange information in order to carry out their duties under this Chapter and Chapters 2 and 3 of this Title.

2. The competent authorities shall without delay provide EBA and ESMA with all information necessary to perform their duties, in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 35 of Regulation (EU) No 1095/2010 respectively.

3. ESMA, in close cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and EBA and ESMA.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

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

Article 97

Promotion of convergence on the classification of crypto-assets

1. By 30 December 2024, the ESAs shall jointly issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, Article 16 of Regulation (EU) No 1094/2010 and Article 16 of Regulation (EU) No 1095/2010 to specify the content and form of the explanation accompanying the crypto-asset white paper referred to in Article 8(4) and of the legal opinions on the qualification of asset-referenced tokens referred to in Article 17(1), point (b)(ii), and Article 18(2), point (e). The guidelines shall include a template for the explanation and the opinion and a standardised test for the classification of crypto-assets.

2. The ESAs shall, in accordance with Article 29 of Regulation (EU) No 1093/2010, Article 29 of Regulation (EU) No 1094/2010 and Article 29 of Regulation (EU) No 1095/2010, respectively, promote discussion among competent authorities on the classification of the crypto-assets, including on the classification of those crypto-assets that are excluded from the scope of this Regulation pursuant to Article 2(3). The ESAs shall also identify the sources of potential divergences in the approaches of the competent authorities to the classification of those crypto-assets and shall, to the extent possible, promote a common approach thereto.

3. Competent authorities of the home or the host Member States may request ESMA, EIOPA or EBA, as appropriate, for an opinion on the classification of crypto-assets, including those that are excluded from the scope of this Regulation pursuant to Article 2(3). ESMA, EIOPA or EBA, as applicable, shall provide such opinion in accordance with Article 29 of Regulation (EU) No 1093/2010, Article 29 of Regulation (EU) No 1094/2010 and Article 29 of Regulation (EU) No 1095/2010, as applicable, within 15 working days of receipt of the request from the competent authorities.

4. The ESAs shall jointly draw up an annual report based on the information contained in the register referred to in Article 109 and on the results of their work referred to in paragraphs 2 and 3 of this Article, identifying difficulties in the classification of crypto-assets and divergences in the approaches of the competent authorities.

Article 98

Cooperation with other authorities

Where an offeror, person seeking admission to trading, an issuer of an asset-referenced token or e-money token or a crypto-asset service provider engages in activities other than those covered by this Regulation, the competent authorities shall cooperate with the authorities responsible for the supervision or oversight of such other activities pursuant to Union or national law, including tax authorities and relevant supervisory authorities of third countries.

Article 99

Duty of notification

Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission, EBA and ESMA by 30 June 2025. Member States shall notify the Commission, EBA and ESMA without undue delay of any subsequent amendments thereto.

Article 100

Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings or cases covered by national taxation or criminal law.

2. The obligation of professional secrecy shall apply to all natural and legal persons who work or have worked for the competent authorities. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of Union or national legislative acts.

Article 101

Data protection

With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679.

The processing of personal data by EBA and ESMA for the purposes of this Regulation shall be carried out in accordance with Regulation (EU) 2018/1725.

Article 102

Precautionary measures

1. Where the competent authority of a host Member State has clear and demonstrable grounds for suspecting that there are irregularities in the activities of an offeror or person seeking admission to trading of crypto-assets, an issuer of an asset-referenced token or e-money token, or a crypto-asset service provider, it shall notify the competent authority of the home Member State and ESMA thereof.

Where the irregularities referred to in the first subparagraph concern an issuer of an asset-referenced token or e-money token, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority of the host Member State shall also notify EBA.

2. Where, despite the measures taken by the competent authority of the home Member State, the irregularities referred to in paragraph 1 persist, amounting to an infringement of this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State, ESMA and, where appropriate, EBA, shall take appropriate measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders. Such measures include preventing the offeror, person seeking admission to trading, the issuer of the asset-referenced token or e-money token or the crypto-asset service provider from conducting further activities in the host Member State. The competent authority shall inform ESMA and, where appropriate, EBA thereof without undue delay. ESMA, and, where involved, EBA, shall inform the Commission accordingly without undue delay.

3. Where a competent authority of the home Member State disagrees with any of the measures taken by a competent authority of the host Member State pursuant to paragraph 2 of this Article, it may bring the matter to the attention of ESMA. Article 19(4) of Regulation (EU) No 1095/2010 shall apply in such situations *mutatis mutandis*.

By way of derogation from the first subparagraph of this paragraph, where the measures referred to in paragraph 2 of this Article concern an issuer of an asset-referenced token or e-money token, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority of the host Member State may bring the matter to the attention of EBA. Article 19(4) of Regulation (EU) No 1093/2010 shall apply in such situations *mutatis mutandis*.

Article 103

ESMA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where the conditions in paragraphs 2 and 3 of this Article are fulfilled, temporarily prohibit or restrict:

(a) the marketing, distribution or sale of certain crypto-assets other than asset-referenced tokens or e-money tokens or crypto-assets other than asset-referenced tokens or e-money tokens with certain specified features; or

(b) a type of activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens.

A prohibition or restriction may apply in certain circumstances, or be subject to exceptions, specified by ESMA.

2. ESMA shall take a measure pursuant to paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed prohibition or restriction addresses a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union;

(b) the regulatory requirements under Union law that are applicable to the relevant crypto-assets and crypto-asset services do not address the threat at issue;

(c) a relevant competent authority has not taken action to address the threat at issue or the actions that have been taken do not adequately address that threat.

3. When taking a measure pursuant to paragraph 1, ESMA shall ensure that the measure does not:

(a) have a detrimental effect on the efficiency of markets in crypto-assets or on holders of crypto-assets or clients receiving crypto-asset services that is disproportionate to the benefits of the measure; and

(b) create a risk of regulatory arbitrage.

Where competent authorities have taken a measure pursuant to Article 105, ESMA may take any of the measures referred to in paragraph 1 of this Article without issuing an opinion pursuant to Article 106(2).

4. Before deciding to take a measure pursuant to paragraph 1, ESMA shall notify the relevant competent authorities of the measure it intends to take.

5. ESMA shall publish on its website a notice of a decision to take a measure pursuant to paragraph 1. That notice shall specify the details of the prohibition or restriction imposed and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to activities after the measure has taken effect.

6. ESMA shall review a prohibition or restriction imposed pursuant to paragraph 1 at appropriate intervals, and at least every six months. Following at least two consecutive renewals and based on a proper analysis assessing the impact on consumers, ESMA may decide on the annual renewal of the prohibition or restriction.

7. Measures taken by ESMA pursuant to this Article shall prevail over any previous measure taken by the relevant competent authorities on the same matter.

8. The Commission shall adopt delegated acts in accordance with Article 139 to supplement this Regulation by specifying the criteria and factors to be taken into account by ESMA in determining whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union for the purposes of paragraph 2, point (a), of this Article.

Article 104

EBA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1093/2010, EBA may, where the conditions in paragraphs 2 and 3 of this Article are fulfilled, temporarily prohibit or restrict:

(a) the marketing, distribution or sale of certain asset-referenced tokens or e-money tokens or asset-referenced tokens or e-money tokens with certain specified features; or

(b) a type of activity or practice related to asset-referenced tokens or e-money tokens.

A prohibition or restriction may apply in certain circumstances, or be subject to exceptions, specified by EBA.

2. EBA shall take a measure pursuant to paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed prohibition or restriction addresses a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union;

(b) the regulatory requirements under Union law that are applicable to the relevant asset-referenced tokens, e-money tokens or crypto-asset services related to them do not address the threat at issue;

(c) a relevant competent authority has not taken action to address the threat at issue or the actions that have been taken do not adequately address that threat.

3. When taking a measure pursuant to paragraph 1, EBA shall ensure that the measure does not:

(a) have a detrimental effect on the efficiency of markets in crypto-assets or on holders of asset-referenced tokens or e-money tokens or clients receiving crypto-asset services that is disproportionate to the benefits of the measure; and

(b) create a risk of regulatory arbitrage.

Where competent authorities have taken a measure pursuant to Article 105, EBA may take any of the measures referred to in paragraph 1 of this Article without issuing an opinion pursuant to Article 106(2).

4. Before deciding to take a measure pursuant to paragraph 1, EBA shall notify the relevant competent authorities of the measure it intends to take.

5. EBA shall publish on its website a notice of a decision to take a measure pursuant to paragraph 1. That notice shall specify the details of the prohibition or restriction imposed and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to activities after the measure has taken effect.

6. EBA shall review a prohibition or restriction imposed pursuant to paragraph 1 at appropriate intervals, and at least every six months. Following at least two consecutive renewals and based on a proper analysis assessing the impact on consumers, EBA may decide on the annual renewal of the prohibition or restriction.

7. Measures taken by EBA pursuant to this Article shall prevail over any previous measure taken by the relevant competent authority on the same matter.

8. The Commission shall adopt delegated acts in accordance with Article 139 to supplement this Regulation by specifying the criteria and factors to be taken into account by EBA in determining whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union for the purposes of paragraph 2, point (a), of this Article.

Article 105

Product intervention by competent authorities

1. A competent authority may prohibit or restrict the following in or from its Member State:

(a) the marketing, distribution or sale of certain crypto-assets or crypto-assets with certain specified features; or

(b) a type of activity or practice related to crypto-assets.

2. A competent authority shall only take a measure pursuant to paragraph 1 if it is satisfied on reasonable grounds that:

(a) a crypto-asset gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system within at least one Member State;

(b) existing regulatory requirements under Union law applicable to the crypto-asset or crypto-asset service concerned do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

(c) the measure is proportionate, taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the measure on investors and market participants who may hold, use or benefit from the crypto-asset or crypto-asset service concerned;

(d) the competent authority has properly consulted the competent authorities in other Member States that might be significantly affected by the measure; and

(e) the measure does not have a discriminatory effect on services or activities provided from another Member State.

Where the conditions set out in the first subparagraph of this paragraph are fulfilled, the competent authority may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a crypto-asset has been marketed, distributed or sold to clients.

The competent authority may decide to apply the prohibition or restriction referred to in paragraph 1 only in certain circumstances or to make it subject to exceptions.

3. The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities and ESMA, or EBA for asset-referenced tokens and e-money tokens, in writing or through another medium agreed between the authorities, the following details:

(a) the crypto-asset or activity or practice to which the proposed measure relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and

(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2, first subparagraph, are met.

4. In exceptional cases where the competent authority considers it necessary in order to prevent any detrimental effects arising from the crypto-asset or activity or practice referred to in paragraph 1, the competent authority may take an urgent measure on a provisional basis with no less than 24 hours' written notice before the measure is intended to take effect to all other competent authorities and ESMA, provided that all of the criteria listed in this Article are met and, in addition, that it is clearly established that a one-month notification period would not adequately address the specific concern or threat. The duration of measures taken on a provisional basis shall not exceed three months.

5. The competent authority shall publish on its website a notice of a decision to impose a prohibition or restriction as referred to in paragraph 1. That notice shall specify the details of the prohibition or restriction imposed and specify a time after the publication of the notice from which the measures will take effect and the evidence upon which the competent authority has based its decision, and is satisfied that each of the conditions in paragraph 2, first subparagraph, is met. The prohibition or restriction shall only apply to activities after the measures have taken effect.

6. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7. The Commission shall adopt delegated acts in accordance with Article 139 to supplement this Regulation by specifying the criteria and factors to be taken into account by the competent authorities in determining whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system within at least one Member State as for the purposes of paragraph 2, first subparagraph, point (a).

Article 106

Coordination with ESMA or EBA

1. ESMA or, for asset-referenced tokens and e-money tokens, EBA, shall perform a facilitating and coordinating role in relation to measures taken by competent authorities pursuant to Article 105. ESMA or, for asset-referenced tokens and e-money tokens, EBA, shall ensure that measures taken by a competent authority are justified and proportionate and that a consistent approach is taken by competent authorities, where appropriate.

2. After receiving notification in accordance with Article 105(3) of any measure to be taken pursuant to that Article, ESMA or, for asset-referenced tokens and e-money tokens, EBA, shall issue an opinion on whether the prohibition or restriction is justified and proportionate. If ESMA or, for asset-referenced tokens and e-money tokens, EBA, considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on the website of ESMA or, for asset-referenced tokens and e-money tokens, EBA.

3. Where a competent authority proposes to take, or takes or declines to take measures contrary to an opinion issued by ESMA or EBA pursuant to paragraph 2, it shall immediately publish on its website a notice fully explaining its reasons therefor.

Article 107

Cooperation with third countries

1. The competent authorities of Member States shall, where necessary, conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with those supervisory authorities of third countries and the enforcement of obligations under this Regulation in those third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

A competent authority shall inform EBA, ESMA and the other competent authorities where it intends to conclude such an arrangement.

2. ESMA, in close cooperation with EBA, shall, where possible, facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

3. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards establishing a template document for cooperation arrangements referred to in paragraph 1 for use by competent authorities of Member States where possible.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA, in close cooperation with EBA, shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that might be relevant for taking measures under Chapter 3 of this Title.

5. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy that are at least equivalent to those set out in Article 100. Such exchange of information shall be intended for the performance of the tasks under this Regulation of those competent authorities.

Article 108

Complaints-handling by competent authorities

1. Competent authorities shall set up procedures that allow clients and other interested parties, including consumer associations, to submit complaints to them with regard to alleged infringements of this Regulation by offerors, persons seeking admission to trading, issuers of asset-referenced tokens or e-money tokens, or crypto-asset service providers. Complaints shall be accepted in writing, including electronically, and in an official language of the Member State in which the complaint is submitted, or in a language accepted by the competent authorities of that Member State.

2. Information on the complaints-handling procedures referred to in paragraph 1 of this Article shall be made available on the website of each competent authority and communicated to EBA and ESMA. ESMA shall publish hyperlinks to the sections of the websites of the competent authorities related to complaints-handling procedures in its crypto-asset register referred to in Article 109.

CHAPTER 2

ESMA register

Article 109

Register of crypto-asset white papers, of issuers of asset-referenced tokens and e-money tokens, and of crypto-asset service providers

1. ESMA shall establish a register of:

(a) crypto-asset white papers for crypto-assets other than asset-referenced tokens and e-money tokens;

(b) issuers of asset-referenced tokens;

(c) issuers of e-money tokens; and

(d) crypto-asset service providers.

ESMA's register shall be publicly available on its website and shall be updated on a regular basis. In order to facilitate such updating, the competent authorities shall communicate to ESMA any changes notified to them regarding the information specified in paragraphs 2 to 5.

The competent authorities shall provide ESMA with the data necessary for the classification of crypto-asset white papers in the register, as specified in accordance with paragraph 8.

2. As regards crypto-asset white papers for crypto-assets other than asset-referenced tokens or e-money tokens, the register shall contain the crypto-asset white papers and any modified crypto-asset white papers. Any out-of-date versions of the crypto-asset white papers shall be kept in a separate archive and be clearly marked as out-of-date versions.

3. As regards issuers of asset-referenced tokens, the register shall contain the following information:

(a) the name, legal form and legal entity identifier of the issuer;

(b) the commercial name, physical address, telephone number, email and website of the issuer;

(c) the crypto-asset white papers and any modified crypto-asset white papers, with the out-of-date versions of the crypto-asset white paper kept in a separate archive and clearly marked as out-of-date;

(d) the list of host Member States where the applicant issuer intends to offer an asset-referenced token to the public or intends to seek admission to trading of the asset-referenced tokens;

(e) the starting date, or, if not available at the time of the notification by the competent authority, the intended starting date, of the offer to the public or the admission to trading;

(f) any other services provided by the issuer not covered by this Regulation, with a reference to the applicable Union or national law;

(g) the date of authorisation to offer to the public or seek the admission to trading of an asset-referenced token or of authorisation as a credit institution and, where applicable, of withdrawal of either authorisation.

4. As regards issuers of e-money tokens, the register shall contain the following information:

(a) the name, legal form and legal entity identifier of the issuer;

(b) the commercial name, physical address, telephone number, email and website of the issuer;

(c) the crypto-asset white papers and any modified crypto-asset white papers, with the out-of-date versions of the crypto-asset white paper kept in a separate archive and clearly marked as out-of-date;

(d) the starting date, or, if not available at the time of the notification by the competent authority, the intended starting date, of the offer to the public or the admission to trading;

(e) any other services provided by the issuer not covered by this Regulation, with a reference to the applicable Union or national law;

(f) the date of authorisation as a credit institution or as an electronic money institution and, where applicable, of withdrawal of that authorisation.

5. As regards crypto-asset service providers, the register shall contain the following information:

(a) the name, legal form and legal entity identifier of the crypto-asset service provider and, where applicable, of the branches of the crypto-asset service provider;

(b) the commercial name, physical address, telephone number, email and website of the crypto-asset service provider and, where applicable, of the trading platform for crypto-assets operated by the crypto-asset service provider;

(c) the name and address of the competent authority that granted authorisation and its contact details;

(d) the list of crypto-asset services provided by the crypto-asset service provider;

(e) the list of host Member States in which the crypto-asset service provider intends to provide crypto-asset services;

(f) the starting date, or, if not available at the time of the notification by the competent authority, the intended starting date, of the provision of crypto-asset services;

(g) any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the applicable Union or national law;

(h) the date of authorisation and, where applicable, of the withdrawal of an authorisation.

6. Competent authorities shall notify ESMA without delay of the measures listed in Article 94(1), first subparagraph, point (b), (c), (f), (l), (m), (n), (o) or (t), and of any public precautionary measures taken pursuant to Article 102 affecting the provision of crypto-asset services or the issuance, offer to the public or use of crypto-assets. ESMA shall include such information in the register.

7. Any withdrawal of an authorisation of an issuer of an asset-referenced token, of an issuer of an e-money token, or of a crypto-asset service provider, and any measure notified in accordance with paragraph 6, shall remain published in the register for five years.

8. ESMA shall develop draft regulatory technical standards to further specify the data necessary for the classification, by type of crypto-asset, of crypto-asset white papers, including the legal entity identifiers, in the register and specify the practical arrangements to ensure that such data is machine-readable.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 110

Register of non-compliant entities providing crypto-asset services

1. ESMA shall establish a non-exhaustive register of entities that provide crypto-asset services in violation of Article 59 or 61.

2. The register shall contain at least the commercial name or the website of a non-compliant entity and the name of the competent authority that submitted the information.

3. The register shall be publicly available on ESMA's website in a machine-readable format and shall be updated on a regular basis to take into account any changes of circumstances or any information that is brought to ESMA's attention concerning the registered non-compliant entities. The register shall enable centralised access to information submitted by competent authorities from the Member States or third countries, as well as by EBA.

4. ESMA shall update the register to include information on any case of infringement of this Regulation identified on its own initiative in accordance with Article 17 of Regulation (EU) No 1095/2010 in which it has adopted a decision under paragraph 6 of that Article addressed to a non-compliant entity providing crypto-asset services, or any information on entities providing crypto-asset services without the necessary authorisation or registration submitted by the relevant supervisory authorities of third countries.

5. In the cases referred to in paragraph 4 of this Article, ESMA may apply the relevant supervisory and investigative powers of competent authorities as referred to in Article 94(1) to non-compliant entities providing crypto-asset services.

CHAPTER 3

Administrative penalties and other administrative measures by competent authorities

Article 111

Administrative penalties and other administrative measures

1. Without prejudice to any criminal penalties and without prejudice to the supervisory and investigative powers of competent authorities listed in Article 94, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative penalties and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 4 to 14;

(b) infringements of Articles 16, 17, 19, 22, 23, 25, Articles 27 to 41, Articles 46 and 47;

(c) infringements of Articles 48 to 51, Articles 53, 54 and 55;

(d) infringements of Articles 59, 60, 64 and Articles 65 to 83;

(e) infringements of Articles 88 to 92;

(f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 94(3).

Member States may decide not to lay down rules for administrative penalties where the infringements referred to in the first subparagraph, point (a), (b), (c), (d) or (e), are already subject to criminal penalties in their national law by 30 June 2024. Where they so decide, Member States shall notify to the Commission, ESMA and to EBA, in detail, the relevant parts of their criminal law.

By 30 June 2024, Member States shall notify to the Commission, EBA and ESMA, in detail, the rules referred to in the first and second subparagraphs. They shall also notify the Commission, ESMA and EBA without delay of any subsequent amendment thereto.

2. Member States shall, in accordance with their national law, ensure that competent authorities have the power to impose at least the following administrative penalties and other administrative measures in relation to the infringements referred to in paragraph 1, first subparagraph, points (a) to (d):

(a) a public statement indicating the natural or legal person responsible and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct constituting the infringement and to desist from a repetition of that conduct;

(c) maximum administrative fines of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined, even if it exceeds the maximum amounts set out in point (d) of this paragraph, as regards natural persons, or in paragraph 3 as regards legal persons;

(d) in the case of a natural person, maximum administrative fines of at least EUR 700 000, or, in the Member States whose official currency is not the euro, the corresponding value in the official currency on 29 June 2023.

3. Member States shall, in accordance with their national law, ensure that competent authorities have the power to impose, in relation to infringements committed by legal persons, maximum administrative fines of at least:

(a) EUR 5 000 000, or, in the Member States whose official currency is not the euro, the corresponding value in the official currency on 29 June 2023, for the infringements referred to in paragraph 1, first subparagraph, points (a) to (d);

(b) 3 % of the total annual turnover of the legal person according to the last available financial statements approved by the management body, for the infringements referred to in paragraph 1, first subparagraph, point (a);

(c) 5 % of the total annual turnover of the legal person according to the last available financial statements approved by the management body, for the infringements referred to in paragraph 1, first subparagraph, point (d);

(d) 12,5 % of the total annual turnover of the legal person according to the last available financial statements approved by the management body, for the infringements referred to in paragraph 1, first subparagraph, points (b) and (c).

Where the legal person referred to in the first subparagraph, points (a) to (d), is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with applicable Union law in the field of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. In addition to the administrative penalties and other administrative measures as well as administrative fines referred to in paragraphs 2 and 3, Member States shall, in accordance with their national law, ensure that competent authorities have the power to impose, in the event of infringements referred to in paragraph 1, first subparagraph, point (d), a temporary ban preventing any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in a crypto-asset service provider.

5. Member States shall, in accordance with their national law, ensure that, in the event of the infringements referred to in paragraph 1, first subparagraph, point (e), competent authorities have the power to impose at least the following administrative penalties and to take at least the following administrative measures:

(a) a public statement indicating the natural or legal person responsible and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct constituting the infringement and to desist from a repetition of that conduct;

(c) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(d) withdrawal or suspension of the authorisation of a crypto-asset service provider;

(e) a temporary ban of any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in crypto-asset service providers;

(f) in the event of a repeated infringement of Article 89, 90, 91 or 92, a ban of at least 10 years for any member of the management body of a crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in a crypto-asset service provider;

(g) a temporary ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative fines of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined, even if it exceeds the maximum amounts set out in point (i) or (j), as applicable;

(i) in respect of a natural person, maximum administrative fines of at least EUR 1 000 000 for infringements of Article 88 and EUR 5 000 000 for infringements of Articles 89 to 92 or in the Member States whose official currency is not the euro, the corresponding value in the official currency on 29 June 2023;

(j) in respect of legal persons, maximum administrative fines of at least EUR 2 500 000 for infringements of Article 88 and EUR 15 000 000 for infringements of Articles 89 to 92, or 2 % for infringements of Article 88 and 15 % for infringements of Articles 89 to 92 of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose official currency is not the euro, the corresponding value in the official currency on 29 June 2023.

For the purpose of point (j) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with applicable Union law in the field of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

6. Member States may provide that competent authorities have powers in addition to those referred to in paragraphs 2 to 5 and may provide for higher levels of penalties than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

Article 112

Exercise of supervisory powers and powers to impose penalties

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measure to be imposed in accordance with Article 111, shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the infringement;

(b) whether the infringement has been committed intentionally or negligently;

(c) the degree of responsibility of the natural or legal person responsible for the infringement;

(d) the financial strength of the natural or legal person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(e) the importance of the profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as those can be determined;

(f) the losses for third parties caused by the infringement, insofar as those can be determined;

(g) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(h) previous infringements of this Regulation by the natural or legal person responsible for the infringement;

(i) measures taken by the person responsible for the infringement to prevent its repetition;

(j) the impact of the infringement on the interests of holders of crypto-assets and clients of crypto-asset service providers, in particular retail holders.

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 111, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative penalties and other administrative measures that they impose, are effective and appropriate. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

Article 113

Right of appeal

1. Member States shall ensure that decisions taken by competent authorities under this Regulation are properly reasoned and subject to the right of appeal before a court. The right of appeal before a court shall also apply where, in respect of an application for authorisation which provides all of the required information, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that this Regulation is applied:

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting holders of crypto-assets;

(c) professional organisations having a legitimate interest in protecting their members.

Article 114

Publication of decisions

1. A decision imposing administrative penalties and other administrative measures for an infringement of this Regulation in accordance with Article 111 shall be published by competent authorities on their official websites without undue delay after the natural or legal person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal persons responsible. Decisions imposing measures that are of an investigatory nature need not be published.

2. Where the publication of the identity of the legal entities, or the identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation, competent authorities shall take one of the following actions:

(a) defer the publication of the decision to impose an administrative penalty or other administrative measure until the moment where the reasons for non-publication cease to exist;

(b) publish the decision to impose an administrative penalty or other administrative measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures the effective protection of the personal data concerned;

(c) not publish the decision to impose an administrative penalty or other administrative measure in the event that the options provided for in points (a) and (b) are considered insufficient to ensure:

  (i) that the stability of financial markets is not jeopardised;

  (ii) the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish an administrative penalty or other administrative measure on an anonymous basis, as referred to in the first subparagraph, point (b), the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication will cease to exist.

3. Where the decision to impose an administrative penalty or other administrative measure is under appeal before the relevant courts or administrative bodies, competent authorities shall publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose administrative penalty or other administrative measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article remains on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 115

Reporting of administrative penalties and other administrative measures to ESMA and EBA

1. The competent authority shall, on an annual basis, provide ESMA and EBA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 111. ESMA shall publish that information in an annual report.

Where Member States have, in accordance with Article 111(1), second subparagraph, laid down criminal penalties for the infringements of the provisions referred to therein, their competent authorities shall provide EBA and ESMA annually with anonymised and aggregated data regarding all relevant criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.

2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.

3. Competent authorities shall inform EBA and ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to EBA and ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to EBA, ESMA and the competent authorities and it shall be updated based on the information provided by the competent authorities.

Article 116

Reporting of infringements and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of infringements of this Regulation and the protection of persons reporting such infringements.

CHAPTER 4

Supervisory responsibilities of EBA with respect to issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

Article 117

Supervisory responsibilities of EBA with respect to issuers of significant asset-referenced tokens and issuers of significant e-money tokens

1. Where an asset-referenced token has been classified as significant in accordance with Article 43 or 44, the issuer of such asset-referenced token shall carry out its activities under the supervision of EBA.

Without prejudice to the powers of national competent authorities under paragraph 2 of this Article, EBA shall exercise the powers of competent authorities conferred by Articles 22 to 25, 29, 33 Article 34(7) and (12), Article 35(3) and (5), Article 36(10) and Articles 41, 42, 46 and 47 as regards issuers of significant asset-referenced tokens.

2. Where an issuer of a significant asset-referenced token also provides crypto-asset services or issues crypto-assets that are not significant asset-referenced tokens, those services and activities shall remain under the supervision of the competent authority of the home Member State.

3. Where an asset-referenced token has been classified as significant in accordance with Article 43, EBA shall conduct a supervisory reassessment to ensure that the issuer complies with Title III.

4. Where an e-money token issued by an electronic money institution has been classified as significant in accordance with Article 56 or 57, EBA shall supervise the compliance of the issuer of such significant e-money token with Articles 55 and 58.

For the purposes of the supervision of compliance with Articles 55 and 58, EBA shall exercise the powers of the competent authorities conferred on them by Articles 22 and 23, Article 24(3), Article 35(3) and (5), Article 36(10) and Articles 46 and 47, as regards electronic money institutions issuing significant e-money tokens.

5. EBA shall exercise its supervisory powers as provided in paragraphs 1 to 4 in close cooperation with the other competent authorities responsible for supervising the issuer, in particular:

(a) the prudential supervisory authority, including, where applicable, the ECB under Regulation (EU) No 1024/2013;

(b) relevant competent authorities under national law transposing Directive 2009/110/EC, where applicable;

(c) the competent authorities referred to in Article 20(1).

Article 118

EBA crypto-asset committee

1. EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purposes of preparing EBA's decisions to be taken in accordance with Article 44 thereof, including decisions relating to the supervisory tasks that have been conferred on EBA by this Regulation.

2. The crypto-asset committee may also prepare decisions in relation to draft regulatory technical standards and draft implementing technical standards relating to supervisory tasks that have been conferred on EBA by this Regulation.

3. EBA shall ensure that the crypto-asset committee performs only the activities referred to in paragraphs 1 and 2 and any other tasks necessary for the performance of its activities related to crypto-assets.

Article 119

Colleges for issuers of significant asset-referenced tokens and significant e-money tokens

1. Within 30 calendar days of a decision to classify an asset-referenced token or e-money token as significant pursuant to Article 43, 44, 56 or 57, as applicable, EBA shall establish, manage and chair a consultative supervisory college for each issuer of a significant asset-referenced token or of a significant e-money token, to facilitate the exercise of supervisory tasks and act as a vehicle for the coordination of supervisory activities under this Regulation.

2. A college referred to in paragraph 1 shall consist of:

(a) EBA;

(b) ESMA;

(c) the competent authorities of the home Member State where the issuer of the significant asset-referenced token or of the significant e-money token is established;

(d) the competent authorities of the most relevant crypto-asset service providers, credit institutions or investment firms ensuring the custody of the reserve assets in accordance with Article 37 or of the funds received in exchange of the significant e-money tokens;

(e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens or the significant e-money tokens are admitted to trading;

(f) the competent authorities of the most relevant payment service providers providing payment services in relation to the significant e-money tokens;

(g) where applicable, the competent authorities of the entities ensuring the functions as referred to in Article 34(5), first subparagraph, point (h);

(h) where applicable, the competent authorities of the most relevant crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients in relation to the significant asset-referenced tokens or with the significant e-money tokens;

(i) the ECB;

(j) where the issuer of the significant asset-referenced token is established in a Member State whose official currency is not the euro, or where an official currency that is not the euro is referenced by the significant asset-referenced token, the central bank of that Member State;

(k) where the issuer of the significant e-money token is established in a Member State whose official currency is not the euro, or where an official currency that is not the euro is referenced by the significant e-money token, the central bank of that Member State;

(l) competent authorities of Member States where the asset-referenced token or the e-money token is used at large scale, at their request;

(m) relevant supervisory authorities of third countries with which EBA has concluded administrative agreements in accordance with Article 126.

3. EBA may invite other authorities to be members of the college referred to in paragraph 1 where the entities they supervise are relevant to the work of the college.

4. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties under this Regulation.

5. A college referred to in paragraph 1 of this Article shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 120;

(b) the exchange of information in accordance with this Regulation;

(c) agreement on the voluntary entrustment of tasks among its members.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, the members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.

6. The establishment and functioning of the college referred to in paragraph 1 shall be based on a written agreement between all of its members.

The agreement referred to in the first subparagraph shall determine the practical arrangements for the functioning of the college, including detailed rules on:

(a) voting procedures as referred in Article 120(3);

(b) the procedures for setting the agenda of college meetings;

(c) the frequency of the college meetings;

(d) the appropriate minimum timeframes for the assessment of the relevant documentation by the members of the college;

(e) the modalities of communication between the members of the college;

(f) the creation of several colleges, one for each specific crypto-asset or group of crypto-assets.

The agreement may also determine tasks to be entrusted to EBA or another member of the college.

7. As chair of each college, EBA shall:

(a) establish written arrangements and procedures for the functioning of the college, after consulting the other members of the college;

(b) coordinate all activities of the college;

(c) convene and chair all its meetings and keep the members of the college fully informed in advance of the organisation of meetings of the college, of the main issues to be discussed and of the items to be considered;

(d) notify the members of the college of any planned meetings so that they can request to participate;

(e) keep the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

8. In order to ensure the consistent and coherent functioning of colleges, EBA, in cooperation with ESMA and the ECB, shall develop draft regulatory standards specifying:

(a) the conditions under which the entities referred to in paragraph 2, points (d), (e), (f) and (h), are to be considered the most relevant;

(b) the conditions under which it is considered that asset-referenced tokens or e-money tokens are used at large scale, as referred to in paragraph 2, point (l); and

(c) the details of the practical arrangements referred to in paragraph 6.

EBA shall submit the draft regulatory standards referred to in the first subparagraph to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

Article 120

Non-binding opinions of the colleges for issuers of significant asset-referenced tokens and significant e-money tokens

1. A college referred to in Article 119(1) may issue a non-binding opinion on the following:

(a) the supervisory reassessment as referred to in Article 117(3);

(b) any decision to require an issuer of a significant asset-referenced token or a significant e-money token to hold a higher amount of own funds in accordance with Article 35(2), (3) and (5), Article 45(5) and Article 58(1), as applicable;

(c) any update of the recovery plan or redemption plan of an issuer of a significant asset-referenced token or an issuer of a significant e-money token pursuant to Articles 46, 47 and 55, as applicable;

(d) any change of the business model of an issuer of a significant asset-referenced token pursuant to Article 25(1);

(e) a draft modified crypto-asset white paper drawn up in accordance with Article 25(2);

(f) any envisaged appropriate corrective measures pursuant to Article 25(4);

(g) any envisaged supervisory measures pursuant to Article 130;

(h) any envisaged administrative agreement on the exchange of information with a supervisory authority of a third-country in accordance with Article 126;

(i) any delegation of supervisory tasks from EBA to a competent authority pursuant to Article 138;

(j) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the members of the college referred to in Article 119(2), points (d) to (h);

(k) a draft modified crypto-asset white paper drawn up in accordance with Article 51(12).

2. Where the college issues an opinion in accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 3, the opinion may include any recommendations aimed at addressing shortcomings of the measure envisaged by EBA or the competent authorities.

3. An opinion of the college shall be adopted based on a simple majority of its members.

Where there are several members of the college per Member State, only one of those members shall have a vote.

Where the ECB is a member of the college in several capacities, including supervisory capacities, it shall have only one vote.

Supervisory authorities of third countries referred to in Article 119(2), point (m), shall have no voting right in respect of an opinion of the college.

4. EBA or the competent authorities, as applicable, shall duly consider the non-binding opinion of the college reached in accordance with paragraph 3, including any recommendations aimed at addressing shortcomings of the supervisory measure envisaged in respect of an issuer of a significant asset-referenced token, an issuer of a significant e-money token, an entity or a crypto-asset service provider as referred to in Article 119(2), points (d) to (h). Where EBA or a competent authority does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the supervisory measure envisaged, its decision shall contain its reasons and an explanation for any significant deviation from that opinion or recommendations.

CHAPTER 5

EBA's powers and competences with respect to issuers of significant asset-referenced tokens and issuers of significant e-money tokens

Article 121

Legal privilege

The powers conferred on EBA by Articles 122 to 125, or on any official or other person authorised by EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 122

Request for information

1. In order to carry out its supervisory responsibilities under Article 117, EBA may by simple request or by decision require the following persons to provide all information necessary to enable EBA to carry out its duties under this Regulation:

(a) an issuer of a significant asset-referenced token or a person controlling or being directly or indirectly controlled by an issuer of a significant asset-referenced token;

(b) a third party as referred to in Article 34(5), first subparagraph, point (h), with which an issuer of a significant asset-referenced token has a contractual arrangement;

(c) a crypto-asset service provider, credit institution or investment firm ensuring the custody of the reserve assets in accordance with Article 37;

(d) an issuer of a significant e-money token or a person controlling or being directly or indirectly controlled by an issuer of a significant e-money token;

(e) a payment service provider that provides payment services in relation to significant e-money tokens;

(f) a natural or legal person in charge of distributing significant e-money tokens on behalf of an issuer of significant e-money tokens;

(g) a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients in relation to significant asset-referenced tokens or significant e-money tokens;

(h) an operator of a trading platform for crypto-assets that has admitted to trading a significant asset-referenced token or a significant e-money token;

(i) the management body of the persons referred to in points (a) to (h).

2. A simple request for information as referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) inform the person from whom the information is requested that it is not obliged to provide the information but that, in the case of a voluntary reply to the request, the information provided is required to be correct and not misleading; and

(f) indicate the fine provided for in Article 131, where the answers to questions asked are incorrect or misleading.

3. When requiring the provision of information by decision pursuant to paragraph 1, EBA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 132 where the production of information is required;

(f) indicate the fine provided for in Article 131, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before EBA's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 60 and 61 of Regulation (EU) No 1093/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law, shall provide the information requested.

5. EBA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons concerned by the request for information are domiciled or established.

Article 123

General investigative powers

1. In order to carry out its supervisory responsibilities under Article 117, EBA may conduct investigations into issuers of significant asset-referenced tokens and issuers of significant e-money tokens. To that end, the officials and other persons authorised by EBA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any issuer of a significant asset-referenced token or issuer of a significant of e-money token, or their management body or staff, for oral or written explanations of facts or documents relating to the subject matter and purpose of the investigation and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purposes of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

A college as referred to in Article 119(1) shall be informed without undue delay of any findings that might be relevant for the execution of its tasks.

2. The officials and other persons authorised by EBA for the purposes of the investigation referred to in paragraph 1 shall exercise their powers upon the production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 132 where the required records, data, procedures or any other material, or the answers to questions posed to issuers of significant asset-referenced tokens or issuers of significant e-money tokens, are not provided or are incomplete, and the fines provided for in Article 131, where the answers to questions posed to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are incorrect or misleading.

3. The issuers of significant asset-referenced tokens and issuers of significant e-money tokens are required to submit to investigations launched based on a decision of EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 132, the legal remedies available under Regulation (EU) No 1093/2010 and the right to have the decision reviewed by the Court of Justice.

4. Within a reasonable period before an investigation referred to in paragraph 1, EBA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of EBA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in paragraph 1, first subparagraph, point (e), requires authorisation from a court pursuant to applicable national law, EBA shall apply for such authorisation. Such authorisation may also be applied for as a precautionary measure.

6. Where a court in a Member State receives an application for the authorisation of a request for records of telephone or data traffic referred to in paragraph 1, first subparagraph, point (e), that court shall verify whether:

(a) the decision of EBA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of paragraph 6, point (b), the court may ask EBA for detailed explanations, in particular relating to the grounds EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. That court shall, however, not review the necessity for the investigation or demand that it be provided with the information on EBA's file. The lawfulness of EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 124

On-site inspections

1. In order to carry out its supervisory responsibilities under Article 117, EBA may conduct all necessary on-site inspections at any business premises of the issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

The college referred to in Article 119 shall be informed without undue delay of any findings that might be relevant for the execution of its tasks.

2. The officials and other persons authorised by EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by EBA and shall have all of the powers provided for in Article 123(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In due time before the inspection, EBA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, EBA, after informing that competent authority, may carry out the on-site inspection without giving prior notice to the issuer of the significant asset-referenced token or the issuer of the significant e-money token.

4. The officials and other persons authorised by EBA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 132 where the persons concerned do not submit to the inspection.

5. The issuer of the significant asset-referenced token or the issuer of the significant e-money token shall submit to on-site inspections ordered by a decision of EBA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 132, the legal remedies available under Regulation (EU) No 1093/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of EBA, actively assist the officials and other persons authorised by EBA. Officials of the competent authority of the Member State concerned may also attend the on-site inspections.

7. EBA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 123(1) on its behalf.

8. Where the officials and other accompanying persons authorised by EBA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a court pursuant to national law, EBA shall make an application for such authorisation. Such authorisation may also be applied for as a precautionary measure.

10. Where a court in a Member State receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that court shall verify whether:

(a) the decision adopted by EBA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of paragraph 10, point (b), the court may ask EBA for detailed explanations, in particular relating to the grounds EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. That court shall, however, not review the necessity for the investigation or demand that it be provided with the information on EBA's file. The lawfulness of EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 125

Exchange of information

1. In order to carry out EBA's supervisory responsibilities under Article 117 and without prejudice to Article 96, EBA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, the competent authorities and EBA shall exchange any information related to:

(a) an issuer of a significant asset-referenced token or a person controlling or being directly or indirectly controlled by an issuer of a significant asset-referenced token;

(b) a third party as referred to in Article 34(5), first subparagraph, point (h), with which an issuer of a significant asset-referenced token has a contractual arrangement;

(c) a crypto-asset service provider, credit institution or investment firm ensuring the custody of the reserve assets in accordance with Article 37;

(d) an issuer of a significant e-money token or a person controlling or being directly or indirectly controlled by an issuer of a significant e-money token;

(e) a payment service provider that provides payment services in relation to significant e-money tokens;

(f) a natural or legal person in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(g) a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients, in relation to significant asset-referenced tokens or significant e-money tokens;

(h) a trading platform for crypto-assets on which a significant asset-referenced token or a significant e-money token has been admitted to trading;

(i) the management body of the persons referred to in points (a) to (h).

2. A competent authority may refuse to act on a request to exchange information as provided for in paragraph 1 of this Article or a request for cooperation in carrying out an investigation or an on-site inspection as provided for in Articles 123 and 124, respectively, only where:

(a) complying with the request is likely to adversely affect its own investigation, enforcement activities or, where applicable, criminal investigation;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the courts of the Member State addressed;

(c) a final judgment has already been delivered in relation to such natural or legal person for the same actions in the Member State addressed.

Article 126

Administrative agreements on the exchange of information between EBA and third countries

1. In order to carry out its supervisory responsibilities under Article 117, EBA may conclude administrative agreements on the exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 129.

2. The exchange of information shall be intended for the performance of the tasks of EBA or of the supervisory authorities referred to in paragraph 1.

3. With regard to transfers of personal data to a third country, EBA shall apply Regulation (EU) 2018/1725.

Article 127

Disclosure of information from third countries

1. EBA may disclose information received from supervisory authorities of third countries only where EBA or the competent authority that provided the information to EBA has obtained the express agreement of the supervisory authority of a third country that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for judicial proceedings.

2. The requirement for an express agreement as referred to in paragraph 1 shall not apply to other supervisory authorities of the Union where the information requested by them is needed for the fulfilment of their tasks and shall not apply to courts where the information requested by them is needed for investigations or proceedings in respect of infringements subject to criminal penalties.

Article 128

Cooperation with other authorities

Where an issuer of a significant asset-referenced token or an issuer of a significant e-money token engages in activities other than those covered by this Regulation, EBA shall cooperate with the authorities responsible for the supervision of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities of third countries that are not members of the college as referred to in Article 119(2), point (m).

Article 129

Professional secrecy

The obligation of professional secrecy shall apply to EBA and all persons who work or who have worked for EBA as well as for any other person to whom EBA has delegated tasks, including auditors and experts contracted by EBA.

Article 130

Supervisory measures by EBA

1. Where EBA finds that an issuer of a significant asset-referenced token has committed an infringement as listed in Annex V, it may take one or more of the following measures:

(a) adopt a decision requiring the issuer of the significant asset-referenced token to cease the conduct constituting the infringement;

(b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 131 and 132;

(c) adopt a decision requiring the issuer of the significant asset-referenced token to transmit supplementary information, where necessary for the protection of holders of the asset-referenced token, in particular retail holders;

(d) adopt a decision requiring the issuer of the significant asset-referenced token to suspend an offer to the public of crypto-assets for a maximum period of 30 consecutive working days on any single occasion where it has reasonable grounds for suspecting that this Regulation has been infringed;

(e) adopt a decision prohibiting an offer to the public of the significant asset-referenced token where it finds that this Regulation has been infringed or where it has reasonable grounds for suspecting that it will be infringed;

(f) adopt a decision requiring the crypto-asset service provider operating a trading platform for crypto-assets that has admitted to trading the significant asset-referenced token to suspend trading of such crypto-asset for a maximum of 30 consecutive working days on any single occasion where it has reasonable grounds for suspecting that this Regulation has been infringed;

(g) adopt a decision prohibiting trading of the significant asset-referenced token on a trading platform for crypto-assets where it finds that this Regulation has been infringed;

(h) adopt a decision requiring the issuer of the significant asset-referenced token to amend its marketing communications, where it finds that the marketing communications do not comply with Article 29;

(i) adopt a decision to suspend or prohibit marketing communications where there are reasonable grounds for suspecting that this Regulation has been infringed;

(j) adopt a decision requiring the issuer of the significant asset-referenced token to disclose all material information which might have an effect on the assessment of the significant asset-referenced token offered to the public or admitted to trading in order to ensure consumer protection or the smooth operation of the market;

(k) issue warnings that the issuer of the significant asset-referenced token fails to fulfil its obligations under this Regulation;

(l) withdraw the authorisation of the issuer of the significant asset-referenced token;

(m) adopt a decision requiring the removal of a natural person from the management body of the issuer of the significant asset-referenced token;

(n) require the issuer of the significant asset-referenced token under its supervision to introduce a minimum denomination amount in respect of that significant asset-referenced token or to limit the amount of the significant asset-referenced token issued, in accordance with Article 23(4) and Article 24(3).

2. Where EBA finds that an issuer of a significant e-money token has committed an infringement as listed in Annex VI, it may take one or more of the following measures:

(a) adopt a decision requiring the issuer of the significant e-money token to cease the conduct constituting the infringement;

(b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 131 and 132;

(c) adopt a decision requiring the issuer of the significant e-money token to transmit supplementary information where necessary for the protection of holders of the significant e-money token, in particular retail holders;

(d) adopt a decision requiring the issuer of the significant e-money token to suspend an offer to the public of crypto-assets for a maximum period of 30 consecutive working days on any single occasion where it has reasonable grounds for suspecting that this Regulation has been infringed;

(e) adopt a decision prohibiting an offer to the public of the significant e-money token where it finds that this Regulation has been infringed or where it has reasonable grounds for suspecting that it will be infringed;

(f) adopt a decision requiring the relevant crypto-asset service provider operating a trading platform for crypto-assets that has admitted to trading significant e-money tokens to suspend trading of such crypto-assets for a maximum of 30 consecutive working days on any single occasion where it has reasonable grounds for suspecting that this Regulation has been infringed;

(g) adopt a decision prohibiting trading of significant e-money tokens on a trading platform for crypto-assets where it finds that this Regulation has been infringed;

(h) adopt a decision requiring the issuer of the significant e-money token to disclose all material information which might have an effect on the assessment of the significant e-money token offered to the public or admitted to trading in order to ensure consumer protection or the smooth operation of the market;

(i) issue warnings that the issuer of the significant e-money token fails to fulfil its obligations under this Regulation;

(j) require the issuer of the significant e-money token under its supervision to introduce a minimum denomination amount in respect of that significant e-money token or to limit the amount of the significant e-money token issued, as a result of the application of Article 58(3).

3. When taking the measures referred to in paragraph 1 or 2, EBA shall take into account the nature and seriousness of the infringement, having regard to:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the procedures, policies and risk management measures of the issuer of the significant asset-referenced token or the issuer of the significant e-money tokens;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of the significant asset-referenced token or the issuer of the significant e-money token responsible for the infringement;

(f) the financial strength of the issuer of the significant asset-referenced token, or of the issuer of the significant e-money token, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of the significant asset-referenced token or significant e-money token responsible for the infringement or the losses for third parties caused by the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of the significant asset-referenced token or of the issuer of the significant e-money token responsible for the infringement with EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of the significant asset-referenced token or by the issuer of the e-money token responsible for the infringement;

(k) measures taken by the issuer of the significant asset-referenced token or by the issuer of the significant e-money token after the infringement to prevent the repetition of such an infringement.

4. Before taking any of the measures as referred to in paragraph 1, points (d) to (g), and point (j), EBA shall inform ESMA and, where the significant asset-referenced tokens are referencing the euro or an official currency of a Member State that is not the euro, the ECB or the central bank of the Member State concerned issuing that official currency, respectively.

5. Before taking any of the measures as referred to in paragraph 2, EBA shall inform the competent authority of the issuer of the significant e-money token and the central bank of the Member State whose official currency the significant e-money token is referencing.

6. EBA shall notify any measure taken pursuant to paragraph 1 or 2 to the issuer of the significant asset-referenced token or the issuer of the significant e-money token responsible for the infringement without undue delay and shall communicate that measure to the competent authorities concerned as well as to the Commission. EBA shall publicly disclose any such decision on its website within 10 working days of the date of adoption of such decision, unless such disclosure would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data.

7. The disclosure to the public referred to in paragraph 6 shall include the following statements:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision before the Court of Justice;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for EBA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1093/2010.

Article 131

Fines

1. EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4 of this Article where, in accordance with Article 134(8), it finds that:

(a) an issuer of a significant asset-referenced token or a member of its management body has, intentionally or negligently, committed an infringement as listed in Annex V;

(b) an issuer of a significant e-money token or a member of its management body has, intentionally or negligently, committed an infringement as listed in Annex VI.

An infringement shall be considered to have been committed intentionally if EBA finds objective factors which demonstrate that such an issuer or a member of its management body acted deliberately to commit the infringement.

2. When adopting a decision as referred to in paragraph 1, EBA shall take into account the nature and seriousness of the infringement, having regard to:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of the significant asset-referenced token's or in the issuer of the significant e-money token's procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of the significant asset-referenced token or the issuer of the significant e-money token responsible for the infringement;

(f) the financial strength of the issuer of the significant asset-referenced token, or of the issuer of the significant e-money token, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of the significant asset-referenced token or the significant e-money token responsible for the infringement or the losses for third parties caused by the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of the significant asset-referenced token or of the issuer of the significant e-money token responsible for the infringement with EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of the significant asset-referenced token or by the issuer of the significant e-money token responsible for the infringement;

(k) measures taken by the issuer of the significant asset-referenced token or by the issuer of the significant e-money token after the infringement to prevent the repetition of such an infringement.

3. For issuers of significant asset-referenced tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 12,5 % of its annual turnover in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

4. For issuers of significant e-money tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 10 % of its annual turnover in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

Article 132

Periodic penalty payments

1. EBA shall adopt a decision imposing periodic penalty payments in order to compel:

(a) a person to cease the conduct constituting an infringement in accordance with a decision taken pursuant to Article 130;

(b) a person referred to in Article 122(1):

(i) to provide complete information which has been requested by a decision pursuant to Article 122;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 123;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 124.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date set out in EBA's decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of EBA's decision. At the end of that period, EBA shall review the measure.

Article 133

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 131 and 132, unless such disclosure to the public would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data.

2. Fines and periodic penalty payments imposed pursuant to Articles 131 and 132 shall be of an administrative nature.

3. Fines and periodic penalty payments imposed pursuant to Articles 131 and 132 shall be enforceable in accordance with the rules of civil procedure in force in the State in the territory of which the fine or periodic penalty payment is enforced.

4. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the Union.

5. Where, notwithstanding Articles 131 and 132, EBA decides not to impose fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned and shall set out the reasons for its decision.

Article 134

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its supervisory responsibilities under Article 117, there are clear and demonstrable grounds to suspect that there has been or will be an infringement as listed in Annex V or VI, EBA shall appoint an independent investigation officer within EBA to investigate the matter. The investigation officer shall not be involved or have been directly or indirectly involved in the supervision of the issuers of significant asset-referenced tokens or issuers of significant e-money tokens concerned and shall perform its functions independently from EBA.

2. The investigation officer shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigation, and shall submit a complete file with the investigation officer's findings to EBA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 122 and the power to conduct investigations and on-site inspections in accordance with Articles 123 and 124. When using those powers, the investigation officer shall comply with Article 121.

4. Where carrying out its tasks, the investigation officer shall have access to all documents and information gathered by EBA in its supervisory activities.

5. Upon completion of its investigation and before submitting the file with its findings to EBA, the investigation officer shall give the persons subject to the investigation the opportunity to be heard on the matters being investigated. The investigation officer shall base its findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with its findings to EBA, the investigation officer shall notify the persons who are subject to the investigation thereof. The persons subject to the investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties or EBA's internal preparatory documents.

8. Based on the file containing the investigation officer's findings and, when requested by the persons subject to the investigation, after having heard those persons in accordance with Article 135, EBA shall decide whether an infringement as listed in Annex V or VI has been committed by the issuer of the significant asset-referenced token or the issuer of the significant e-money token subject to the investigation and, in such a case, shall take a supervisory measure in accordance with Article 130 or impose a fine in accordance with Article 131.

9. The investigation officer shall not participate in EBA's deliberations or in any other way intervene in EBA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 139 by 30 June 2024 to supplement this Regulation by specifying further the procedural rules for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. EBA shall bring matters to the attention of the relevant national authorities for investigation and, where appropriate, criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, EBA shall refrain from imposing fines or periodic penalty payments where it is aware that a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already acquired the force of *res judicata* as a result of criminal proceedings under national law.

Article 135

Hearing of the persons concerned

1. Before taking any decision pursuant to Article 130, 131 or 132, EBA shall give the persons subject to an investigation the opportunity to be heard on its findings. EBA shall base its decisions only on findings on which the persons subject to such investigation have had an opportunity to comment.

2. Paragraph 1 shall not apply if urgent action is needed in order to prevent significant and imminent damage to financial stability or to the holders of crypto-assets, in particular retail holders. In such a case, EBA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to an investigation shall be fully respected. Those persons shall be entitled to have access to EBA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to EBA's file shall not extend to confidential information or to EBA's internal preparatory documents.

Article 136

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby EBA has imposed a fine, a periodic penalty payment or any administrative penalty or other administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 137

Supervisory fees

1. EBA shall charge fees to issuers of significant asset-referenced tokens and issuers of significant e-money tokens. Those fees shall cover EBA's expenditure for the execution of its supervisory tasks relating to issuers of significant asset-referenced tokens and issuers of significant e-money tokens in accordance with Articles 117 and 119, as well as the reimbursement of costs that the competent authorities might incur carrying out work under this Regulation, in particular as a result of any delegation of tasks in accordance with Article 138.

2. The amount of the fee charged to an individual issuer of a significant asset-referenced token shall be proportionate to the size of its reserve assets and shall cover all costs incurred by EBA for the performance of its supervisory tasks under this Regulation.

The amount of the fee charged to an individual issuer of a significant e-money token shall be proportionate to the size of issuance of the e-money token in exchange for funds and shall cover all costs derived from the execution of EBA's supervisory tasks under this Regulation, including the reimbursement of any costs incurred as a result of the execution of those tasks.

3. The Commission shall adopt a delegated act in accordance with Article 139 by 30 June 2024 to supplement this Regulation by specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity referred to in paragraph 2 of this Article that can be charged by EBA.

Article 138

Delegation of tasks by EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task in respect of issuers of significant asset-referenced tokens or issuers of significant e-money tokens, EBA may delegate specific supervisory tasks to a competent authority. Such specific supervisory tasks may include the power to carry out requests for information in accordance with Article 122 and to conduct investigations and on-site inspections in accordance with Article 123 or 124.

2. Before delegating a task as referred to in paragraph 1, EBA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to EBA.

3. In accordance with the delegated act on fees adopted by the Commission pursuant to Article 137(3) and Article 139, EBA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4. EBA shall review the delegation of tasks at appropriate intervals. Such delegation may be revoked at any time.

TITLE VIII

DELEGATED ACTS

Article 139

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10) and 137(3) shall be conferred on the Commission for a period of 36 months from 29 June 2023. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 36-month period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of powers referred to in Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10) and 137(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10) and 137(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months on the initiative of the European Parliament or of the Council.

TITLE IX

TRANSITIONAL AND FINAL PROVISIONS

Article 140

Reports on the application of this Regulation

1. By 30 June 2027, having consulted EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation accompanied, where appropriate, by a legislative proposal. An interim report shall be presented by 30 June 2025, accompanied, where appropriate, by a legislative proposal.

2. The reports referred to in paragraph 1 shall contain the following:

(a) the number of issuances of crypto-assets in the Union, the number of crypto-asset white papers submitted or notified to the competent authorities, the type of crypto-assets issued and their market capitalisation and the number of crypto-assets admitted to trading;

(b) a description of the experience with the classification of crypto-assets including possible divergences in approaches by competent authorities;

(c) an assessment of the necessity of the introduction of an approval mechanism for crypto-asset white papers for crypto-assets other than asset-referenced tokens and e-money tokens;

(d) an estimate of the number of Union residents using or investing in crypto-assets issued in the Union;

(e) where possible, an estimate of the number of Union residents using or investing in crypto-assets issued outside the Union and an explanation of the availability of data in that respect;

(f) the number and value of fraud, scams, hacks, the use of crypto-assets for payments related to ransomware attacks, cyber-attacks, thefts or losses of crypto-assets reported in the Union, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

(g) the number of issuers of asset-referenced tokens and an analysis of the categories of reserve assets, the size of the reserves of assets and the volume of payments made in asset-referenced tokens;

(h) the number of issuers of significant asset-referenced tokens and an analysis of the categories of reserve assets, the size of the reserves of assets and the volume of payments made in significant asset-referenced tokens;

(i) the number of issuers of e-money tokens and an analysis of the official currencies referenced by the e-money tokens, the composition and the size of the funds deposited or invested in accordance with Article 54 and the volume of payments made in e-money tokens;

(j) the number of issuers of significant e-money tokens and an analysis of the official currencies referenced by the significant e-money tokens and, for electronic money institutions issuing significant e-money tokens, an analysis of the categories of reserve assets, the size of the reserves of assets, and the volume of payments made in significant e-money tokens;

(k) the number of significant crypto-asset service providers;

(l) an assessment of the functioning of the markets in crypto-assets in the Union, including of market development and trends, taking into account the experience of the supervisory authorities, the number of authorised crypto-asset service providers and their respective average market share;

(m) an assessment of the level of protection of holders of crypto-assets and clients of crypto-asset service providers, in particular retail holders;

(n) an assessment of fraudulent marketing communications and scams involving crypto-assets occurring through social media networks;

(o) an assessment of the requirements applicable to issuers of crypto-assets and crypto-asset service providers and their impact on operational resilience, market integrity, financial stability, and the protection of clients and holders of crypto-assets;

(p) an evaluation of the application of Article 81 and of the possibility of introducing appropriateness tests in Articles 78, 79 and 80 in order to better protect clients of crypto-asset service providers, especially retail holders;

(q) an assessment of whether the scope of crypto-asset services covered by this Regulation is appropriate and whether any adjustment to the definitions set out in this Regulation is needed, as well as whether any additional innovative crypto-asset forms need to be included in the scope of this Regulation;

(r) an assessment of whether the prudential requirements for crypto-asset service providers are appropriate and whether they should be aligned with the requirements for initial capital and own funds applicable to investment firms under Regulation (EU) 2019/2033 of the European Parliament and of the Council ([46]) and Directive (EU) 2019/2034 of the European Parliament and of the Council ([47]);

(s) an assessment of the appropriateness of the thresholds to classify asset-referenced tokens and e-money tokens as significant as set out in Article 43(1), points (a), (b) and (c), and an assessment of whether the thresholds should be evaluated periodically;

(t) an assessment of the development of decentralised finance in markets in crypto-assets and of the appropriate regulatory treatment of decentralised crypto-asset systems;

(u) an assessment of the appropriateness of the thresholds to consider crypto-asset service providers as significant pursuant to Article 85, and an assessment of whether the thresholds should be evaluated periodically;

(v) an assessment of whether an equivalence regime should be established under this Regulation for entities providing crypto-asset services, issuers of asset-referenced tokens or issuers of e-money tokens from third countries;

(w) an assessment of whether the exemptions under Articles 4 and 16 are appropriate;

(x) an assessment of the impact of this Regulation on the proper functioning of the internal market with regard to crypto-assets, including any impact on the access to finance for SMEs and on the development of new means of payment, including payment instruments;

(y) a description of developments in business models and technologies in markets in crypto-assets with a particular focus on the environmental and climate-related impact of new technologies, as well as an assessment of policy options and where necessary any additional measures that might be warranted to mitigate the adverse impacts on the climate and other environment-related adverse impacts of the technologies used in markets in crypto-assets and, in particular, of the consensus mechanisms used to validate crypto-asset transactions;

(z) an appraisal of whether any changes are needed to the measures set out in this Regulation to ensure the protection of clients and holders of crypto-assets, market integrity and financial stability;

(aa) the application of administrative penalties and other administrative measures;

(ab) an evaluation of the cooperation between the competent authorities, EBA, ESMA, central banks, as well as other relevant authorities, including with regards to the interaction between their responsibilities or tasks, and an assessment of the advantages and disadvantages of the competent authorities of the Member States and EBA, respectively, being responsible for supervision under this Regulation;

([46]) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

([47]) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

(ac) an evaluation of the cooperation between the competent authorities and ESMA regarding the supervision of significant crypto-asset service providers, and an assessment of the advantages and disadvantages of the competent authorities of the Member States and ESMA, respectively, being responsible for the supervision of significant crypto-asset service providers under this Regulation;

(ad) the costs for issuers of crypto-assets other than asset-referenced tokens and e-money tokens, to comply with this Regulation as a percentage of the amount raised through crypto-asset issuances;

(ae) the costs for issuers of asset-referenced tokens and issuers of e-money tokens to comply with this Regulation as a percentage of their operational costs;

(af) the costs for crypto-asset service providers to comply with this Regulation as a percentage of their operational costs;

(ag) the number and amount of administrative fines and criminal penalties imposed for infringements of this Regulation by competent authorities and EBA.

3. Where applicable, the reports referred to in paragraph 1 of this Article shall also follow up on the topics addressed in the reports referred to in Articles 141 and 142.

Article 141

ESMA annual report on market developments

By 31 December 2025 and every year thereafter, ESMA, in close cooperation with EBA, shall submit a report to the European Parliament and to the Council on the application of this Regulation and developments in markets in crypto-assets. The report shall be made publicly available.

The report shall contain the following:

(a) the number of issuances of crypto-assets in the Union, the number of crypto-asset white papers submitted or notified to the competent authorities, the type of crypto-asset issued and their market capitalisation, and the number of crypto-assets admitted to trading;

(b) the number of issuers of asset-referenced tokens, and an analysis of the categories of reserve assets, the size of the reserves of assets and the volume of transactions in asset-referenced tokens;

(c) the number of issuers of significant asset-referenced tokens, and an analysis of the categories of reserve assets, the size of the reserves of assets and the volume of transactions in significant asset-referenced tokens;

(d) the number of issuers of e-money tokens, and an analysis of the official currencies referenced by the e-money tokens, the composition and the size of the funds deposited or invested in accordance with Article 54, and the volume of payments made in e-money tokens;

(e) the number of issuers of significant e-money tokens, and an analysis of the official currencies referenced by the significant e-money tokens, and, for electronic money institutions issuing significant e-money tokens, an analysis of the categories of reserve assets, the size of the reserves of assets, and the volume of payments made in significant e-money tokens;

(f) the number of crypto-asset service providers, and the number of significant crypto-asset service providers;

(g) an estimate of the number of Union residents using or investing in crypto-assets issued in the Union;

(h) where possible, an estimate of the number of Union residents using or investing in crypto-assets issued outside the Union and an explanation of the availability of data in that respect;

(i) a mapping of the geographical location and level of know-your-customer and customer due diligence procedures of unauthorised exchanges providing services in crypto-assets to Union residents, including the number of exchanges without a clear domiciliation and the number of exchanges located in jurisdictions included in the list of high-risk third countries for the purposes of Union rules on anti-money laundering and counter-terrorist financing or in the list of non-cooperative jurisdictions for tax purposes, classified by the level of compliance with adequate know-your-customer procedures;

(j) the proportion of transactions in crypto-assets that occur through a crypto-asset service provider or unauthorised service provider or peer-to-peer, and their transaction volume;

(k) the number and value of fraud, scams, hacks, the use of crypto-assets for payments related to ransomware attacks, cyber-attacks, thefts or losses of crypto-assets reported in the Union, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

(l) the number of complaints received by crypto-asset service providers, issuers and competent authorities in relation to false and misleading information contained in crypto-asset white papers or in marketing communications, including via social media platforms;

(m) possible approaches and options, based on best practices and reports by relevant international organisations, to reduce the risk of circumvention of this Regulation, including in relation to the provision of crypto-asset services by third-country actors in the Union without authorisation.

Competent authorities shall provide ESMA with the information necessary for the preparation of the report. For the purposes of the report, ESMA may request information from law enforcement agencies.

Article 142

Report on latest developments in crypto-assets

1. By 30 December 2024 and after consulting EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the latest developments with respect to crypto-assets, in particular on matters that are not addressed in this Regulation, accompanied, where appropriate, by a legislative proposal.

2. The report referred to in paragraph 1 shall contain at least the following:

(a) an assessment of the development of decentralised-finance in markets in crypto-assets and of the appropriate regulatory treatment of decentralised crypto-asset systems without an issuer or crypto-asset service provider, including an assessment of the necessity and feasibility of regulating decentralised finance;

(b) an assessment of the necessity and feasibility of regulating lending and borrowing of crypto-assets;

(c) an assessment of the treatment of services associated to the transfer of e-money tokens, where not addressed in the context of the review of Directive (EU) 2015/2366;

(d) an assessment of the development of markets in unique and non-fungible crypto-assets and of the appropriate regulatory treatment of such crypto-assets, including an assessment of the necessity and feasibility of regulating offerors of unique and non-fungible crypto-assets as well as providers of services related to such crypto-assets.

Article 143

Transitional measures

1. Articles 4 to 15 shall not apply to offers to the public of crypto-assets that ended before 30 December 2024.

2. By way of derogation from Title II, only the following requirements shall apply in relation to crypto-assets other than asset-referenced tokens and e-money tokens that were admitted to trading before 30 December 2024:

(a) Articles 7 and 9 shall apply to marketing communications published after 30 December 2024;

(b) operators of trading platforms shall ensure by 31 December 2027 that a crypto-asset white paper, in the cases required by this Regulation, is drawn up, notified and published in accordance with Articles 6, 8 and 9 and updated in accordance with Article 12.

3. Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorisation pursuant to Article 63, whichever is sooner.

Member States may decide not to apply the transitional regime for crypto-asset service providers provided for in the first subparagraph or to reduce its duration where they consider that their national regulatory framework applicable before 30 December 2024 is less strict than this Regulation.

By 30 June 2024, Member States shall notify to the Commission and ESMA whether they have exercised the option provided for in the second subparagraph and the duration of the transitional regime.

4. Issuers of asset-referenced tokens other than credit institutions that issued asset-referenced tokens in accordance with applicable law before 30 June 2024, may continue to do so until they are granted or refused an authorisation pursuant to Article 21, provided that they apply for authorisation before 30 July 2024.

5. Credit institutions that issued asset-referenced tokens in accordance with applicable law before 30 June 2024, may continue to do so until the crypto-asset white paper has been approved or has failed to be approved pursuant to Article 17 provided that they notify their competent authority pursuant to paragraph 1 of that Article before 30 July 2024.

6. By way of derogation from Articles 62 and 63, Member States may apply a simplified procedure for applications for an authorisation that are submitted between 30 December 2024 and 1 July 2026 by entities that on 30 December 2024, were authorised under national law to provide crypto-asset services. The competent authorities shall ensure that Chapters 2 and 3 of Title V are complied with before granting authorisation pursuant to such simplified procedures.

7. EBA shall exercise its supervisory responsibilities pursuant to Article 117 from the date of application of the delegated acts referred to in Article 43(11).

Article 144

Amendment to Regulation (EU) No 1093/2010

In Article 1(2) of Regulation (EU) No 1093/2010, the first subparagraph is replaced by the following:

'The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC (*), Directive 2009/110/EC, Regulation (EU) No 575/2013 (**), Directive 2013/36/EU (***), Directive 2014/49/EU (****), Directive 2014/92/EU (*****), Directive (EU) 2015/2366 (******), Regulation (EU) 2023/1114 (*******) of the European Parliament and of the Council and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013 (********).

(*) Directive 2008/48/EC Of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

(**) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(***) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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

(*****) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

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

(*******) 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).

(********) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).'.

Article 145

Amendment to Regulation (EU) No 1095/2010

In Article 1(2) of Regulation (EU) No 1095/2010, the first subparagraph is replaced by the following:

'The Authority shall act within the powers conferred by this Regulation and within the scope of Directives 97/9/EC, 98/26/EC, 2001/34/EC, 2002/47/EC, 2004/109/EC, 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council (*), Regulation (EC) No 1060/2009 and Directive 2014/65/EU of the European Parliament and of the Council (**), Regulation (EU) 2017/1129 of the European Parliament and of the Council (***), Regulation (EU) 2023/1114 of the European Parliament and of the Council (****) and to the extent that those acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares, issuers or offerors of crypto-assets, persons seeking admission to trading or crypto-asset service providers and the competent authorities that supervise them, within the relevant parts of, Directives 2002/87/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

(*) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

(**) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(***) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

(****) 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).'.

Article 146

Amendment to Directive 2013/36/EU

In Annex I to Directive 2013/36/EU, point 15 is replaced by the following:

'15. Issuing electronic money including electronic-money tokens as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114 of the European Parliament and of the Council (*).

16. Issuance of asset-referenced tokens as defined in Article 3(1), point (6), of Regulation (EU) 2023/1114.

17. Crypto-asset services as defined in Article 3(1), point (16), of Regulation (EU) 2023/1114.

(*) 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).'.

Article 147

Amendment to Directive (EU) 2019/1937

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

'(xxii) 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).'.

Article 148

Transposition of amendments to Directives 2013/36/EU and (EU) 2019/1937

1. Member States shall adopt and publish, by 30 December 2024, the laws, regulations and administrative provisions necessary to comply with Articles 146 and 147.

2. Member States shall communicate to the Commission, EBA and ESMA the text of the main measures of national law that they adopt in the field covered by Article 116.

Article 149

Entry into force and application

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

2. This Regulation shall apply from 30 December 2024.

3. By way of derogation from paragraph 2, Titles III and IV shall apply from 30 June 2024.

4. By way of derogation from paragraphs 2 and 3 of this Article, Articles 2(5), 3(2), 6(11) and (12), Article 14(1), second subparagraph, Articles 17(8), 18(6) and (7), 19(10) and (11), 21(3), 22(6) and (7), 31(5), 32(5), 34(13), 35(6), 36(4), 38(5), 42(4), 43(11), 45(7) and (8), 46(6), 47(5), 51(10) and (15), 60(13) and (14), 61(3), 62(5) and (6), 63(11), 66(6), 68(10), 71(5), 72(5), 76(16), 81(15), 82(2), 84(4), 88(4), 92(2) and (3), 95(10) and (11), 96(3), 97(1), 103(8), 104(8), 105(7), 107(3) and (4), 109(8) and 119(8), 134(10), 137(3) and Article 139 shall apply from 29 June 2023.

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

Done at Brussels, 31 May 2023.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	P. KULLGREN

ANNEX I

DISCLOSURE ITEMS FOR THE CRYPTO-ASSET WHITE PAPER FOR CRYPTO-ASSETS OTHER THAN ASSET-REFERENCED TOKENS OR E-MONEY TOKENS

Part A: Information about the offeror or the person seeking admission to trading

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier or another identifier required pursuant to applicable national law;

6. A contact telephone number and an email address of the offeror or the person seeking admission to trading, and the period of days within which an investor contacting the offeror or the person seeking admission to trading via that telephone number or email address will receive an answer;

7. Where applicable, the name of the parent company;

8. Identity, business addresses and functions of persons that are members of the management body of the offeror or person seeking admission to trading;

9. Business or professional activity of the offeror or person seeking admission to trading and, where applicable, of its parent company;

10. The financial condition of the offeror or person seeking admission to trading over the past three years or where the offeror or person seeking admission to trading has not been established for the past three years, its financial condition since the date of its registration.

    The financial condition shall be assessed based on a fair review of the development and performance of the business of the offeror or person seeking admission to trading and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

    The review shall be a balanced and comprehensive analysis of the development and performance of the business of the offeror or person seeking admission to trading and of its position, consistent with the size and complexity of the business.

Part B: Information about the issuer, if different from the offeror or person seeking admission to trading

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier or another identifier required pursuant to applicable national law;

6. Where applicable, the name of the parent company;

7. Identity, business addresses and functions of persons that are members of the management body of the issuer;

8. Business or professional activity of the issuer and, where applicable, of its parent company.

Part C: Information about the operator of the trading platform in cases where it draws up the crypto-asset white paper

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier or another identifier required pursuant to applicable national law;

6. Where applicable, the name of the parent company;

7. The reason why that operator drew up the crypto-asset white paper;

8. Identity, business addresses and functions of persons that are members of the management body of the operator;

9. Business or professional activity of the operator and, where applicable, of its parent company.

Part D: Information about the crypto-asset project

1. Name of the crypto-asset project and of the crypto-assets, if different from the name of the offeror or person seeking admission to trading, and abbreviation or ticker handler;

2. A brief description of the crypto-asset project;

3. Details of all natural or legal persons (including business addresses or domicile of the company) involved in the implementation of the crypto-asset project, such as advisors, development team and crypto-asset service providers;

4. Where the crypto-asset project concerns utility tokens, key features of the goods or services to be developed;

5. Information about the crypto-asset project, especially past and future milestones of the project and, where applicable, resources already allocated to the project;

6. Where applicable, planned use of any funds or other crypto-assets collected.

Part E: Information about the offer to the public of crypto-assets or their admission to trading

1. Indication as to whether the crypto-asset white paper concerns an offer to the public of crypto-assets or their admission to trading;

2. The reasons for the offer to the public or for seeking admission to trading;

3. Where applicable, the amount that the offer to the public intends to raise in funds or in any other crypto-asset, including, where applicable, any minimum and maximum target subscription goals set for the offer to the public of crypto-assets, and whether oversubscriptions are accepted and how they are allocated;

4. The issue price of the crypto-asset being offered to the public (in an official currency or any other crypto-assets), any applicable subscription fee or the method in accordance with which the offer price will be determined;

5. Where applicable, the total number of crypto-assets to be offered to the public or admitted to trading;

6. Indication of the prospective holders targeted by the offer to the public of crypto-assets or admission of such crypto-assets to trading, including any restriction as regards the type of holders for such crypto-assets;

7. Specific notice that purchasers participating in the offer to the public of crypto-assets will be able to be reimbursed if the minimum target subscription goal is not reached at the end of the offer to the public, if they exercise the right to withdrawal foreseen in Article 13 or if the offer is cancelled and detailed description of the refund mechanism, including the expected timeline of when such refunds will be completed;

8. Information about the various phases of the offer to the public of crypto-assets, including information on discounted purchase price for early purchasers of crypto-assets (pre-public sales); in the case of discounted purchase prices for some purchasers, an explanation why purchase prices may be different, and a description of the impact on the other investors;

9. For time-limited offers, the subscription period during which the offer to the public is open;

10. The arrangements to safeguard funds or other crypto-assets as referred to in Article 10 during the time-limited offer to the public or during the withdrawal period;

11. Methods of payment to purchase the crypto-assets offered and methods of transfer of the value to the purchasers when they are entitled to be reimbursed;

12. In the case of offers to the public, information on the right of withdrawal as referred to in Article 13;

13. Information on the manner and time schedule of transferring the purchased crypto-assets to the holders;

14. Information about technical requirements that the purchaser is required to fulfil to hold the crypto-assets;

15. Where applicable, the name of the crypto-asset service provider in charge of the placing of crypto-assets and the form of such placement (with or without a firm commitment basis);

16. Where applicable, the name of the trading platform for crypto-assets where admission to trading is sought, and information about how investors can access such trading platforms and the costs involved;

17. Expenses related to the offer to the public of crypto-assets;

18. Potential conflicts of interest of the persons involved in the offer to the public or admission to trading, arising in relation to the offer or admission to trading;

19. The law applicable to the offer to the public of crypto-assets, as well as the competent court.

Part F: Information about the crypto-assets

1. The type of crypto-asset that will be offered to the public or for which admission to trading is sought;

2. A description of the characteristics, including the data necessary for classification of the crypto-asset white paper in the register referred to in Article 109, as specified in accordance with paragraph 8 of that Article, and functionality of the crypto-assets being offered or admitted to trading, including information about when the functionalities are planned to apply.

Part G: Information on the rights and obligations attached to the crypto-assets

1. A description of the rights and obligations, if any, of the purchaser, and the procedure and conditions for the exercise of those rights;

2. A description of the conditions under which the rights and obligations may be modified;

3. Where applicable, information on the future offers to the public of crypto-assets by the issuer and the number of crypto-assets retained by the issuer itself;

4. Where the offer to the public of crypto-assets or their admission to trading concerns utility tokens, information about the quality and quantity of goods or services to which the utility tokens give access;

5. Where the offers to the public of crypto-assets or their admission to trading concerns utility tokens, information on how utility tokens can be redeemed for goods or services to which they relate;

6. Where an admission to trading is not sought, information on how and where the crypto-assets can be purchased or sold after the offer to the public;

7. Restrictions on the transferability of the crypto-assets that are being offered or admitted to trading;

8. Where the crypto-assets have protocols for the increase or decrease of their supply in response to changes in demand, a description of the functioning of such protocols;

9. Where applicable, a description of protection schemes protecting the value of the crypto-assets and of compensation schemes;

10. The law applicable to the crypto-assets, as well as the competent court.

Part H: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, protocols and technical standards used;

2. The consensus mechanism, where applicable;

3. Incentive mechanisms to secure transactions and any fees applicable;

4. Where the crypto-assets are issued, transferred and stored using distributed ledger technology that is operated by the issuer, the offeror or a third-party acting on their behalf, a detailed description of the functioning of such distributed ledger technology;

5. Information on the audit outcome of the technology used, if such an audit was conducted.

Part I: Information on the risks

1. A description of the risks associated with the offer to the public of crypto-assets or their admission to trading;

2. A description of the risks associated with the issuer, if different from the offeror, or person seeking admission to trading;

3. A description of the risks associated with the crypto-assets;

4. A description of the risks associated with project implementation;

5. A description of the risks associated with the technology used as well as mitigation measures, if any.

ANNEX II

DISCLOSURE ITEMS FOR THE CRYPTO-ASSET WHITE PAPER FOR AN ASSET-REFERENCED TOKEN

Part A: Information about the issuer of the asset-referenced token

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier or another identifier required pursuant to applicable national law;

6. Where applicable, the identity of the parent company;

7. Identity, business addresses and functions of persons that are members of the management body of the issuer;

8. Business or professional activity of the issuer and, where applicable, of its parent company;

9. The financial condition of the issuer over the past three years or, where the issuer has not been established for the past three years, its financial condition since the date of its registration.

   The financial condition shall be assessed based on a fair review of the development and performance of the business of the issuer and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

   The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business.

10. A detailed description of the issuer's governance arrangements;

11. Except for issuers of asset-referenced tokens that are exempted from authorisation in accordance with Article 17, details about the authorisation as an issuer of an asset-referenced token and name of the competent authority which granted such authorisation.

    For credit institutions, the name of the competent authority of the home Member State.

12. Where the issuer of the asset-referenced token also issues other crypto-assets, or also has activities related to other crypto-assets, that should be clearly stated; the issuer should also state whether there is any connection between the issuer and the entity running the distributed ledger technology used to issue the crypto-asset, including if the protocols are run or controlled by a person closely connected to the project participants.

Part B: Information about the asset-referenced token

1. Name and abbreviation or ticker handler of the asset-referenced token;

2. A description of the characteristics of the asset-referenced token, including the data necessary for classification of the crypto-asset white paper in the register referred to in Article 109, as specified in accordance with paragraph 8 of that Article;

3. Details of all natural or legal persons (including business addresses or domicile of the company) involved in the operationalisation of the asset-referenced token, such as advisors, development team and crypto-asset service providers;

4. A description of the role, responsibilities and accountability of any third-party entities referred to in Article 34(5), first subparagraph, point (h);

5. Information about the plans for the asset-referenced tokens, including the description of the past and future milestones and, where applicable, resources already allocated.

Part C: Information about the offer to the public of the asset-referenced token or its admission to trading

1. Indication as to whether the crypto-asset white paper concerns an offer to the public of the asset-referenced token or its admission to trading;

2. Where applicable, the amount that the offer to the public of the asset-referenced token intends to raise in funds or in any other crypto-asset, including, where applicable, any minimum and maximum target subscription goals set for the offer to the public of the asset-referenced token, and whether oversubscriptions are accepted and how they are allocated;

3. Where applicable, the total number of units of the asset-referenced token to be offered or admitted to trading;

4. Indication of the prospective holders targeted by the offer to the public of the asset-referenced token or admission of such asset-referenced token to trading, including any restriction as regards the type of holders for such asset-referenced token;

5. A specific notice that purchasers participating in the offer to the public of the asset-referenced token will be able to be reimbursed if the minimum target subscription goal is not reached at the end of the offer to the public, including the expected timeline of when such refunds will be completed; the consequences of exceeding a maximum target subscription goal should be made explicit;

6. Information about the various phases of the offer to the public of the asset-referenced token, including information on discounted purchase price for early purchasers of the asset-referenced token (pre-public sales) and, in the case of discounted purchase price for some purchasers, an explanation as to why the purchase prices may be different, and a description of the impact on the other investors;

7. For time-limited offers, the subscription period during which the offer to the public is open;

8. Methods of payment to purchase and to redeem the asset-referenced token offered;

9. Information on the method and time schedule of transferring the purchased asset-referenced token to the holders;

10. Information about technical requirements that the purchaser is required to fulfil to hold the asset-referenced token;

11. Where applicable, the name of the crypto-asset service provider in charge of the placing of asset-referenced tokens and the form of such placement (with or without a firm commitment basis);

12. Where applicable, the name of the trading platform for crypto-assets where admission to trading is sought, and information about how investors can access such trading platforms and the costs involved;

13. Expenses related to the offer to the public of the asset-referenced token;

14. Potential conflicts of interest of the persons involved in the offer to the public or admission to trading, arising in relation to the offer or admission to trading;

15. The law applicable to the offer to the public of the asset-referenced token, as well as the competent court.

Part D: Information on the rights and obligations attached to the asset-referenced token

1. A description of the characteristics and functionality of the asset-referenced token being offered or admitted to trading, including information about when the functionalities are planned to apply;

2. A description of the rights and obligations, if any, of the purchaser, and the procedure and conditions for the exercise of those rights;

3. A description of the conditions under which the rights and obligations may be modified;

4. Where applicable, information on the future offers to the public of the asset-referenced token by the issuer and the number of units of the asset-referenced token retained by the issuer itself;

5. Where an admission to trading is not sought, information on how and where the asset-referenced token can be purchased or sold after the offer to the public;

6. Any restrictions on the transferability of the asset-referenced token that is being offered or admitted to trading;

7. Where the asset-referenced token has protocols for the increase or decrease of its supply in response to changes in demand, a description of the functioning of such protocols;

8. Where applicable, a description of protection schemes protecting the value of the asset-referenced token and compensation schemes;

9. Information on the nature and enforceability of rights, including permanent rights of redemption and any claims that holders and any legal or natural person as referred to in Article 39(2), may have against the issuer, including information on how such rights will be treated in the case of insolvency procedures, information on whether different rights are allocated to different holders and the non-discriminatory reasons for such different treatment;

10. A detailed description of the claim that the asset-referenced token represents for holders, including:

    (a) the description of each referenced asset and specified proportions of each of those assets;

    (b) the relation between the value of the referenced assets and the amount of the claim and the reserve of assets; and

    (c) a description how a fair and transparent valuation of components of the claim is undertaken, which identifies, where relevant, independent parties;

11. Where applicable, information on the arrangements put in place by the issuer to ensure the liquidity of the asset-referenced token, including the name of the entities in charge of ensuring such liquidity;

12. The contact details for submitting complaints and description of the complaints-handling procedures and any dispute resolution mechanism or redress procedure established by the issuer of the asset-referenced token;

13. A description of the rights of the holders when the issuer is not able to fulfil its obligations, including in insolvency;

14. A description of the rights in the context of the implementation of the recovery plan;

15. A description of the rights in the context of the implementation of the redemption plan;

16. Detailed information on how the asset-referenced token is redeemed, including whether the holder will be able to choose the form of redemption, the form of transference or the official currency of redemption;

17. The law applicable to the asset-referenced token, as well as the competent court.

Part E: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, as well as protocols and technical standards used, allowing for the holding, storing and transfer of asset-referenced tokens;

2. The consensus mechanism, where applicable;

3. Incentive mechanisms to secure transactions and any fees applicable;

4. Where the asset-referenced tokens are issued, transferred and stored using distributed ledger technology that is operated by the issuer or a third-party acting on the issuer's behalf, a detailed description of the functioning of such distributed ledger technology;

5. Information on the audit outcome of the technology used, if such an audit was conducted.

Part F: Information on the risks

1. The risks related to the reserve of assets, when the issuer is not able to fulfil its obligations;

2. A description of the risks associated with the issuer of the asset-referenced token;

3. A description of the risks associated with the offer to the public of the asset-referenced token or its admission to trading;

4. A description of the risks associated with the asset-referenced token, in particular with regard to the assets referenced;

5. A description of the risks associated with the operationalisation of the asset-referenced token project;

6. A description of the risks associated with the technology used as well as mitigation measures, if any.

Part G: Information on the reserve of assets

1. A detailed description of the mechanism aimed at aligning the value of the reserve of assets with the claim associated with the asset-referenced token, including legal and technical aspects;

2. A detailed description of the reserve of assets and their composition;

3. A description of the mechanisms through which asset-referenced tokens are issued and redeemed;

4. Information on whether a part of the reserve assets are invested and, where applicable, a description of the investment policy for those reserve assets;

5. A description of the custody arrangements for the reserve assets, including their segregation, and the name of crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients, credit institutions or investment firms appointed as custodians of the reserve assets.

ANNEX III

DISCLOSURE ITEMS FOR THE CRYPTO-ASSET WHITE PAPER FOR AN E-MONEY TOKEN

Part A: Information about the issuer of the e-money token

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier or another identifier required pursuant to applicable national law;

6. A contact telephone number and an email address of the issuer, and the period of days within which an investor contacting the issuer via that telephone number or email address will receive an answer;

7. Where applicable, the identity of the parent company;

8. Identity, business address and functions of persons that are members of the management body of the issuer;

9. Business or professional activity of the issuer and, where applicable, of its parent company;

10. Potential conflicts of interest;

11. Where the issuer of the e-money token also issues other crypto-assets, or also has other activities related to crypto-assets, that should be clearly stated; the issuer should also state whether there is any connection between the issuer and the entity running the distributed ledger technology used to issue the crypto-asset, including if the protocols are run or controlled by a person closely connected to project participants;

12. The issuer's financial condition over the past three years or, where the issuer has not been established for the past three years, the issuer's financial condition record since the date of its registration.

    The financial condition shall be assessed based on a fair review of the development and performance of the business of the issuer and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

    The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

13. Except for issuers of e-money tokens who are exempted from authorisation in accordance with Article 48(4) and (5), details about the authorisation as an issuer of an e-money token and the name of the competent authority which granted authorisation.

Part B: Information about the e-money token

1. Name and abbreviation;

2. A description of the characteristics of the e-money token, including the data necessary for classification of the crypto-asset white paper in the register referred to in Article 109, as specified in accordance with paragraph 8 of that Article;

3. Details of all natural or legal persons (including business addresses and/or domicile of the company) involved in the design and development, such as advisors, development team and crypto-asset service providers.

Part C: Information about the offer to the public of the e-money token or its admission to trading

1. Indication as to whether the crypto-asset white paper concerns an offer to the public of the e-money token or its admission to trading;

2. Where applicable, the total number of units of the e-money token to be offered to the public or admitted to trading;

3. Where applicable, name of the trading platforms for crypto-assets where the admission to trading of the e-money token is sought;

4. The law applicable to the offer to the public of the e-money token, as well as the competent court.

Part D: Information on the rights and obligations attached to e-money tokens

1. A detailed description of the rights and obligations, if any, that the holder of the e-money token has, including the right of redemption at par value as well as the procedure and conditions for the exercise of those rights;

2. A description of the conditions under which the rights and obligations may be modified;

3. A description of the rights of the holders when the issuer is not able to fulfil its obligations, including in insolvency;

4. A description of rights in the context of the implementation of the recovery plan;

5. A description of rights in the context of the implementation of the redemption plan;

6. The contact details for submitting complaints and description of the complaints-handling procedures and any dispute resolution mechanism or redress procedure established by the issuer of the e-money token;

7. Where applicable, a description of protection schemes protecting the value of the crypto-asset and of compensation schemes;

8. The law applicable to the e-money token as well as the competent court.

Part E: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, as well as the protocols and technical standards used, allowing for the holding, storing and transfer of e-money tokens;

2. Information about the technical requirements that the purchaser has to fulfil to gain control over the e-money token;

3. The consensus mechanism, where applicable;

4. Incentive mechanisms to secure transactions and any fees applicable;

5. Where the e-money token is issued, transferred and stored using distributed ledger technology that is operated by the issuer or a third-party acting on its behalf, a detailed description of the functioning of such distributed ledger technology;

6. Information on the audit outcome of the technology used, if such an audit was conducted.

Part F: Information on the risks

1. Description of the risks associated with the issuer of the e-money token;

2. Description of the risks associated with the e-money token;

3. Description of the risks associated with the technology used as well as mitigation measures, if any.

ANNEX IV

MINIMUM CAPITAL REQUIREMENTS FOR CRYPTO-ASSET SERVICE PROVIDERS

Crypto-asset service providers	Type of crypto-asset services	Minimum capital requirements under Article 67(1), point (a)
Class 1	Crypto-asset service provider authorised for the following crypto-asset services: — execution of orders on behalf of clients; — placing of crypto-assets; — providing transfer services for crypto-assets on behalf of clients; — reception and transmission of orders for crypto-assets on behalf of clients; — providing advice on crypto-assets; and/or — providing portfolio management on crypto-assets.	EUR 50 000
Class 2	Crypto-asset service provider authorised for any crypto-asset services under class 1 and: — providing custody and administration of crypto-assets on behalf of clients; — exchange of crypto-assets for funds; and/or — exchange of crypto-assets for other crypto-assets.	EUR 125 000
Class 3	Crypto-asset service provider authorised for any crypto-asset services under class 2 and: — operation of a trading platform for crypto-assets.	EUR 150 000

ANNEX V

LIST OF INFRINGEMENTS REFERRED TO IN TITLES III AND VI FOR ISSUERS OF SIGNIFICANT ASSET-REFERENCED TOKENS

1. The issuer infringes Article 22(1) by not reporting, for each significant asset-referenced token with an issue value that is higher than EUR 100 000 000, on a quarterly basis to EBA the information referred to in the first subparagraph, points (a) to (d), of that paragraph.

2. The issuer infringes Article 23(1) by not stopping issuing a significant asset-referenced token upon reaching the thresholds provided for in that paragraph or by not submitting a plan to EBA within 40 working days of reaching those thresholds to ensure that the estimated quarterly average number and average aggregate value of the transactions per day are kept below those thresholds.

3. The issuer infringes Article 23(4) by not complying with the modifications of the plan referred to in paragraph 1, point (b), of that Article as required by EBA.

4. The issuer infringes Article 25 by not notifying EBA of any intended change of its business model likely to have a significant influence on the purchase decision of any holders or prospective holders of significant asset-referenced tokens, or by not describing such a change in a crypto-asset white paper.

5. The issuer infringes Article 25 by not complying with a measure requested by EBA in accordance with Article 25(4).

6. The issuer infringes Article 27(1) by not acting honestly, fairly and professionally.

7. The issuer infringes Article 27(1) by not communicating with holders and prospective holders of the significant asset-referenced token in a fair, clear and not misleading manner.

8. The issuer infringes Article 27(2) by not acting in the best interests of the holders of the significant asset-referenced token, or by giving preferential treatment to specific holders which is not disclosed in the issuer's crypto-asset white paper or, where applicable, the marketing communications.

9. The issuer infringes Article 28 by not publishing on its website the approved crypto-asset white paper as referred to in Article 21(1) and, where applicable, the modified crypto-asset white paper as referred to in Article 25.

10. The issuer infringes Article 28 by not making the crypto-asset white paper publicly accessible by the starting date of the offer to the public of the significant asset-referenced token or the admission to trading of that token.

11. The issuer infringes Article 28 by not ensuring that the crypto-asset white paper, and, where applicable, the modified crypto-asset white paper, remains available on its website for as long as the significant asset-referenced token is held by the public.

12. The issuer infringes Article 29(1) and (2) by publishing marketing communications relating to an offer to the public of a significant asset-referenced token, or to the admission to trading of such significant asset-referenced token, which do not comply with the requirements set out in paragraph 1, points (a) to (d), and paragraph 2 of that Article.

13. The issuer infringes Article 29(3) by not publishing marketing communications and any modifications thereto on its website.

14. The issuer infringes Article 29(5) by not notifying marketing communications to EBA upon request.

15. The issuer infringes Article 29(6) by disseminating marketing communications prior to the publication of the crypto-asset white paper.

16. The issuer infringes Article 30(1) by not disclosing in a clear, accurate and transparent manner in a publicly and easily accessible place on its website the amount of the significant asset-referenced token in circulation and the value and composition of the reserve of assets referred to in Article 36, or by not updating the required information at least monthly.

17. The issuer infringes Article 30(2) by not publishing as soon as possible in a publicly and easily accessible place on its website a brief, clear, accurate and transparent summary of the audit report, as well as the full and unredacted audit report, in relation to the reserve of assets referred to in Article 36.

18. The issuer infringes Article 30(3) by not disclosing in a publicly and easily accessible place on its website in a clear, accurate and transparent manner as soon as possible any event that has or is likely to have a significant effect on the value of the significant asset-referenced token or on the reserve of assets referred to in Article 36.

19. The issuer infringes Article 31(1) by not establishing and maintaining effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of the significant asset-referenced token and other interested parties, including consumer associations that represent holders of the significant asset-referenced token, and by not publishing descriptions of those procedures, or, where the significant asset-referenced token is distributed, totally or partially, by third-party entities, by not establishing procedures to also facilitate the handling of complaints between holders and third-party entities as referred to in Article 34(5), first subparagraph, point (h).

20. The issuer infringes Article 31(2) by not enabling the holders of the significant asset-referenced token to file complaints free of charge.

21. The issuer infringes Article 31(3) by not developing and making available to the holders of the significant asset-referenced token a template for filing complaints and by not keeping a record of all complaints received and any measures taken in response to those complaints.

22. The issuer infringes Article 31(4), by not investigating all complaints in a timely and fair manner or by not communicating the outcome of such investigations to the holders of its significant asset-referenced token within a reasonable period.

23. The issuer infringes Article 32(1) by not implementing and maintaining effective policies and procedures to identify, prevent, manage and disclose conflicts of interest between the issuer itself and its shareholders or members, itself and any shareholder or member, whether direct or indirect, that has a qualifying holding in it, itself and the members of its management body, itself and its employees, itself and the holders of the significant asset-referenced token or itself and any third party providing one of the functions as referred in Article 34(5), first subparagraph, point (h).

24. The issuer infringes Article 32(2) by not taking all appropriate steps to identify, prevent, manage and disclose conflicts of interest arising from the management and investment of the reserve of assets referred to in Article 36.

25. The issuer infringes Article 32(3) and (4), by not disclosing, in a prominent place on its website, to the holders of the significant asset-referenced token the general nature and sources of conflicts of interest and the steps taken to mitigate those risks, or by not being sufficiently precise in the disclosure to enable the prospective holders of the significant asset-referenced token to take an informed purchasing decision about such token.

26. The issuer infringes Article 33 by not immediately notifying EBA of any changes to its management body or by not providing EBA with all necessary information to assess compliance with Article 34(2).

27. The issuer infringes Article 34(1) by not having robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

28. The issuer infringes Article 34(2) by having members of its management body who are not of sufficiently good repute or do not possess the appropriate knowledge, skills and experience, both individually and collectively, to perform their duties or do not demonstrate that they are capable of committing sufficient time to effectively perform their duties.

29. The issuer infringes Article 34(3) by not having its management body assess or periodically review the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2, 3, 5 and 6 of Title III or by not taking appropriate measures to address any deficiencies in that respect.

30. The issuer infringes Article 34(4) by having shareholders or members, whether direct or indirect, with qualifying holdings who are not of sufficiently good repute.

31. The issuer infringes Article 34(5) by not adopting policies and procedures that are sufficiently effective to ensure compliance with this Regulation, in particular by not establishing, maintaining and implementing any of the policies and procedures referred to in the first subparagraph, points (a) to (k), of that paragraph.

32. The issuer infringes Article 34(5) by not entering into contractual arrangements with third-party entities as referred to in the first subparagraph, point (h), of that paragraph that set out the roles, responsibilities, rights and obligations both of the issuer and of the third-party entity concerned, or by not providing for an unambiguous choice of applicable law.

33. The issuer infringes Article 34(6), unless it has initiated a plan as referred to in Article 47, by not employing appropriate and proportionate systems, resources or procedures to ensure the continued and regular performance of its services and activities, and by not maintaining all of its systems and security access protocols in conformity with the appropriate Union standards.

34. The issuer infringes Article 34(7) by not submitting a plan for discontinuation of providing services and activities to EBA, for approval of such discontinuation.

35. The issuer infringes Article 34(8) by not identifying sources of operational risks and by not minimising those risks through the development of appropriate systems, controls and procedures.

36. The issuer infringes Article 34(9) by not establishing a business continuity policy and plans to ensure, in the case of an interruption of its ICT systems and procedures, the preservation of essential data and functions and the maintenance of its activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its activities.

37. The issuer infringes Article 34(10) by not having in place internal control mechanisms and effective procedures for risk management, including effective control and safeguard arrangements for managing ICT systems as required by Regulation (EU) 2022/2554.

38. The issuer infringes Article 34(11) by not having in place systems and procedures that are adequate to safeguard the availability, authenticity, integrity and confidentiality of data as required by Regulation (EU) 2022/2554 and in line with Regulation (EU) 2016/679.

39. The issuer infringes Article 34(12) by not ensuring that the issuer is regularly audited by independent auditors.

40. The issuer infringes Article 35(1) by not having, at all times, own funds equal to amounts of at least the highest of that set in point (a) or (c) of that paragraph or in Article 45(5).

41. The issuer infringes Article 35(2) of this Regulation where its own funds do not consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Article 46(4) and Article 48 of that Regulation.

42. The issuer infringes Article 35(3) by not complying with the requirement of EBA to hold a higher amount of own funds, following the assessment made in accordance with points (a) to (g) of that paragraph.

43. The issuer infringes Article 35(5) by not conducting, on a regular basis, stress testing that takes into account severe but plausible financial stress scenarios, such as interest rate shocks and non-financial stress scenarios such as operational risk.

44. The issuer infringes Article 35(5) by not complying with the requirement of EBA to hold a higher amount of own funds based on the outcome of the stress testing.

45. The issuer infringes Article 36(1) by not constituting and, at all times, maintaining a reserve of assets.

46. The issuer infringes Article 36(1) by not ensuring that the reserve of assets is composed and managed in such a way that the risks associated to the assets referenced by the significant asset-referenced token are covered.

47. The issuer infringes Article 36(1) by not ensuring that the reserve of assets is composed and managed in such a way that the liquidity risks associated to the permanent rights of redemption of the holders are addressed.

48. The issuer infringes Article 36(3) by not ensuring that the reserve of assets is operationally segregated from the issuer's estate, and from the reserve of assets of other asset-referenced tokens.

49. The issuer infringes Article 36(6) where its management body does not ensure effective and prudent management of the reserve of assets.

50. The issuer infringes Article 36(6) by not ensuring that the issuance and redemption of the significant asset-referenced token is always matched by a corresponding increase or decrease in the reserve of assets.

51. The issuer infringes Article 36(7) by not determining the aggregate value of the reserve of assets using market prices, and by not having its aggregate value always at least equal to the aggregate value of the claims against the issuer from holders of the significant asset-referenced token in circulation.

52. The issuer infringes Article 36(8), by not having a clear and detailed policy describing the stabilisation mechanism of the significant asset-referenced token that meets the conditions set out in points (a) to (g) of that paragraph.

53. The issuer infringes Article 36(9) by not mandating an independent audit of the reserve of assets every six months, as of the date of its authorisation or as of the date of approval of the crypto-asset white paper pursuant to Article 17.

54. The issuer infringes Article 36(10) by not notifying to EBA the result of the audit in accordance with that paragraph or by not publishing the result of the audit within two weeks of the date of notification to EBA.

55. The issuer infringes Article 37(1) by not establishing, maintaining or implementing custody policies, procedures and contractual arrangements that ensure at all times that the conditions listed in the first subparagraph, points (a) to (e), of that paragraph are met.

56. The issuer infringes Article 37(2) by not having, when issuing two or more significant asset-referenced tokens, a custody policy in place for each pool of reserve of assets.

57. The issuer infringes Article 37(3) by not ensuring that the reserve assets are held in custody by a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients, a credit institution or an investment firm by no later than five working days after the date of issuance of the significant asset-referenced token.

58. The issuer infringes Article 37(4) by not exercising all due skill, care and diligence in the selection, appointment and review of crypto-asset service providers, credit institutions and investment firms appointed as custodians of the reserve assets, or by not ensuring that the custodian is a legal person different from the issuer.

59. The issuer infringes Article 37(4) by not ensuring that the crypto-asset service providers, credit institutions and investment firms appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of such reserve assets.

60. The issuer infringes Article 37(4) by not ensuring in the contractual arrangements with the custodians that the reserve assets held in custody are protected against claims of the custodians' creditors.

61. The issuer infringes Article 37(5) by not setting out in the custody policies and procedures the selection criteria for the appointment of crypto-asset service providers, credit institutions or investment firms as custodians of the reserve assets or by not setting out the procedure for reviewing such appointment.

62. The issuer infringes Article 37(5) by not reviewing the appointment of crypto-asset service providers, credit institutions or investment firms as custodians of the reserve assets on a regular basis, by not evaluating its exposures to such custodians or by not monitoring the financial conditions of such custodians on an ongoing basis.

63. The issuer infringes Article 37(6) by not ensuring that custody of the reserve assets is carried out in accordance with the first subparagraph, points (a) to (d), of that paragraph.

64. The issuer infringes Article 37(7) by not having the appointment of a crypto-asset service provider, credit institution or investment firm as custodian of the reserve assets evidenced by a contractual arrangement, or by not regulating, by means of such a contractual arrangement, the flow of information necessary to enable the issuer of the significant asset-referenced token, the crypto-asset service provider, the credit institution and the investment firm to perform their functions as custodians.

65. The issuer infringes Article 38(1) by investing the reserve of assets in any products that are not highly liquid financial instruments with minimal market risk, credit risk and concentration risks or where such investments cannot be liquidated rapidly with minimal adverse price effect.

66. The issuer infringes Article 38(3) by not holding in custody in accordance with Article 37 the financial instruments in which the reserve of assets is invested.

67. The issuer infringes Article 38(4) by not bearing all profits and losses and any counterparty or operational risks that result from the investment of the reserve of assets.

68. The issuer infringes Article 39(1), by not establishing, maintaining and implementing clear and detailed policies and procedures in respect of permanent rights of redemption of holders of the significant asset-referenced token.

69. The issuer infringes Article 39(1) and (2) by not ensuring that holders of the significant asset-referenced token have permanent rights of redemption in accordance with those paragraphs, and by not establishing a policy on such permanent rights of redemption that meets the conditions listed in Article 39(2), first subparagraph, points (a) to (e).

70. The issuer infringes Article 39(3) by applying fees in the event of the redemption of the significant asset-referenced token.

71. The issuer infringes Article 40 by granting interest in relation to the significant asset-referenced token.

72. The issuer infringes Article 45(1) by not adopting, implementing and maintaining a remuneration policy that promotes the sound and effective risk management of issuers of significant asset-referenced tokens and that does not create incentives to relax risk standards.

73. The issuer infringes Article 45(2) by not ensuring that its significant asset-referenced token can be held in custody by different crypto-asset service providers authorised for providing custody and administration of crypto-assets on behalf of clients, on a fair, reasonable and non-discriminatory basis.

74. The issuer infringes Article 45(3) by not assessing or monitoring the liquidity needs to meet requests for redemption of the significant asset-referenced token by its holders.

75. The issuer infringes Article 45(3) by not establishing, maintaining or implementing a liquidity management policy and procedures or by not ensuring, with those policy and procedures, that the reserve assets have a resilient liquidity profile that enables the issuer of the significant asset-referenced token to continue operating normally, including under scenarios of liquidity stress.

76. The issuer infringes Article 45(4) by not conducting, on a regular basis, liquidity stress testing or by not strengthening the liquidity requirements where requested by EBA based on the outcome of such tests.

77. The issuer infringes Article 46(1) by not drawing up and maintaining a recovery plan providing for measures to be taken by the issuer of the significant asset-referenced token to restore compliance with the requirements applicable to the reserve of assets in cases where the issuer fails to comply with those requirements, including the preservation of its services related to the significant asset-referenced token, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations.

78. The issuer infringes Article 46(1) by not drawing up and maintaining a recovery plan that includes appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options, as listed in the third subparagraph of that paragraph.

79. The issuer infringes Article 46(2) by not notifying the recovery plan to EBA and, where applicable, to its resolution and prudential supervisory authorities, within six months of the date of authorisation pursuant to Article 21 or of the date of approval of the crypto-asset white paper pursuant to Article 17.

80. The issuer infringes Article 46(2) by not regularly reviewing or updating the recovery plan.

81. The issuer infringes Article 47(1) by not drawing up and maintaining an operational plan to support the orderly redemption of each significant asset-referenced token.

82. The issuer infringes Article 47(2) by not having a redemption plan that demonstrates the ability of the issuer of the significant asset-referenced token to carry out the redemption of the outstanding significant asset-referenced token issued without causing undue economic harm to its holders or to the stability of the markets of the reserve assets.

83. The issuer infringes Article 47(2) by not having a redemption plan that includes contractual arrangements, procedures or systems, including the designation of a temporary administrator, to ensure the equitable treatment of all holders of the significant asset-referenced token and to ensure that holders of the significant asset-referenced token are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

84. The issuer infringes Article 47(2) by not having a redemption plan that ensures the continuity of any critical activities that are necessary for the orderly redemption and that are performed by the issuer or by any third-party entity.

85. The issuer infringes Article 47(3) by not notifying the redemption plan to EBA within six months of the date of authorisation pursuant to Article 21 or of the date of approval of the crypto-asset white paper pursuant to Article 17.

86. The issuer infringes Article 47(3) by not regularly reviewing or updating the redemption plan.

87. The issuer infringes Article 88(1), except where the conditions of Article 88(2) are met, by not informing the public as soon as possible of inside information as referred to in Article 87, that directly concerns that issuer, in a manner that enables fast access and complete, correct and timely assessment of the information by the public.

ANNEX VI

LIST OF INFRINGEMENTS OF PROVISIONS REFERRED TO IN TITLE IV IN CONJUNCTION WITH TITLE III FOR ISSUERS OF SIGNIFICANT E-MONEY TOKENS

1. The issuer infringes Article 22(1) by not reporting, for each significant e-money token denominated in a currency that is not an official currency of a Member State with an issue value that is higher than EUR 100 000 000, on a quarterly basis to EBA, the information referred to in the first subparagraph, points (a) to (d), of that paragraph.

2. The issuer infringes Article 23(1) by not stopping issuing a significant e-money token denominated in a currency that is not an official currency of a Member State upon reaching the thresholds provided for in that paragraph or by not submitting a plan to EBA within 40 working days of reaching those thresholds to ensure that the estimated quarterly average number and average aggregate value of the transactions per day are kept below those thresholds.

3. The issuer infringes Article 23(4) by not complying with the modifications of the plan referred to in paragraph 1, point (b), of that Article as required by EBA.

4. The issuer infringes Article 35(2) of this Regulation where its own funds do not consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Article 46(4) and Article 48 of that Regulation.

5. The issuer infringes Article 35(3) by not complying with the requirement of EBA to hold a higher amount of own funds, following the assessment made in accordance with points (a) to (g) of that paragraph.

6. The issuer infringes Article 35(5) by not conducting, on a regular basis, stress testing that takes into account severe but plausible financial stress scenarios, such as interest rate shocks, and non-financial stress scenarios, such as operational risk.

7. The issuer infringes Article 35(5) by not complying with the requirement of EBA to hold a higher amount of own funds based on the outcome of the stress testing.

8. The issuer infringes Article 36(1) by not constituting and, at all times, maintaining a reserve of assets.

9. The issuer infringes Article 36(1) by not ensuring that the reserve of assets is composed and managed in such a way that the risks associated to the official currency referenced by the significant e-money token are covered.

10. The issuer infringes Article 36(1) by not ensuring that the reserve of assets is composed and managed in such a way that the liquidity risks associated to the permanent rights of redemption of the holders are addressed.

11. The issuer infringes Article 36(3) by not ensuring that the reserve of assets is operationally segregated from the issuer's estate, and from the reserve of assets of other e-money tokens.

12. The issuer infringes Article 36(6) where its management body does not ensure effective and prudent management of the reserve of assets.

13. The issuer infringes Article 36(6) by not ensuring that the issuance and redemption of the significant e-money token is always matched by a corresponding increase or decrease in the reserve of assets.

14. The issuer infringes Article 36(7) by not determining the aggregate value of the reserve of assets by using market prices, and by not having its aggregate value always at least equal to the aggregate value of the claims against the issuer from the holders of the significant e-money token in circulation.

15. The issuer infringes Article 36(8) by not having a clear and detailed policy describing the stabilisation mechanism of the significant e-money token that meets the conditions set out in points (a) to (g) of that paragraph.

16. The issuer infringes Article 36(9) by not mandating an independent audit of the reserve of assets every six months after the date of the offer to the public or admission to trading.

17. The issuer infringes Article 36(10) by not notifying to EBA the result of the audit in accordance with that paragraph or by not publishing the result of the audit within two weeks of the date of notification to EBA.

18. The issuer infringes Article 37(1) by not establishing, maintaining or implementing custody policies, procedures and contractual arrangements that ensure at all times that the conditions listed in the first subparagraph, points (a) to (e), of that paragraph are met.

19. The issuer infringes Article 37(2) by not having, when issuing two or more significant e-money tokens, a custody policy in place for each pool of reserve of assets.

20. The issuer infringes Article 37(3) by not ensuring that the reserve assets are held in custody by a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients, a credit institution or an investment firm by no later than five working days after the date of issuance of the significant e-money token.

21. The issuer infringes Article 37(4) by not exercising all due skill, care and diligence in the selection, appointment and review of crypto-asset service providers, credit institutions and investment firms appointed as custodians of the reserve assets or by not ensuring that the custodian is a legal person different from the issuer.

22. The issuer infringes Article 37(4) by not ensuring that the crypto-asset service providers, credit institutions and investment firms appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of such reserve assets.

23. The issuer infringes Article 37(4) by not ensuring in the contractual arrangements with the custodians that the reserve assets held in custody are protected against claims of the custodians' creditors.

24. The issuer infringes Article 37(5) by not setting out in the custody policies and procedures the selection criteria for the appointment of crypto-asset service providers, credit institutions or investment firms as custodians of the reserve assets or by not setting out the procedure for reviewing such appointment.

25. The issuer infringes Article 37(5) by not reviewing the appointment of crypto-asset service providers, credit institutions or investment firms as custodians of the reserve assets on a regular basis, and by not evaluating its exposures to such custodians, or by not monitoring the financial conditions of such custodians on an ongoing basis.

26. The issuer infringes Article 37(6) by not ensuring that the custody of the reserve assets is carried out in accordance with the first subparagraph, points (a) to (d), of that paragraph.

27. The issuer infringes Article 37(7) by not having the appointment of a crypto-asset service provider, credit institution or investment firm as custodian of the reserve assets evidenced by a contractual arrangement, or by not regulating, by means of such a contractual arrangement, the flow of information necessary to enable the issuer of the significant e-money token, the crypto-asset service provider, the credit institutions and the investment firm to perform their functions as custodians.

28. The issuer infringes Article 38(1) by investing the reserve of assets in any products that are not highly liquid financial instruments with minimal market risk, credit risk and concentration risks or where such investments cannot be liquidated rapidly with minimal adverse price effect.

29. The issuer infringes Article 38(3) by not holding in custody in accordance with Article 37 the financial instruments in which the reserve of assets is invested.

30. The issuer infringes Article 38(4) by not bearing all profits and losses and any counterparty or operational risks that result from the investment of the reserve of assets.

31. The issuer infringes Article 45(1) by not adopting, implementing and maintaining a remuneration policy that promotes the sound and effective risk management of issuers of significant e-money tokens and that does not create incentives to relax risk standards.

32. The issuer infringes Article 45(2) by not ensuring that its significant e-money token can be held in custody by different crypto-asset service providers authorised for providing custody and administration of crypto-assets on behalf of clients on a fair, reasonable and non-discriminatory basis.

33. The issuer infringes Article 45(3) by not assessing or monitoring the liquidity needs to meet requests for redemption of the significant e-money token by its holders.

34. The issuer infringes Article 45(3) by not establishing, maintaining or implementing a liquidity management policy and procedures or by not ensuring, with those policy and procedures, that the reserve assets have a resilient liquidity profile that enables the issuer of the significant e-money token to continue operating normally, including under liquidity stressed scenarios.

35. The issuer infringes Article 45(4) by not conducting, on a regular basis, liquidity stress testing or by not strengthening the liquidity requirements where requested by EBA based on the outcome of such tests.

36. The issuer infringes Article 45(5) by not complying, at all times, with the own funds requirement.

37. The issuer infringes Article 46(1) by not drawing up and maintaining a recovery plan providing for measures to be taken by the issuer of significant e-money tokens to restore compliance with the requirements applicable to the reserve of assets in cases where the issuer fails to comply with those requirements, including the preservation of its services related to the significant e-money token, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations.

38. The issuer infringes Article 46(1) by not drawing up and maintaining a recovery plan that includes appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options, as listed in the third subparagraph, points (a), (b) and (c), of that paragraph.

39. The issuer infringes Article 46(2) by not notifying the recovery plan to EBA and, where applicable, to its resolution and prudential supervisory authorities, within six months of the date of the offer to the public or admission to trading.

40. The issuer infringes Article 46(2) by not regularly reviewing or updating the recovery plan.

41. The issuer infringes Article 47(1) by not drawing up and maintaining an operational plan that supports the orderly redemption of each significant e-money token.

42. The issuer infringes Article 47(2) by not having a redemption plan that demonstrates the ability of the issuer of the significant e-money token to carry out the redemption of the outstanding significant e-money token issued without causing undue economic harm to its holders or to the stability of the markets of the reserve assets.

43. The issuer infringes Article 47(2) by not having a redemption plan that includes contractual arrangements, procedures or systems, including the designation of a temporary administrator, to ensure the equitable treatment of all holders of the significant e-money token and to ensure that holders of the significant e-money token are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

44. The issuer infringes Article 47(2) by not having a redemption plan that ensures the continuity of any critical activities that are necessary for the orderly redemption and that are performed by the issuer or by any third-party entities.

45. The issuer infringes Article 47(3) by not notifying the redemption plan to EBA within six months of the date of the offer to the public or admission to trading.

46. The issuer infringes Article 47(3) by not regularly reviewing or updating the redemption plan.

REGULATION (EU) 2023/1115 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 31 May 2023

on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) Forests provide a broad variety of environmental, economic and social benefits, including timber and non-wood forest products and environmental services essential for humankind, as they harbour most of the Earth's terrestrial biodiversity. They maintain ecosystem functions, help protect the climate system, provide clean air and play a vital role for the purification of waters and soils as well as for water retention and recharge. Large forest areas act as a moisture source and help prevent desertification of continental regions. In addition, forests provide subsistence and income to approximately one third of the world's population and the destruction of forests has serious consequences for the livelihoods of the most vulnerable people, including indigenous peoples and local communities who depend heavily on forest ecosystems. Furthermore, deforestation and forest degradation reduce essential carbon sinks. Deforestation and forest degradation also increase the likelihood of contact between wild animals, farmed animals and humans, thereby increasing the risk of spreading new diseases and the risks of new epidemics and pandemics.

(2) Deforestation and forest degradation are taking place at an alarming rate. The Food and Agriculture Organization of the United Nations (FAO) estimates that 420 million hectares of forest – about 10 % of the world's remaining forests, equalling an area larger than the European Union – have been lost worldwide between 1990 and 2020. Deforestation and forest degradation are, in turn, important drivers of global warming and biodiversity loss – the two most important environmental challenges of our time. Yet, every year the world continues to lose 10 million hectares of forest. Forests are also heavily impacted by climate change and many challenges will need to be addressed to ensure the adaptability and resilience of forests in the coming decades.

(3) Deforestation and forest degradation contribute to the global climate crisis in multiple ways. Most importantly, they increase greenhouse gas emissions through associated forest fires, permanently removing carbon sink capacities, decreasing the climate change resilience of the affected area and substantially reducing its biodiversity and resilience to diseases and pests. Deforestation alone accounts for 11 % of greenhouse gas emissions as stated in the Intergovernmental Panel on Climate Change (IPCC) special report on climate change and land of 2019.

(4) Climate breakdown induces the loss of biodiversity globally and biodiversity loss aggravates climate change, they are thus inextricably linked, as recent studies have confirmed. Biodiversity and healthy ecosystems are fundamental to climate-resilient development. Insects, birds and mammals act as pollinators and seed dispersers and can help store carbon more efficiently, directly or indirectly. Forests also ensure the continuous replenishment of water resources and the prevention of droughts and their deleterious effects on local communities, including indigenous peoples. Drastically reducing deforestation and forest degradation and systemically restoring forests and other ecosystems is the single largest nature-based opportunity for climate mitigation.

[1] OJ C 275, 18.7.2022, p. 88.
[2] Position of the European Parliament of 19 April 2023 (not yet published in the Official Journal) and decision of the Council of 16 May 2023.

(5) Biodiversity is essential for the resilience of ecosystems and their services both at local and at global level. Over half of the global gross domestic product depends on nature and the services it provides. Three major economic sectors – construction, agriculture, and food and drink – all highly depend on nature. Biodiversity loss threatens sustainable water cycles and food systems, putting food security and nutrition at risk. More than 75 % of global food crop types rely on animal pollination. Furthermore, several industrial sectors rely on genetic diversity and ecosystem services as critical inputs for production, in particular for medicines, including antimicrobials.

(6) Climate change, biodiversity loss and deforestation are concerns of the highest global importance, affecting the survival of humanity and sustained living conditions on Earth. The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects on nature, human living conditions and local economies, have led to the recognition of the green transition as the defining objective of our time and a matter of gender equality and of intergenerational equity.

(7) Environmental human rights defenders, who strive to protect and promote human rights relating to the environment, including access to clean water, air, and land are often the target of persecution and lethal attacks. Those attacks disproportionately affect indigenous peoples. According to 2020 reports, more than two thirds of victims of those attacks were working to defend the world's forests from deforestation and industrial development.

(8) Union consumption is a considerable driver of deforestation and forest degradation on a global scale. The impact assessment of this Regulation estimated that without appropriate regulatory intervention, the Union's consumption and production of six commodities (cattle, cocoa, coffee, oil palm, soya and wood) alone would rise to approximately 248 000 hectares of deforestation annually by 2030.

(9) As regards the situation of forests within the Union, the State of Europe's Forests 2020 report states that, between 1990 and 2020, the area of forests in Europe has increased by 9 %, carbon stored in the biomass has grown by 50 % and wood supply has risen by 40 %. Primary and naturally regenerating forests are at risk, *inter alia*, from intensive management, and their unique biodiversity and structural features are in danger. Furthermore, the European Environment Agency has noted that less than 5 % of European forest areas are now considered to be undisturbed or natural, whereas 10 % of European forest areas have been classified as intensively managed. Forest ecosystems have to cope with multiple pressures caused by climate change, ranging from extreme weather patterns to pests, and with human-related activities that negatively affect ecosystems and habitats. In particular, intensively managed even-aged forests through clear-cutting and deadwood removal can have a severe impact on whole habitats.

(10) In 2019, the Commission adopted several initiatives to address the global environmental crises, including specific actions on deforestation. In its communication of 23 July 2019 on Stepping up EU Action to Protect and Restore the World's Forests ('Communication on Stepping up EU Action to Protect and Restore the World's Forests'), the Commission identified as a priority the reduction of the Union consumption footprint on land and encouraged the consumption of products from deforestation-free supply chains in the Union. In its communication of 11 December 2019 on the European Green Deal, the Commission set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy built on sustainable and rule-based free trade, where there are no net emissions of greenhouse gases in 2050, where economic growth is decoupled from resource use and no person or place is left behind. It aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens and future generations from environment-related risks and impacts. Furthermore, the European Green Deal aims to provide citizens and future generations with, *inter alia*, fresh air, clean water, healthy soil and biodiversity. To that end, the communication of the Commission of 20 May 2020 on a EU Biodiversity Strategy for 2030: Bringing nature back into our lives (the 'EU Biodiversity Strategy for 2030') the communication of the Commission of 20 May 2020 on a Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (the 'Farm to Fork' strategy), the communication of the Commission of 16 July 2021 on a new EU Forest Strategy for 2030, the communication of the Commission of 12 May 2021 on the Pathway to a Healthy Planet for All, EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' and other relevant strategies, such as the communication of the Commission of 30 June 2021 on a long-term Vision for the EU's Rural Areas – Towards stronger, connected, resilient and prosperous rural areas by 2040, developed under the European Green Deal, further highlight the importance of action on forest protection and resilience. In particular, the EU Biodiversity Strategy for 2030 aims to protect nature and reverse the degradation of ecosystems. Finally, the communication of the Commission of

11 October 2018 on a sustainable Bioeconomy for Europe: Strengthening the connection between economy, society and the environment enhances the protection of the environment and ecosystems while addressing the growing demand for food, feed, energy, materials and products by seeking new ways to produce and consume.

(11) Member States have repeatedly expressed their concern about persistent deforestation and forest degradation. They have emphasised that since current policies and action at global level on conservation, restoration and sustainable management of forests do not suffice to halt deforestation, forest degradation and biodiversity loss, enhanced Union action is needed in order to contribute more effectively to the achievement of the Sustainable Development Goals (SDGs) under the 2030 Agenda for Sustainable Development, which was adopted by all United Nations (UN) Member States in 2015. The Council has specifically supported the Commission announcement in its communication on Stepping up EU Action to Protect and Restore the World's Forests that it would assess additional regulatory and non-regulatory measures and that it would present proposals for both types of measures. The Union and Member States have also endorsed the UN Decade of Action for the SDGs, the UN Decade on Ecosystem Restoration and the UN Decade of Family Farming.

(12) The European Parliament has highlighted that ongoing destruction, degradation and conversion of the world's forests and natural ecosystems, as well as human rights violations, are linked, to a large extent, to the expansion of agricultural production – in particular by converting forests to agricultural land dedicated to producing a number of high-demand commodities and products. On 22 October 2020, the European Parliament adopted a resolution, in accordance with Article 225 of the Treaty on the Functioning of the European Union (TFEU), requesting the Commission to submit, on the basis of Article 192(1) TFEU, a proposal for an 'EU legal framework to halt and reverse EU-driven global deforestation' based on mandatory due diligence.

(13) Combating deforestation and forest degradation constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and to comply with the Union's commitments under the European Green Deal as well as with the Paris Agreement adopted under the United Nations Framework Convention on Climate Change ([3]) (the 'Paris Agreement'), and the Eighth Environment Action Programme adopted by Decision (EU) 2022/591 of the European Parliament and of the Council ([4]), and with the legally binding commitment under Regulation (EU) 2021/1119 of the European Parliament and of the Council ([5]) to reach climate neutrality at the latest by 2050 and reduce greenhouse gas emissions by at least 55 % compared to 1990 levels by 2030.

(14) Combating deforestation and forest degradation constitutes also an important part of the package of measures needed to combat biodiversity loss and to comply with the Union's commitments under the UN Convention on Biological Diversity (CBD) ([6]), the European Green Deal, the EU Biodiversity Strategy for 2030 and the accompanying Union nature restoration objectives.

(15) Primary forests are unique and irreplaceable. Plantation forests and planted forests have a different biodiversity composition and provide different ecosystem services compared to primary and naturally regenerating forests.

(16) Agricultural expansion drives almost 90 % of global deforestation, with more than half of forest loss being due to conversion of forest into cropland, whereas livestock grazing is responsible for almost 40 % of forest loss.

(17) Production of feed for livestock can contribute to deforestation and forest degradation. Promoting alternative, sustainable agricultural practices can address environmental and climate challenges, and prevent deforestation and forest degradation worldwide. Incentives to adopt more balanced, healthier and more nutritious diets and a more sustainable lifestyle can decrease the pressure on land and resources.

([3]) OJ L 282, 19.10.2016, p. 4.
([4]) Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (OJ L 114, 12.4.2022, p. 22).
([5]) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) No 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).
([6]) Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

(18) The Union imported and consumed one third of the globally traded agricultural products associated with deforestation between 1990 and 2008. Over that period, Union consumption was responsible for 10 % of worldwide deforestation associated with the production of goods or the provision of services. Even if the relative share of Union consumption is decreasing, Union consumption is a disproportionally large driver of deforestation. The Union should therefore take action to minimise global deforestation and forest degradation driven by its consumption of certain commodities and products and thereby seek to reduce its contribution to greenhouse gas emissions and global biodiversity loss as well as promote sustainable production and consumption patterns in the Union and globally. To have the greatest impact, Union policy should aim at influencing the global market, not only supply chains to the Union. Partnerships and efficient international cooperation, including free trade agreements, with producer and consumer countries are fundamental in that respect.

(19) The Union is committed to promoting and implementing ambitious environment and climate policies across the world, in accordance with the Charter of Fundamental Rights of the European Union, in particular Article 37 thereof which provides that a high level of environmental protection and the improvement of the quality of the environment is to be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. As part of the external dimension of the European Green Deal, action under this Regulation should take into account the importance of existing global agreements, commitments and frameworks contributing to the reduction of deforestation and forest degradation such as the UN Strategic Plan for Forests 2017-2030 and its Global Forest Goals, the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, the CBD and its Post-2020 Global Biodiversity Framework, the global Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, and the UN Convention to Combat Desertification, as well as the multilateral framework in support of tackling the root causes of deforestation and forest degradation, such as the SDGs and the UN Declaration on the Rights of Indigenous Peoples.

(20) Halting deforestation and restoring degraded forests is an essential part of the SDGs. This Regulation should contribute in particular to meeting the goals regarding life on land (SDG 15), climate action (SDG 13), responsible consumption and production (SDG 12), zero hunger (SDG 2) and good health and well-being (SDG 3). The relevant target 15.2 to halt deforestation by 2020 has not been met, underlining the urgency of ambitious and effective action.

(21) This Regulation should also respond to the New York Declaration on Forests, a non-legally binding political declaration that endorses a global timeline to cut natural forest loss in half by 2020 and to strive to end it by 2030. The Declaration was endorsed by dozens of governments, many of the world's biggest companies, and influential civil society and indigenous peoples' organisations. It also called on the private sector to meet the goal of eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020, a goal that was not achieved. In addition, this Regulation should contribute to the UN Strategic Plan for Forests 2017-2030 whose Global Forest Goal 1 is to reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation and contribute to the global effort of addressing climate change.

(22) This Regulation should also respond to the Glasgow Leaders' Declaration on Forests and Land Use issued at the November 2021 UN Climate Change Conference, which recognises that 'to meet our land use, climate, biodiversity and Sustainable Development Goals, both globally and nationally, will require transformative further action in the interconnected areas of sustainable production and consumption; infrastructure development; trade, finance and investment; and support for smallholders, indigenous peoples, and local communities'. The signatories committed to working collectively to halt and reverse forest loss and land degradation by 2030 and stressed that they would strengthen their shared efforts to facilitate trade and development policies, internationally and domestically, that promote sustainable development and sustainable commodity production and consumption, and that work to countries' mutual benefit.

(23) As a member of World Trade Organization (WTO), the Union is committed to promoting a universal, rule-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as an open, sustainable, and assertive trade policy. The scope of this Regulation should therefore include commodities and products produced within the Union as well as commodities and products imported to the Union.

(24) The challenges the world is facing in climate change and biodiversity loss can only be dealt with by global action. The Union should be a strong global actor, leading both by example as well as by taking the lead in international cooperation to create an open and fair multilateral system where sustainable trade acts as a key enabler of the green transition to fight climate change and reverse biodiversity loss.

(25) This Regulation also follows the communications of the Commission of 22 June 2022 on the power of trade partnerships: together for green and just economic growth and of 18 February 2021 on Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, which stated that with new internal and external challenges and more particularly a new, more sustainable growth model as defined by the European Green Deal and the European Digital Strategy, contained in the communication of the Commission of 19 February 2020 on Shaping Europe's digital future, the Union needs a new trade policy strategy – one that will support achieving its domestic and external policy objectives and promote greater sustainability in line with its commitment to fully implement the SDGs. Trade policy needs to play a full role in the Union's recovery from the COVID-19 pandemic and in the green and digital transformations of the economy and towards building a more resilient Union in the world.

(26) In line with its communication of 22 June 2022 on the power of trade partnerships: together for green and just economic growth, the Commission is stepping up engagement with trade partners to foster compliance with international labour and environmental standards. The communication envisages robust chapters on sustainable development, containing clauses on deforestation and forest degradation. Ensuring enforcement of current and the conclusion of new trade agreements with such chapters will complement the objectives of this Regulation.

(27) This Regulation should be complementary to other measures proposed in the communication on Stepping up EU Action to Protect and Restore the World's Forests, in particular working in partnership with producer countries, to support them in addressing root causes of deforestation, such as weak governance, ineffective law enforcement and corruption, and strengthening international cooperation with major consumer countries by, *inter alia*, encouraging trade in deforestation-free products and the adoption of similar measures, to avoid products coming from supply chains associated with deforestation and forest degradation being placed on their markets.

(28) This Regulation should take into account the principle of policy coherence for development and serve to promote and facilitate cooperation with developing countries, particularly with the least developed countries (LDCs), *inter alia* through the provision of technical and financial assistance, where possible and relevant.

(29) In coordination with Member States, the Commission should continue to work in partnership with producer countries, and more generally in cooperation with international organisations and bodies as well as with relevant stakeholders active on the ground through multi-stakeholder dialogues. The Commission should reinforce its support and incentives with regard to protecting forests and the transition to deforestation-free production, acknowledging and strengthening the role and rights of indigenous peoples, local communities, smallholders and micro, small and medium-sized enterprises (SMEs), improving governance and land tenure, increasing law enforcement and promoting sustainable forest management, with an emphasis on closer-to-nature forestry practices, based on science-based indicators and thresholds, ecotourism, climate-resilient agriculture, diversification, agro-ecology and agroforestry. In doing so, the Commission should fully recognise the role and rights of indigenous peoples and local communities in protecting forests, taking into account the principle of free, prior and informed consent (FPIC). Building upon the experience and lessons learned in the context of existing initiatives, the Union and the Member States should work towards partnerships with producer countries, at their request, and address global challenges while meeting local needs and paying attention to the challenges faced by smallholders, in line with the communication on Stepping up EU Action to Protect and Restore the World's Forests. The partnership approach should help producer countries and parts thereof in protecting, restoring and sustainably using forest, hence contributing to the objective of this Regulation to reduce deforestation and forest degradation, including through the use of digital technologies, geospatial information and capacity building.

(30) Operators and traders should be bound by the obligations under this Regulation regardless of whether the making available on the market takes place through traditional or online means. This Regulation should therefore ensure that in every supply chain there is an operator within the meaning of this Regulation who is established in the Union and can be held accountable in the event of non-fulfilment of the obligations under this Regulation. The Commission and the Member States should monitor the implementation of this Regulation and identify whether digital and technological developments require further specifications or initiatives, as appropriate, in the future.

(31) Another important action announced in the communication on Stepping up EU Action to Protect and Restore the World's Forests is the establishment of the EU Observatory on deforestation, forest degradation, changes in the world's forest cover and associated drivers ('EU Observatory') launched by the Commission in order to better monitor changes in the world's forest cover and related drivers. Building on existing monitoring tools, including Copernicus products and other publicly or privately available sources, the EU Observatory should facilitate access to information on supply chains for public entities, consumers and business, providing easy-to-understand data and information linking deforestation, forest degradation and changes in the world's forest cover to Union demand for, and trade in, commodities and products. The EU Observatory should thus support the implementation of this Regulation by providing scientific evidence with regard to global deforestation and forest degradation and related trade. The EU Observatory should provide for land cover maps, including with time series since the cut-off date defined in this Regulation, and a range of classes allowing landscape composition to be examined. The EU Observatory should participate in the development of an early warning system combining research and monitoring capacity. As regards this Regulation, when technically feasible, the objective of the early warning system should be to be part of a platform that can assist the competent authorities, operators, traders and other relevant stakeholders and that can provide continuous monitoring and early notification of possible deforestation or forest degradation activities. That platform should be operational as soon as possible. The EU Observatory should cooperate with the competent authorities, relevant international organisations and bodies, research institutes, non-governmental organisations, operators, traders, third countries and other relevant stakeholders.

(32) The existing Union legal framework focuses on tackling illegal logging and associated trade and does not address deforestation directly. It consists of Regulation (EU) No 995/2010 of the European Parliament and of the Council ([7]) and Council Regulation (EC) No 2173/2005 ([8]). Both Regulations were evaluated in a Fitness Check which determined that, while the legislation has had a positive impact on forest governance, the objectives of the two Regulations – namely to curb illegal logging and related trade, and to reduce the consumption of illegally harvested timber in the Union – have not been met and it was concluded that focusing solely on the legality of timber was not sufficient to meet the set objectives.

(33) Available reports confirm that a sizeable part of ongoing deforestation is legal in accordance with the laws of the country of production. A report by the Forest Policy Trade and Finance Initiative published in May 2021 estimates that between 2013 and 2019, around 30 % of deforestation destined to commercial agriculture in tropical countries was legal. Available data tend to focus on countries with weak governance – the global share of deforestation that is illegal might be lower, but already provide clear data signalling that leaving out deforestation that is legal in the country of production undermines the effectiveness of policy measures.

(34) The impact assessment of possible policy measures to address Union-driven deforestation and forest degradation, the Council conclusions of 16 December 2019 and the resolution of the European Parliament of 22 October 2020 clearly identify the need to establish deforestation and forest degradation as the guiding criteria for future Union measures. A focus only on legality could potentially entail a risk of lowered environmental standards with a view to obtaining market access. Therefore, the new Union legal framework should address both legality and whether the production of relevant commodities and relevant products is deforestation-free.

(35) The definition of 'deforestation-free' should be sufficiently broad to cover deforestation and forest degradation, should provide legal clarity, and should be measurable based on quantitative, objective and internationally recognised data.

([7]) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23).

([8]) Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1).

(36) For the purposes of this Regulation, agricultural use should be defined as the use of land for the purpose of agriculture. In this regard, the Commission should develop guidelines in order to clarify the interpretation of this definition, in particular in relation to the conversion of forest to land the purpose of which is not agricultural use.

(37) In line with FAO definitions, agroforestry systems, including where crops are grown under tree cover, as well as agrisilvicultural, silvopastoral and agrosilvopastoral systems, should not be considered forests, but as constituting agricultural use.

(38) This Regulation should cover commodities the Union consumption of which is the most relevant in terms of driving global deforestation and forest degradation and for which a Union policy intervention could bring the highest benefits per unit value of trade. An extensive review of relevant scientific literature, namely of primary sources estimating the impact of Union consumption on global deforestation and linking that environmental footprint to specific commodities, was carried out as a part of the study supporting the impact assessment for this Regulation and cross-checked by means of extensive consultation with stakeholders. That process delivered a first list of eight commodities. Wood was directly included in the scope as it was already covered by Regulation (EU) No 995/2010. According to a recent research paper ([9]) used for the efficiency analysis, seven commodities represent the largest share of Union-driven deforestation of the eight commodities analysed in that research paper: oil palm (34,0 %), soya (32,8 %), wood (8,6 %), cocoa (7,5 %), coffee (7,0 %), cattle (5,0 %) and rubber (3,4 %).

(39) To ensure that this Regulation achieves its objectives, it is important to ensure that feed used for livestock falling within the scope of this Regulation does not lead to deforestation. Therefore, operators placing on the market or exporting relevant products that contain or have been made using cattle which have been fed with relevant products that contain or have been made using other relevant commodities or relevant products, should ensure, as part of their due diligence system, that the feed is deforestation-free. In that case, geolocation requirements under this Regulation should be limited to referring to the geographical location of each of the establishments where the cattle were raised, and no geolocation information should be required for the feed itself. If the competent authority obtains or is made aware of relevant information, including information based on substantiated concerns submitted by third parties, that there is a risk of the feed not being in compliance with this Regulation, the competent authority should immediately request detailed information on such feed. If the feed has already been subject to due diligence in a previous step of the supply chain, operators should use as evidence the relevant invoices, reference numbers of relevant due diligence statements or any other relevant documentation indicating that the feed is deforestation-free and they could be required to make that evidence available to competent authorities upon request. The evidence should cover the lifetime of the animals, up to a maximum of five years.

(40) Bearing in mind that the use of recycled relevant commodities and relevant products should be encouraged, and that including such commodities and products in the scope of this Regulation would place a disproportionate burden on operators, used commodities and products that have completed their lifecycle, and would otherwise be disposed of as waste, as defined in Article 3, point (1), of Directive 2008/98/EC of the European Parliament and of the Council ([10]) should be excluded from the scope of this Regulation. However, this should not apply to certain by-products of the manufacturing process.

(41) This Regulation should lay down obligations concerning relevant commodities and relevant products in order to effectively combat deforestation and forest degradation, and to promote deforestation-free supply chains, while taking into account the protection of human rights and the rights of indigenous peoples and local communities, both in the Union and in third countries.

(42) When assessing the risk of non-compliance of relevant commodities and relevant products intended to be placed on the market or exported, violations of human rights that are associated with deforestation or forest degradation, including rights of indigenous peoples, local communities and customary tenure rights holders, should be taken into account.

([9]) Pendrill F., Persson U. M., Kastner, T. 2020. Deforestation risk embodied in production and consumption of agricultural and forestry commodities 2005-2017 (Version 1.0). Zenodo.

([10]) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

(43) Many international organisations and bodies, such as the FAO, the IPCC, the UN Environment Programme, and the International Union for the Conservation of Nature, have been active, and international agreements, such as the Paris Agreement and the CBD, have been concluded in the field of deforestation and forest degradation, and the definitions in this Regulation build on that work.

(44) It is essential that this Regulation also address the issue of forest degradation. The definition of forest degradation should be based on internationally agreed concepts and ensure that the associated obligations can be easily fulfilled by operators and competent authorities. Those obligations should be operationally measurable and verifiable, as well as clear and unambiguous, to provide legal certainty. In that context, this Regulation should focus on key elements of forest degradation that are measurable and verifiable, and that are particularly relevant to avoid environmental impacts, based on the most up-to-date scientific data. For that purpose, the definition of forest degradation should build on internationally agreed concepts that are defined by the FAO. The definition of forest degradation should be reviewed, in accordance with this Regulation, to assess whether it should be extended to cover a broader scope of forest degradation drivers and of forest ecosystems worldwide to further support the environmental objectives of this Regulation, taking into account progress made in international discussions on the matter, as well as the diversity of forest ecosystems and practices around the world. The review should be conducted on the basis of an in-depth analysis, in close cooperation with the Member States, and in consultation with relevant stakeholders, international organisations and bodies and the scientific community.

(45) This Regulation should ensure a proper balance between the protection of the legitimate expectations of operators and traders placing relevant commodities and relevant products on the market or exporting them, while minimising sudden disruption to supply chains, and the fundamental right to protection of the environment as established in Article 37 of the Charter of Fundamental Rights of the European Union. To that end, a cut-off date should be set to provide a basis for the evaluation of whether land concerned has been subject to deforestation or forest degradation, so that no commodities and products falling within the scope of this Regulation can be placed on the market or exported, if they were produced on land subject to deforestation or forest degradation after that date.

(46) The cut-off date should correspond to existing international commitments set out in the SDGs and the New York Declaration on Forests, which pursue the ambitions of halting deforestation, restoring degraded forests and substantially increasing afforestation and reforestation globally by 2020, and thus should be set on 31 December 2020. That date is also consistent with the Commission's announcement of its intention to combat deforestation in the communication on Stepping up EU Action to Protect and Restore the World's Forests, the European Green Deal, the EU Biodiversity Strategy for 2030 as well as in the Farm to Fork strategy. In line with the precautionary principle, the cut-off date indicated in the Commission proposal for this Regulation precedes the date of entry into force of this Regulation. The cut-off date was chosen in order to prevent an anticipated acceleration of activities leading to deforestation and forest degradation between the announcement in the Commission proposal and the date of entry into force of this Regulation. This Regulation should acknowledge the environmental objective pursued and confirm the proposed cut-off date to ensure that the producers and operators which have caused deforestation and forest degradation during the period of negotiation of this Regulation are not allowed to place the relevant commodities and relevant products concerned on the market or to export them.

(47) The limitations on the exercise of the fundamental rights and the protection of the legitimate expectations of operators and traders resulting from the choice of the cut-off date should be proportionate to, and strictly necessary for, pursuing the general interest objective of environmental protection. To contribute to that objective, this Regulation should not apply to relevant commodities and relevant products produced before the date of entry into force of this Regulation. The deferred application of provisions of this Regulation governing obligations for operators and traders who intend to place relevant commodities and relevant products on the market or to export them also provides them a reasonable period of time to adapt to the new requirements of this Regulation.

(48) To strengthen the Union's contribution to halting deforestation and forest degradation, and to ensure that relevant products from supply chains related to deforestation and forest degradation are not placed on the market or exported, relevant products should not be placed or made available on the market or exported unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. To confirm that this is the case, they should always be accompanied by a due diligence statement.

(49) On the basis of a systemic approach, operators should take the appropriate steps in order to ensure that the relevant products that they intend to place on the market comply with the deforestation-free and legality requirements of this Regulation. To that end, operators should establish and implement due diligence systems. Those due diligence systems should include three elements, namely information requirements, risk assessment and risk mitigation measures, complemented by reporting obligations. The due diligence systems should be designed to provide access to information about the sources and suppliers of the commodities and products being placed on the market, including information demonstrating that the absence of deforestation and forest degradation and legality requirements are fulfilled, *inter alia*, by identifying the country of production or parts thereof and including the geolocation coordinates of relevant plots of land. Those geolocation coordinates that rely on timing, positioning and/or Earth observation could make use of space data and services delivered under the Union's Space programme (EGNOS/Galileo and Copernicus). On the basis of that information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate that risk to achieve no or only a negligible risk. The operator should only be allowed to place relevant products on the market or export them if the operator concludes, after exercising due diligence, that there is no or only a negligible risk that the relevant products do not comply with this Regulation.

(50) When sourcing products, reasonable efforts should be undertaken to ensure that a fair price is paid to producers, in particular smallholders, so as to enable a living income and effectively address poverty as a root cause of deforestation.

(51) Operators should formally take responsibility for the compliance of the relevant products that they intend to place on the market or export by making available due diligence statements. This Regulation should provide a template for such statements. Such due diligence statements are expected to facilitate enforcement of this Regulation by the competent authorities and courts as well as increase compliance by operators.

(52) In order to recognise good practice, certification or other third-party verified schemes could be used in the risk assessment procedure. They should not, however, substitute the operator's responsibility as regards due diligence.

(53) Traders should be responsible for collecting and keeping information to ensure the transparency of the supply chain of relevant products which they make available on the market. Non-SME traders have a significant influence on supply chains and play an important role in ensuring that supply chains are deforestation-free. They should therefore have the same obligations as operators, take responsibility for the compliance of the relevant products with this Regulation and ensure, prior to making the relevant products available on the market, that they have exercised due diligence in accordance with this Regulation and have concluded that there is no or only a negligible risk that the relevant products do not comply with this Regulation.

(54) In order to foster transparency and facilitate enforcement, operators which do not fall under the categories of SMEs, including microenterprises, or natural persons should, on an annual basis, publicly report on their due diligence system, including on the steps taken to fulfil their obligations.

(55) Operators should be able to receive substantiated concerns from interested parties, including by electronic means, and should thoroughly investigate all substantiated concerns received.

(56) Other Union legal acts that provide for due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment should apply in so far as there are no specific provisions with the same objective, nature and effect in this Regulation which can be adapted in the light of future amendments to Union legal acts. The existence of this Regulation should not exclude the application of other Union legal acts that lay down requirements regarding value chain due diligence. Where such other Union legal acts provide for more specific provisions or add requirements to the provisions laid down in this Regulation, such provisions should be applied in conjunction with this Regulation. Furthermore, where this Regulation contains more specific provisions, they should not be interpreted in a way that undermines the effective application of other Union legal acts on due diligence or the achievement of their general aim. It should be possible for the Commission to issue clear and easy to understand guidelines for the compliance of operators and traders, in particular SMEs, with this Regulation.

(57) Respecting the rights of indigenous peoples with regard to forests and the principle of FPIC, including as set out in the UN Declaration on the rights of indigenous peoples, contributes towards protecting biodiversity, mitigating climate change and addressing the related public interest concerns. Indigenous peoples possess traditional knowledge of ecological and medical value, and very often offer a model of sustainable use of forest resources.

This can contribute to in-situ conservation, in line with the CBD. Furthermore, studies suggest that forest-dwelling indigenous peoples play a dual role in combating climate change: first, they normally resist the occupation and deforestation of the lands they have inhabited for generations; and second, some indigenous communities consider it their responsibility to protect the forests in order to mitigate climate change.

(58) The principles set out in the 1992 Rio Declaration on Environment and Development of the UN, in particular, Principle 10 concerning the importance of public awareness and participation in environmental issues and Principle 22 concerning the vital role of indigenous people in environmental management and development, are important in the context of securing sustainable forest management.

(59) The concept of FPIC of indigenous peoples has been developed over the years following the approval of the International Labour Organisation Indigenous and Tribal Peoples Convention, 1989 (No 169), and it is reflected in the UN Declaration on the Protection of the Rights of Indigenous Peoples. It aims to be a safeguard to ensure that potential impacts on indigenous peoples will be considered in the decision-making process of projects affecting them.

(60) Operators falling within the scope of other Union legal acts that set out due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment should be in a position to fulfil the reporting obligations under this Regulation by including the required information when reporting under the other Union legal acts.

(61) The responsibility for enforcing this Regulation should lie with the Member States, and the competent authorities of the Member States should ensure full compliance with this Regulation. A uniform enforcement of this Regulation as regards relevant products entering or leaving the market can only be achieved through systematic exchange of information and cooperation amongst competent authorities, customs authorities and the Commission.

(62) The effective and efficient implementation and enforcement of this Regulation are essential to achieving its goals. To that end, the Commission should set up and manage an information system to support the operators and the competent authorities in presenting and accessing the necessary information on relevant products placed on the market. The operators should submit the due diligence statements through the information system. The information system should be accessible to competent authorities and customs authorities to facilitate the fulfilment of their obligations under this Regulation and should facilitate the transfer of information between Member States, competent authorities and customs authorities. The non-commercially sensitive data should also be accessible to a wider public, subject to the data being anonymised, apart from information concerning the list of final judgments against legal persons for infringements of this Regulation and the penalties imposed on them, and should be provided in an open and machine-readable format in line with the Union's Open Data Policy as set out in Directive (EU) 2019/1024 of the European Parliament and of the Council ([11]).

(63) For the relevant products entering or leaving the market, competent authorities should be tasked with checking compliance of relevant products with this Regulation based, *inter alia*, on the due diligence statements submitted by the operators. The role of customs authorities should be to ensure that a reference to the due diligence statement is made available to them where applicable. In addition, as from the moment the electronic interface is in place to exchange information between customs authorities and competent authorities, customs authorities should examine the status of the due diligence statement after an initial risk analysis has been carried out by competent authorities in the information system. Customs authorities should take appropriate action, such as to suspend or refuse a relevant commodity or relevant product if requested to do so on the basis of the status of the due diligence statement in the information system. That specific organisation of controls renders Chapter VII of Regulation (EU) 2019/1020 of the European Parliament and of the Council ([12]) inapplicable in so far as the application and enforcement of this Regulation is concerned.

(64) Member States should ensure that adequate financial resources are always available for the appropriate staffing and equipping of the competent authorities. A high level of resources is needed in order to carry out checks efficiently and stable resources should be provided at a level appropriate to the enforcement needs at any given

([11]) Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

([12]) Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).

moment. Member States should have the possibility to supplement public financing by recovering from the relevant economic operators the costs incurred when carrying out checks in relation to relevant commodities and relevant products that were found to be non-compliant.

(65) This Regulation is without prejudice to other Union legal acts on goods and products entering or leaving the market, in particular Regulation (EU) No 952/2013 of the European Parliament and of the Council ([13]) as regards the powers of customs authorities and customs controls. Importers should be reminded that Articles 220, 254, 256, 257 and 258 of that Regulation provide that products entering the market that require further processing are to be placed under the appropriate customs procedure allowing such processing. Generally, the release for free circulation or export should not be deemed to be proof of compliance with Union law, since such a release or export does not necessarily include a complete control of compliance.

(66) In order to optimise the control process, including by minimising the administrative burden, for relevant products entering or leaving the market, it is necessary to set up an interoperable electronic interface that enables the automatic transfer of data between customs systems and the information systems of competent authorities. The European Union Single Window Environment for Customs is the natural candidate to enable such data transfer. The interface should be highly automated and easy-to-use, and should facilitate processes for customs authorities and operators. Moreover, in view of the limited differences between the data that are to be made available to customs authorities and that are to be included in the due diligence statement, it is appropriate to propose also a 'business-to-government' approach whereby traders and economic operators make available the due diligence statement of a relevant product through the national single window environment for customs and that statement is automatically transmitted to the information system under this Regulation used by competent authorities. Customs authorities and competent authorities should contribute to the determination of the data to be transmitted and any other technical requirement.

(67) The risk of non-compliant products being placed on the market or exported varies depending on the commodity and product as well as on its country of origin and production or parts thereof. Operators sourcing commodities and products from countries or parts thereof that present a low risk of growing, harvesting or producing relevant commodities in violation of this Regulation should be subject to fewer obligations, thereby reducing compliance costs and administrative burden, unless the operator knows or has reason to believe that there is a risk of non-compliance with this Regulation. Where a competent authority becomes aware of a risk that this Regulation is being circumvented, for example where a relevant commodity or relevant product produced in a high-risk country is subsequently processed in a low risk country or parts thereof from where it is placed on or enters or leaves the market and the due diligence statement or the customs declaration indicates that the relevant commodity or relevant product was produced in a low-risk country, the competent authority should verify by means of further checks whether there is any non-compliance and, if necessary, take appropriate action, such as the seizure of the relevant commodity or relevant product and the suspension of the placing on the market or of the export of the relevant commodity or relevant product, as well as carry out further checks. The competent authorities should be required to apply enhanced scrutiny to relevant commodities and relevant products from high-risk countries or parts thereof.

(68) Furthermore, the Commission should assess the deforestation and forest degradation risk at the level of a country or parts thereof based on a range of criteria that reflect quantitative, objective and internationally recognised data, and indications that the countries are actively engaged in fighting deforestation and forest degradation. Such benchmarking information should make it easier for operators in the Union to exercise due diligence and for competent authorities to monitor and enforce compliance, while also providing an incentive for producer countries to increase the sustainability of their agricultural production systems and reduce their deforestation impact. This should help to make supply chains more transparent and sustainable. The benchmarking system should be based on a three-tier system for classification of countries as low, standard or high risk. In order to ensure appropriate transparency and clarity, the Commission should in particular make publicly available the data being used for benchmarking, the reasons for the proposed change of classification and the reply of the country concerned. For relevant products from low-risk countries or parts thereof operators should be allowed to exercise simplified due diligence. For relevant products from high-risk countries or parts thereof competent authorities should be required to apply enhanced scrutiny. The Commission should be empowered to adopt implementing acts to establish the list of countries or parts thereof that present a low or high risk.

([13]) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

(69) The Commission should cooperate with countries which are classified or could be classified as high risk, and with relevant stakeholders in those countries, in order to work towards reducing the level of risk.

(70) Competent authorities should carry out checks at regular intervals on operators and traders to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should carry out checks on the basis of relevant information in their possession, including substantiated concerns submitted by third parties. Competent authorities should use a risk-based approach to identify the checks to be carried out. In respect of relevant products from countries or parts thereof classified as high risk, the respective operators and traders and the volumes of their share of relevant commodities and relevant products, a twofold approach that provides comprehensive coverage should apply. Competent authorities should thus be required to check on a certain percentage of operators and traders, whilst also covering a specific percentage of relevant products. In respect of relevant products from countries or parts thereof classified as low or standard risk, competent authorities should be required to check at least a certain percentage of operators and traders. The level of checks should be higher for relevant products from high-risk countries or parts thereof whereas it could be lower for standard or low-risk countries or parts thereof. In its review of this Regulation, the Commission should evaluate and identify quantified objectives for the annual checks to be carried out by competent authorities that are appropriate to ensure the enforcement of this Regulation and a harmonised approach across the Union.

(71) The checks carried out on operators and traders by competent authorities should cover the due diligence systems and the compliance of the relevant products with this Regulation. The checks should be based on a risk-based plan which contains risk criteria to enable competent authorities to carry out a risk analysis of the due diligence statements submitted by operators and traders. The risk criteria should take into account the risk of deforestation associated to relevant commodities in the country of production, the history of non-compliance of operators and traders with the obligations of this Regulation and any other relevant information available to competent authorities. The risk analysis of due diligence statements should enable the competent authorities to identify those operators, traders and relevant products that need to be checked. That risk analysis should be carried out using electronic data processing techniques in the information system through which the due diligence statements are submitted. Where necessary and technically possible, competent authorities, after consultation and in close cooperation with authorities of third countries, should also be able to carry out checks in situ.

(72) In cases where the risk analysis of the due diligence statements reveals a high risk of non-compliance of specific relevant products, the competent authorities should be able to take immediate interim measures to prevent the placing or making available on the market or the export of those products. In cases where such relevant products were entering or leaving the market, the competent authorities should request from the customs authorities the suspension of the release for free circulation or of export, to enable competent authorities to carry out the necessary checks. Such requests should be communicated by means of the interface system between customs authorities and competent authorities. The suspension of the placing or making available on the market, of the release for free circulation or of export should be limited to three working days, or 72 hours in the case of perishable relevant products, except where the competent authorities require additional time to assess the compliance of the relevant commodities and relevant products with this Regulation. In such cases, the competent authorities should take additional interim measures to extend the suspension period or, in the case of relevant products entering or leaving the market, request an extension from the customs authorities.

(73) The competent authorities should regularly update their plans of checks on the basis of the results of implementing those checks. Those operators showing a consistent track record of compliance could be subject to less frequent checks.

(74) In order to ensure implementation and effective enforcement of this Regulation, Member States should have the power to withdraw and recall non-compliant products and take appropriate corrective actions. They should also ensure that infringements of this Regulation by operators and traders are subject to effective, proportionate and dissuasive penalties.

(75) In order to increase the accountability of operators and traders, the Commission should publish on its website the list of final judgments against legal persons for infringements of this Regulation and the penalties imposed on them. That information could help competent authorities, other operators and traders carry out their risk assessments and increase the awareness of consumers and civil society as regards operators and traders who infringe this Regulation.

(76) The implementation of this Regulation will require sufficient resources and capacity. In that context, in addition to national resources, Member States should, as much as possible, use the opportunities and possibilities for support that are available at Union level and other means, including cohesion funds and capacity-building instruments, in particular in the context of the Technical Support Instrument, established by Regulation (EU) 2021/240 of the European Parliament and of the Council ([14]).

(77) Taking into account the international character of deforestation and forest degradation and related trade, competent authorities should cooperate with each other, with customs authorities of the Member States, with the Commission and with the administrative authorities of third countries. Competent authorities should also cooperate with the competent authorities for the supervision and enforcement of other Union legal acts that set out due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment.

(78) According to settled case law of the Court of Justice of the European Union, it is for the courts of the Member States to ensure judicial protection of a person's rights under Union law. Furthermore, Article 19(1) of the Treaty on European Union (TEU) requires Member States to provide remedies that are sufficient to ensure effective judicial protection in the fields covered by Union law. In this respect, Member States should ensure that the public, including natural or legal persons submitting substantiated concerns in accordance with this Regulation, has access to justice in line with the obligations that Member States have agreed to as parties to the UN Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus Convention').

(79) In order to ensure that this Regulation remain relevant and in line with trade, scientific and technological developments, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the list of CN codes of relevant products set out in Annex I to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([15]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(80) Regulation (EU) No 995/2010 prohibits the placing of illegally harvested timber and timber products on the Union market. It lays down obligations for operators placing timber on the market for the first time to exercise due diligence and for traders to keep a traceable record of their suppliers and customers. This Regulation should maintain the obligation to ensure the legality of relevant products, including wood and wood products, placed on the market and should complement that obligation with a requirement on sustainability. Regulation (EU) No 995/2010 and the related Commission Implementing Regulation (EU) No 607/2012 ([16]) are therefore rendered redundant by this Regulation and should be repealed. Timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 are the equivalent of wood and wood products that are listed in Annex I to this Regulation and that contain or have been made using wood.

(81) Regulation (EC) No 2173/2005 establishes a Forest Law Enforcement, Governance and Trade (FLEGT) licensing scheme for imports of timber into the Union. The licensing scheme is implemented through voluntary partnership agreements (VPAs) with timber producing countries, intended to halt illegal logging and to enhance forest governance and related trade. This Regulation should build upon the positive results achieved under FLEGT, especially in terms of enhanced stakeholders' participation and improved forest governance. In specific cases, VPAs could complement this Regulation with regard to the legality of timber products. To respect ongoing bilateral commitments and to preserve the progress achieved with partner countries that have an operating

([14]) Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJ L 57, 18.2.2021, p. 1).
([15]) OJ L 123, 12.5.2016, p. 1.
([16]) Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (OJ L 177, 7.7.2012, p. 16).

system in place (FLEGT licensing stage) and work, where relevant and agreed, with current VPA partners towards them reaching that stage, this Regulation should include a provision declaring that wood and wood products that are covered by a valid FLEGT license are deemed to comply with the legality requirement of Regulation (EC) No 2173/2005.

(82) While this Regulation addresses deforestation and forest degradation, as envisaged in the communication on Stepping up EU Action to Protect and Restore the World's Forests, protecting forests should not lead to the conversion or degradation of other natural ecosystems. Ecosystems, including managed ecosystems, such as wetlands, savannahs and peatlands are highly significant to global efforts to combat climate change and the biodiversity crisis, as well as other SDGs and their conversion or degradation require particular urgent action and need to be prevented. In light of the Union's footprint on non-forest natural ecosystems, the Commission should evaluate and, where appropriate, present a legislative proposal on extending the scope of this Regulation to other wooded land at the latest one year after the date of entry into force of this Regulation. Moreover, no later than two years after that date of entry into force, the Commission should evaluate and, where appropriate, present a legislative proposal on, extending the scope of this Regulation to other natural ecosystems, including other land with high carbon stocks and with a high biodiversity value such as grasslands, peatlands and wetlands. Ecosystems are also increasingly under pressure from conversion and degradation due to commodity production for the Union market. The Commission should also assess the need and feasibility of extending the scope to further commodities at the latest two years after the date of entry into force of this Regulation. At the same time, the Commission should also undertake a review of the list of CN codes of relevant products set out in Annex I to this Regulation.

(83) Taking into account the request made by the European Parliament in its resolution 'An EU legal framework to halt and reverse EU-driven global deforestation' of 22 October 2020 and that made by the vast majority of the almost 1,2 million participants in the Commission's public consultation, the Commission should focus its evaluation and any future legislative proposal on an extension of the scope of this Regulation to non-forest ecosystems and their conversion and degradation.

(84) Where, for the purposes of this Regulation, it is necessary to process personal data, those data are to be handled in accordance with Union law on the protection of personal data. Any processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council ([17]) and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([18]), as applicable.

(85) Since the objective of this Regulation, namely fighting against deforestation and forest degradation by reducing the contribution of consumption in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(86) Operators, traders and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down rules regarding the placing and making available on the Union market as well as the export from the Union of relevant products, as listed in Annex I, that contain, have been fed with or have been made using relevant commodities, namely cattle, cocoa, coffee, oil palm, rubber, soya and wood, with a view to:

(a) minimising the Union's contribution to deforestation and forest degradation worldwide, and thereby contributing to a reduction in global deforestation;

([17]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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

(b) reducing the Union's contribution to greenhouse gas emissions and global biodiversity loss.

2. Except as provided for in Article 37(3), this Regulation does not apply to relevant products listed in Annex I produced before the date indicated in Article 38(1).

Article 2

Definitions

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

(1) 'relevant commodities' means cattle, cocoa, coffee, oil palm, rubber, soya and wood;

(2) 'relevant products' means products listed in Annex I that contain, have been fed with or have been made using relevant commodities;

(3) 'deforestation' means the conversion of forest to agricultural use, whether human-induced or not;

(4) 'forest' means land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use;

(5) 'agricultural use' means the use of land for the purpose of agriculture, including for agricultural plantations and set-aside agricultural areas, and for rearing livestock;

(6) 'agricultural plantation' means land with tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations, olive orchards and agroforestry systems where crops are grown under tree cover; it includes all plantations of relevant commodities other than wood; agricultural plantations are excluded from the definition of 'forest';

(7) 'forest degradation' means structural changes to forest cover, taking the form of the conversion of:

(a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or

(b) primary forests into planted forests;

(8) 'primary forest' means naturally regenerated forest of native tree species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed;

(9) 'naturally regenerating forest' means forest predominantly composed of trees established through natural regeneration; it includes any of the following:

(a) forests for which it is not possible to distinguish whether planted or naturally regenerated;

(b) forests with a mix of naturally regenerated native tree species and planted or seeded trees, and where the naturally regenerated trees are expected to constitute the major part of the growing stock at stand maturity;

(c) coppice from trees originally established through natural regeneration;

(d) naturally regenerated trees of introduced species;

(10) 'planted forest' means forest predominantly composed of trees established through planting and/or deliberate seeding, provided that the planted or seeded trees are expected to constitute more than 50 % of the growing stock at maturity; it includes coppice from trees that were originally planted or seeded;

(11) 'plantation forest' means a planted forest that is intensively managed and meets, at planting and stand maturity, all the following criteria: one or two species, even age class, and regular spacing; it includes short rotation plantations for wood, fibre and energy, and excludes forests planted for protection or ecosystem restoration, as well as forests established through planting or seeding, which at stand maturity resemble or will resemble naturally regenerating forests;

(12) 'other wooded land' means land not classified as 'forest' spanning more than 0,5 hectares, with trees higher than 5 metres and a canopy cover of 5 to 10 %, or trees able to reach those thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 %, excluding land that is predominantly under agricultural or urban land use;

(13) 'deforestation-free' means:

(a) that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December, 2020; and

(b) in the case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after 31 December, 2020;

(14) 'produced' means grown, harvested, obtained from or raised on relevant plots of land or, as regards cattle, on establishments;

(15) 'operator' means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them;

(16) 'placing on the market' means the first making available of a relevant commodity or relevant product on the Union market;

(17) 'trader' means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market;

(18) 'making available on the market' means any supply of a relevant product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(19) 'in the course of a commercial activity' means for the purpose of processing, for distribution to commercial or non-commercial consumers, or for use in the business of the operator or trader itself;

(20) 'person' means a natural person, a legal person or any association of persons which is not a legal person, but which is recognised under Union or national law as having the capacity to perform legal acts;

(21) 'person established in the Union' means:

(a) in the case of a natural person, any person whose place of residence is in the Union;

(b) in the case of a legal person or an association of persons, any person whose registered office, central head-quarters or a permanent business establishment is in the Union;

(22) 'authorised representative' means any natural or legal person established in the Union who, in accordance with Article 6, has received a written mandate from an operator or from a trader to act on its behalf in relation to specified tasks with regard to the operator's or the trader's obligations under this Regulation;

(23) 'country of origin' means a country or territory as referred to in Article 60 of Regulation (EU) No 952/2013;

(24) 'country of production' means the country or territory where the relevant commodity or the relevant commodity used in the production of, or contained in, a relevant product was produced;

(25) 'non-compliant products' means relevant products that do not comply with Article 3;

(26) 'negligible risk' means the level of risk that applies to relevant commodities and relevant products, where, on the basis of a full assessment of product-specific and general information, and, where necessary, of the application of the appropriate mitigation measures, those commodities or products show no cause for concern as being not in compliance with Article 3, point (a) or (b);

(27) 'plot of land' means land within a single real-estate property, as recognised by the law of the country of production, which enjoys sufficiently homogeneous conditions to allow an evaluation of the aggregate level of risk of deforestation and forest degradation associated with relevant commodities produced on that land;

(28) 'geolocation' means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and one longitude point and using at least six decimal digits; for plots of land of more than four hectares used for the production of the relevant commodities other than cattle, this shall be provided using polygons with sufficient latitude and longitude points to describe the perimeter of each plot of land;

(29) 'establishment' means any premises, structure, or, in the case of open-air farming, any environment or place, where livestock are kept, on a temporary or permanent basis;

(30) 'micro, small and medium-sized enterprises' or 'SMEs' means micro, small and medium-sized undertakings as defined in Article 3 of Directive 2013/34/EU of the European Parliament and of the Council ([19]);

(31) 'substantiated concern' means a duly reasoned claim based on objective and verifiable information regarding non-compliance with this Regulation and which could require the intervention of competent authorities;

(32) 'competent authorities' means the authorities designated under Article 14(1);

(33) 'customs authorities' means customs authorities as defined in Article 5, point (1), of Regulation (EU) No 952/2013;

(34) 'customs territory' means territory as defined in Article 4 of Regulation (EU) No 952/2013;

(35) 'third country' means a country or territory outside the customs territory of the Union;

(36) 'release for free circulation' means the procedure laid down in Article 201 of Regulation (EU) No 952/2013;

(37) 'export' means the procedure laid down in Article 269 of Regulation (EU) No 952/2013;

(38) 'relevant products entering the market' means relevant products from third countries placed under the customs procedure 'release for free circulation' that are intended to be placed on the Union market and are not intended for private use or consumption within the customs territory of the Union;

(39) 'relevant products leaving the market' means relevant products placed under the customs procedure 'export';

(40) 'relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of:

(a) land use rights;

(b) environmental protection;

(c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting;

(d) third parties' rights;

(e) labour rights;

(f) human rights protected under international law;

(g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples;

(h) tax, anti-corruption, trade and customs regulations.

Article 3

Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled:

(a) they are deforestation-free;

(b) they have been produced in accordance with the relevant legislation of the country of production; and

(c) they are covered by a due diligence statement.

CHAPTER 2

OBLIGATIONS OF OPERATORS AND TRADERS

Article 4

Obligations of operators

1. Operators shall exercise due diligence in accordance with Article 8 prior to placing relevant products on the market or exporting them in order to prove that the relevant products comply with Article 3.

([19]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

2. Operators shall not place relevant products on the market or export them without prior submission of a due diligence statement. Operators who, on the basis of the due diligence exercised in accordance with Article 8, conclude that the relevant products comply with Article 3 shall, before placing the relevant products on the market or exporting them, make available a due diligence statement to the competent authorities through the information system referred to in Article 33. Such electronically available and transmittable due diligence statement shall contain the information set out in Annex II for the relevant products and a declaration by the operator that the operator exercised due diligence and that no or only a negligible risk was found.

3. By making available the due diligence statement to competent authorities, the operator shall assume responsibility for the compliance of the relevant product with Article 3. Operators shall keep a record of the due diligence statements for five years from the date the statement is submitted through the information system referred to in Article 33.

4. Operators shall not place relevant products on the market or export them where one or more of the following cases apply:

(a) the relevant products are non-compliant;

(b) the exercise of due diligence has revealed a non-negligible risk that the relevant products are non-compliant;

(c) the operator was unable to fulfil the obligations referred to in paragraphs 1 and 2.

5. Operators that obtain or are made aware of relevant new information, including substantiated concerns, indicating that a relevant product that they have placed on the market is at risk of not complying with this Regulation shall immediately inform the competent authorities of the Member States in which they placed the relevant product on the market, as well as traders to whom they supplied the relevant product. In the case of exports, the operators shall inform the competent authority of the Member State which is the country of production.

6. Operators shall offer all necessary assistance to the competent authorities to facilitate the carrying out of the checks under Article 18, including access to premises and the making available of documentation and records.

7. Operators shall communicate to operators and to traders further down the supply chain of the relevant products they placed on the market or exported all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found, including the reference numbers of the due diligence statements associated to those products.

8. By way of derogation from paragraph 1 of this Article, operators that are SMEs ('SME operators') shall not be required to exercise due diligence for relevant products contained in or made from relevant products that have already been subject to due diligence in accordance with paragraph 1 of this Article and for which a due diligence statement has already been submitted in accordance with Article 33. In such cases, SME operators shall provide the competent authorities with the reference number of the due diligence statement upon request. For parts of relevant products that have not been subject to due diligence, the SME operators shall exercise due diligence in accordance with paragraph 1 of this Article.

9. Operators that are not SMEs ('non-SME operators') may refer to due diligence statements that have already been submitted in accordance with Article 33 only after having ascertained that the due diligence relating to the relevant products contained in or made from the relevant products was exercised in accordance with paragraph 1 of this Article. They shall include the reference numbers of such due diligence statements that have already been submitted in accordance with Article 33 in the due diligence statements that they submit under paragraph 2 of this Article. For parts of relevant products that have not been subject to due diligence, non-SME operators shall exercise due diligence in accordance with paragraph 1 of this Article.

10. Any operator referring to a due diligence statement that has already been submitted in accordance with Article 33 shall retain responsibility for the compliance of the relevant products with Article 3, including that no or only a negligible risk was found, prior to placing such relevant products on the market or exporting them.

Article 5

Obligations of traders

1. Traders that are not SMEs ('non-SME traders') shall be considered as non-SME operators and shall be subject to obligations and provisions in Articles 3, 4 and 6, Articles 8 to 13, Article 16(8) to (11) and Article 18 with regard to the relevant commodities and relevant products that they make available on the market.

2. Traders that are SMEs ('SME traders') shall make available relevant products on the market only if they are in possession of the information required under paragraph 3.

3. SME traders shall collect and keep the following information relating to the relevant products they intend to make available on the market:

(a) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators or the traders who have supplied the relevant products to them, as well as the reference numbers of the due diligence statements associated to those products;

(b) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators or the traders to whom they have supplied the relevant products.

4. SME traders shall keep the information referred to in paragraph 3 for at least five years from the date of the making available on the market and shall provide that information to the competent authorities upon request.

5. SME traders that obtain or are made aware of relevant new information, including substantiated concerns, indicating that a relevant product that they have made available on the market is at risk of not complying with this Regulation shall immediately inform the competent authorities of the Member States in which they made the relevant product available on the market as well as traders to whom they supplied the relevant product.

6. Traders, whether or not they are SMEs, shall offer all necessary assistance to the competent authorities to facilitate the carrying out of the checks under Articles 18 and 19, including access to premises and the making available of documentation and records.

Article 6

Authorised representatives

1. Operators or traders may mandate an authorised representative to submit the due diligence statement pursuant to Article 4(2) on their behalf. In such cases, the operator or trader shall retain responsibility for the compliance of the relevant product with Article 3.

2. The authorised representative shall, upon request, provide a copy of the mandate in an official language of the Union to the competent authorities and a copy in an official language of the Member State in which the due diligence statement is handled or, where that is not possible, in English.

3. An operator that is a natural person or a microenterprise may mandate the next operator or trader further down the supply chain that is not a natural person or a microenterprise to act as an authorised representative. Such next operator or trader further down the supply chain shall not place or make available relevant products on the market or export them without submitting the due diligence statement pursuant to Article 4(2) on behalf of that operator. In such cases, the operator that is a natural person or a microenterprise shall retain responsibility for compliance of the relevant product with Article 3, and shall communicate to that next operator or trader further down the supply chain all information necessary to confirm that due diligence was exercised and that no or only a negligible risk was found.

Article 7

Placing on the market by operators established in third countries

Where a natural or legal person established outside the Union places relevant products on the market, the first natural or legal person established in the Union who makes such relevant products available on the market shall be deemed to be an operator within the meaning of this Regulation.

Article 8

Due diligence

1. Prior to placing relevant products on the market or exporting them, operators shall exercise due diligence with regard to all relevant products supplied by each particular supplier.

2. The due diligence shall include:

(a) the collection of information, data and documents needed to fulfil the requirements set out in Article 9;

(b) risk assessment measures as referred to in Article 10;

(c) risk mitigation measures as referred to in Article 11.

Article 9

Information requirements

1. Operators shall collect information, documents and data which demonstrate that the relevant products comply with Article 3. For this purpose, the operator shall collect, organise and keep for five years from the date of the placing on the market or of the export of the relevant products the following information, accompanied by evidence, relating to each relevant product:

(a) a description, including the trade name and type of the relevant products as well as, in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name; the product description shall include the list of relevant commodities or relevant products contained therein or used to make those products;

(b) the quantity of the relevant products; for relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 ([20]) against the indicated Harmonised System code, or, in all other cases, the quantity is to be expressed in net mass or, where applicable, volume or number of items; a supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement;

(c) the country of production and, where relevant, parts thereof;

(d) the geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as the date or time range of production; where a relevant product contains or has been made with relevant commodities produced on different plots of land, the geolocation of all different plots of land shall be included; any deforestation or forest degradation on the given plots of land shall automatically disqualify all relevant commodities and relevant products from those plots of land from being placed or made available on the market or exported; for relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept; for all other relevant products of Annex I, the geolocation shall refer to the plots of land;

(e) the name, postal address and email address of any business or person from whom they have been supplied with the relevant products;

(f) the name, postal address and email address of any business, operator or trader to whom the relevant products have been supplied;

(g) adequately conclusive and verifiable information that the relevant products are deforestation-free;

(h) adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

2. The operator shall make available to the competent authorities upon request the information, documents and data collected under this Article.

Article 10

Risk assessment

1. Operators shall verify and analyse the information collected in accordance with Article 9 and any other relevant documentation. On the basis of that information and documentation, the operators shall carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on the market or exported are non-compliant. Operators shall not place the relevant products on the market or export them, except where the risk assessment reveals no or only a negligible risk that the relevant products are non-compliant.

([20]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

2. The risk assessment shall take into account, in particular, the following criteria:

(a) the assignment of risk to the relevant country of production or parts thereof in accordance with Article 29;

(b) the presence of forests in the country of production or parts thereof;

(c) the presence of indigenous peoples in the country of production or parts thereof;

(d) the consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof;

(e) the existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity;

(f) prevalence of deforestation or forest degradation in the country of production or parts thereof;

(g) the source, reliability, validity, and links to other available documentation of the information referred to in Article 9(1);

(h) concerns in relation to the country of production and origin or parts thereof, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the European Union;

(i) the complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced;

(j) the risk of circumvention of this Regulation or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;

(k) conclusions of the meetings of the Commission expert groups supporting the implementation of this Regulation, as published in the Commission's expert group register;

(l) substantiated concerns submitted under Article 31, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;

(m) any information that would point to a risk that the relevant products are non-compliant;

(n) complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party verified schemes, including voluntary schemes recognised by the Commission under Article 30(5) of Directive(EU) 2018/2001 of the European Parliament and of the Council [21], provided that the information meets the requirements set out in Article 9 of this Regulation.

3. Wood products which fall within the scope of Regulation (EC) No 2173/2005 that are covered by a valid FLEGT license from an operational licensing scheme shall be deemed to comply with Article 3, point (b), of this Regulation.

4. The operators shall document and review the risk assessments at least on an annual basis and make them available to the competent authorities upon request. Operators shall be able to demonstrate how the information gathered was checked against the risk assessment criteria set out in paragraph 2 and how they determined the degree of risk.

Article 11

Risk mitigation

1. Except where a risk assessment carried out in accordance with Article 10 reveals that there is no or only a negligible risk that the relevant products are non-compliant, the operator shall, prior to placing the relevant products on the market or exporting them, adopt risk mitigation procedures and measures that are adequate to achieve no or only a negligible risk. Such procedures and measures may include any of the following:

(a) requiring additional information, data or documents;

[21] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

(b) carrying out independent surveys or audits;

(c) taking other measures pertaining to information requirements set out in Article 9.

Such procedures and measures may also include supporting compliance with this Regulation by that operator's suppliers, in particular smallholders, through capacity building and investments.

2. Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant products identified. Those policies, controls and procedures shall include:

(a) model risk management practices, reporting, record-keeping, internal control and compliance management, including the appointment of a compliance officer at management level for non-SME operators;

(b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all non-SME operators.

3. The decisions on risk mitigation procedures and measures shall be documented, reviewed at least on an annual basis and made available by the operators to the competent authorities upon request. Operators shall be able to demonstrate how decisions on risk mitigation procedures and measures were taken.

Article 12

Establishment and maintenance of due diligence systems, reporting and record keeping

1. In order to exercise due diligence in accordance with Article 8, operators shall establish and keep up to date a framework of procedures and measures to ensure that the relevant products they place on the market or export comply with Article 3 ('due diligence system').

2. Operators shall review the due diligence system at least once a year. Where operators become aware of new developments which could influence the due diligence system, they shall update the due diligence system to take account of those developments. Operators shall keep a record of such updates in their due diligence systems for five years

3. Operators who do not fall within the categories of SMEs, including microenterprises, or natural persons shall, on an annual basis, publicly report as widely as possible, including via the internet, on their due diligence system, including on the steps taken by them to fulfil their obligations as set out in Article 8. Operators who fall also within the scope of other Union legal acts that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under this paragraph by including the required information when reporting in the context of those other Union legal acts.

4. Without prejudice to Union data protection legislation, the reporting as referred to in paragraph 3 shall include the following information concerning relevant commodities and relevant products:

(a) a summary of the information referred to in Article 9(1), points (a), (b) and (c);

(b) the conclusions of the risk assessment carried out pursuant to Article 10 and measures undertaken pursuant to Article 11 and a description of the information and evidence obtained and used to assess the risk;

(c) where applicable, a description of the process of consultation of indigenous peoples, local communities and other customary tenure rights holders or of the civil society organisations that are present in the area of production of the relevant commodities and relevant products.

5. Operators shall keep for at least five years all documentation related to due diligence, such as all records, measures and procedures pursuant to Article 8. They shall make that documentation available to the competent authorities upon request.

Article 13

Simplified due diligence

1. When placing relevant products on the market or exporting them, operators shall not be required to fulfil the obligations under Articles 10 and 11 where, after having assessed the complexity of the relevant supply chain and the risk of circumvention of this Regulation or the risk of mixing with products of unknown origin or origin in high-risk or standard-risk countries or parts thereof, they have ascertained that all relevant commodities and relevant products have been produced in countries or parts thereof that were classified as low risk in accordance with Article 29. In such cases, the operator shall make available to the competent authority upon request relevant documentation demonstrating that there is a negligible risk of circumvention of this Regulation or of mixing with products of unknown origin or origin in high-risk or standard-risk countries or parts thereof.

2. Notwithstanding paragraph 1 of this Article, if the operator obtains or is made aware of any relevant information, including as a result of the assessment carried out under paragraph 1 of this Article, and including substantiated concerns submitted under Article 31, that would point to a risk that the relevant products do not comply with this Regulation or that this Regulation is circumvented, the operator shall fulfil all of the obligations under Articles 10 and 11 and shall immediately communicate any relevant information to the competent authority.

3. Where a competent authority is made aware of any information that would point to a risk of circumvention of this Regulation, including in cases in which relevant commodities or relevant products produced in a standard-risk or high-risk country or a part thereof are subsequently processed in a low-risk country or a part thereof from where they are placed on or leave the market, the competent authority shall take immediate action in accordance with Article 17(1) and, where necessary, adopt interim measures in accordance with Article 23.

CHAPTER 3

OBLIGATIONS OF MEMBER STATES AND THEIR COMPETENT AUTHORITIES

Article 14

Competent authorities

1. Member States shall designate one or more competent authorities responsible for fulfilling the obligations arising from this Regulation.

2. By 30 December 2023 at the latest, Member States shall inform the Commission of the names, addresses and contact details of the competent authorities referred to in paragraph 1. Member States shall inform the Commission without undue delay of any changes to that information.

3. The Commission shall make the list of the competent authorities publicly available on its website without undue delay. The Commission shall regularly update the list, based on updates received from Member States.

4. Member States shall ensure that the competent authorities have adequate powers, functional independence and the resources to fulfil the obligations set out in this Chapter.

Article 15

Technical assistance, guidance and exchange of information

1. Without prejudice to the operators' obligation to exercise due diligence as set out in Article 8, Member States may provide technical and other assistance and guidance to operators. The Commission, in collaboration with Member States, may also provide, where necessary, guidance to operators and competent authorities. Technical and other assistance and guidance shall take into account the situation of SMEs, including microenterprises, and natural persons, in order to facilitate compliance with this Regulation, including as regards the conversion of data from relevant systems to identify the geolocation in the information system as referred to in Article 33. It shall also take into account relevant current and future Union legal acts containing due diligence obligations.

2. Member States shall facilitate the exchange and dissemination of relevant information, in particular with a view to assisting operators in risk assessment as set out in Article 10, and on best practices regarding the implementation of this Regulation.

3. The competent authorities and the Commission shall continuously monitor and exchange information on any significant change in the pattern of trade of relevant products that can lead to the circumvention of this Regulation.

4. Assistance shall be provided in a manner which does not compromise the independence, legal obligations or responsibilities of competent authorities in enforcing this Regulation.

5. The Commission may facilitate the harmonised implementation of this Regulation, by issuing relevant guidelines and by promoting adequate exchange of information, coordination and cooperation between competent authorities, between competent authorities and customs authorities, and between competent authorities and the Commission.

Article 16

Obligation to carry out checks

1. The competent authorities shall carry out checks within their territory to establish whether operators and traders established in the Union comply with this Regulation. The competent authorities shall carry out checks within their territory to establish whether the relevant products that the operator or trader has placed or intends to place on the market, has made available or intends to make available on the market or has exported or intends to export comply with this Regulation.

2. The checks referred to in paragraph 1 of this Article shall be carried out in accordance with Articles 18 and 19.

3. The competent authorities shall use a risk-based approach to identify the checks to be carried out. Risk criteria shall be identified based on an analysis of risks of non-compliance with this Regulation, taking into account in particular the relevant commodities, the complexity and the length of supply chains, including whether mixing of relevant products is involved, and the stage of processing of the relevant product, whether the plots of land concerned are adjacent to forests, the assignment of risk to countries or parts thereof in accordance with Article 29, paying special attention to the situation of countries or parts thereof classified as high risk, the history of non-compliance of operators or traders with this Regulation, risks of circumvention, and any other relevant information. The analysis of risks shall build on the information referred to in Articles 9 and 10 and may build on the information contained in the information system referred to in Article 33, and may be supported by other relevant sources such as monitoring data, risk profiles from international organisations, substantiated concerns submitted under Article 31, or the conclusions of Commission expert group meetings.

4. The Commission shall, where appropriate, establish and regularly review and update indicative risk criteria at Union level, in accordance with paragraph 3, and communicate them to competent authorities.

5. For the purposes of carrying out the checks referred to in paragraph 1, the competent authorities shall establish annual plans containing at least the following:

(a) national risk criteria, established in accordance with paragraph 3, for the purpose of determining the checks that are necessary, which build upon any indicative risk criteria at Union level established by the Commission in accordance with paragraph 4, and systematically include risk criteria in relation to countries or parts thereof classified as high risk;

(b) the selection of operators and traders to be checked; that selection is to be based on the national risk criteria referred to in point (a), using, *inter alia*, information contained in the information system referred to in Article 33 and electronic data-processing techniques; for each operator or trader to be checked, competent authorities may identify specific due diligence statements to be checked.

6. The annual review of the plans by the competent authorities shall systematically build upon the results of the checks and the experience on implementation of the plans referred to in paragraph 5 in order to improve their effectiveness.

7. Competent authorities shall communicate their plans of checks, as well as updates thereto, to other competent authorities and the Commission. Competent authorities shall exchange information on and coordinate the development and application of the risk criteria referred to in paragraph 5 with competent authorities of other Member States and with the Commission, in order to improve the effectiveness of the enforcement of this Regulation.

8. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 3 % of the operators placing or making available on the market or exporting relevant products that contain or have been made using relevant commodities produced in a country of production or parts thereof classified as standard risk in accordance with Article 29.

9. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 9 % of the operators placing or making available on the market or exporting relevant products that contain or have been made using relevant commodities as well as 9 % of the quantity of each of the relevant products that contain or have been made using relevant commodities produced in a country or parts thereof classified as high risk in accordance with Article 29.

10. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 1 % of the operators placing or making available on the market or exporting relevant products that contain or have been made using relevant commodities produced in a country or parts thereof classified as low risk in accordance with Article 29.

11. The quantified objectives of checks to be carried out by competent authorities shall be met separately for each of the relevant commodities. The quantified objectives shall be calculated by reference to the total number of operators who placed or made available on the market or exported relevant products in the previous year, and to quantity, where applicable. Operators shall be considered as having been checked where the competent authority has checked the elements referred to in Article 18(1), points (a) and (b).

12. Without prejudice to checks planned in advance pursuant to paragraph 5 of this Article, competent authorities shall carry out checks referred to in paragraph 1 of this Article when they obtain or are made aware of relevant information, including based on substantiated concerns submitted by third parties under Article 31, concerning a potential case of non-compliance with this Regulation.

13. Checks shall be carried out without prior warning of the operator or trader, except where prior notification of the operator or trader is necessary in order to ensure the effectiveness of the checks.

14. The competent authorities shall keep records of the checks, indicating in particular their nature and results, as well as on the measures taken in the event of non-compliance. Records of all checks shall be kept for at least 10 years.

15. Records of checks carried out under this Regulation and reports of their results shall constitute environmental information for the purposes of Directive 2003/4/EC of the European Parliament and of the Council [22] and shall be made available upon request.

Article 17

Relevant products requiring immediate action

1. Competent authorities shall identify situations where relevant products present such high risk of non-compliance with Article 3 that they require immediate action by competent authorities before those relevant products are placed or made available on the market or exported. Competent authorities shall register such identified situations in the information system referred to in Article 33.

2. When competent authorities identify the situations referred to in paragraph 1 of this Article, including when a due diligence statement relating to the relevant products concerned is submitted by an operator, the information system referred to in Article 33 shall identify the high risk of non-compliance with Article 3 and inform competent authorities, which shall:

(a) take immediate interim measures under Article 23 to suspend the placing or making available of those relevant products on the market; or

(b) once the electronic interface referred to in Article 28(1) is in place, in the case of relevant products entering or leaving the market, require customs authorities to suspend the release for free circulation or export of those relevant products under Article 26(7).

3. The suspensions referred to in paragraph 2 of this Article shall end within three working days or within 72 hours in the case of perishable relevant products, starting from the moment when the high risk of non-compliance is identified in the information system referred to in Article 33. Where the competent authorities, based on the result of the checks carried out within that period, conclude that they require additional time in which to establish whether the relevant products comply with Article 3, they shall extend the period of suspension, by additional periods of three working days, by means of additional interim measures taken under Article 23 or, in the case of relevant products entering or leaving the market, by notifying the customs authorities of the need to maintain the suspension under Article 26(7).

[22] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

Article 18

Checks on operators and non-SME traders

1. The checks on operators and non-SME traders shall include:

(a) examination of their due diligence system, including risk assessment and risk mitigation procedures, and of documentation and records that demonstrate the proper functioning of the due diligence system;

(b) examination of documentation and records that demonstrate that a specific relevant product that the operator has placed or intends to place on the market or intends to export or that the non-SME trader has made available or intends to make available on the market complies with this Regulation, including, when applicable, through risk mitigation measures, as well as examination of the relevant due diligence statements.

2. The checks on operators and non-SME traders may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions:

(a) on-the-ground examination of relevant commodities or of the relevant products with a view to ascertaining their correspondence with the documentation used for exercising due diligence;

(b) examination of corrective measures taken under Article 24;

(c) any technical and scientific means adequate to determine the species or the exact place where the relevant commodity or relevant product was produced, including anatomical, chemical or DNA analysis;

(d) any technical and scientific means adequate to determine whether the relevant products are deforestation-free, including Earth observation data such as from the Copernicus programme and tools or from other publicly or privately available relevant sources; and

(e) spot checks, including field audits, including where appropriate in third countries, provided that such third countries agree, through cooperation with the administrative authorities of those third countries.

Article 19

Checks on SME traders

1. The checks on SME traders shall include the examination of documentation and records that demonstrate compliance with Article 5(2), (3) and (4).

2. The checks on SME traders may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions, spot checks, including field audits.

Article 20

Recovery of costs by competent authorities

1. Member States may authorise their competent authorities to reclaim from the operators or traders the totality of the costs of their activities with respect to instances of non-compliance.

2. The costs referred to in paragraph 1 may include the costs of carrying out testing, of storage and of activities relating to the relevant products that are found to be non-compliant products and are subject to corrective action prior to the release of those relevant products for free circulation, their placing on the market or their export.

Article 21

Cooperation and exchange of information

1. Competent authorities shall cooperate with each other, the customs authorities from their Member State, the competent authorities and customs authorities from other Member States, the Commission and if necessary, with the administrative authorities of third countries in order to ensure compliance with this Regulation, including as regards the implementation of field audits.

2. Competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information on investigations and the conduct of investigations.

3. Competent authorities shall exchange information necessary for the enforcement of this Regulation, including through the information system referred to in Article 33. That shall include giving access to and exchanging information on operators and traders, including due diligence statements, and on the nature and results of the checks carried out, with other Member States' competent authorities to facilitate the enforcement of this Regulation.

4. Competent authorities shall immediately alert competent authorities of other Member States and the Commission when they detect any potential non-compliance with this Regulation and serious shortcomings that could affect more than one Member State. Competent authorities shall, in particular, inform competent authorities of other Member States when they detect a relevant product on the market that they consider to be a non-compliant product, to enable the withdrawal or recall of such product from sales in all Member States.

5. At the request of a competent authority, Member States shall provide it with the information necessary to ensure compliance with this Regulation.

Article 22

Reporting

1. By 30 April of each year, Member States shall make available to the public and to the Commission information on the application of this Regulation during the previous calendar year. That information shall include:

(a) the plans of checks and the risk criteria on which those plans were based;

(b) the number and the results of the checks carried out on operators, non-SME traders and other traders in relation to the total number of operators, non-SME traders and other traders, including the types of non-compliance identified;

(c) the quantity of relevant products checked in relation to the total quantity of relevant products placed on the market or exported and the countries of production; for relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code, or, in all other cases, the quantity is to be expressed in net mass or, where applicable, volume or number of items; a supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement;

(d) in cases of non-compliance, the corrective action taken in accordance with Article 24 and penalties imposed in accordance with Article 25;

(e) the percentage of checks carried out with prior warnings pursuant to Article 16(13), the use of which shall be justified by the competent authorities in their check reports.

2. By 30 October of each year, the Commission services shall make publicly available a Union-wide overview of the application of this Regulation based on the data submitted by the Member States under paragraph 1.

Article 23

Interim measures

Member States shall provide for the possibility for their competent authorities to take immediate interim measures, including the seizure of the relevant commodities or relevant products, or the suspension of the placing or making available on the market or the export of the relevant commodities or relevant products, when potential non-compliance with this Regulation has been detected on the basis of any of the following:

(a) the examination of evidence or other relevant information, including information exchanged under Article 21 or substantiated concerns submitted under Article 31;

(b) the checks referred to in Articles 18 and 19;

(c) the identification of risks by the information system referred to in Article 33.

Where necessary, Member States shall immediately inform the Commission and the competent authorities of other Member States about such measures.

Article 24

Corrective action in the event of non-compliance

1. Without prejudice to Article 25, where competent authorities establish that an operator or trader has not complied with this Regulation or that a relevant product placed or made available on the market or exported is non-compliant, they shall without delay require the operator or trader to take appropriate and proportionate corrective action to bring the non-compliance to an end within a specified and reasonable period of time.

2. For the purposes of paragraph 1, the corrective action required to be taken by the operator or trader shall include at least one of the following, as applicable:

(a) rectifying any formal non-compliance, in particular with the requirements of Chapter 2;

(b) preventing the relevant product from being placed or made available on the market or exported;

(c) withdrawing or recalling the relevant product immediately;

(d) donating the relevant product to charitable or public interest purposes or, if that is not possible, disposing of it in accordance with Union law on waste management.

3. Irrespective of the corrective action taken under paragraph 2, the operator or trader shall address any shortcomings in the due diligence system with a view to preventing the risk of further non-compliance with this Regulation.

4. If the operator or trader fails to take corrective action as referred to in paragraph 2 within the period of time specified by the competent authority under paragraph 1, or where non-compliance as referred to in paragraph 1 persists, after that period of time competent authorities shall secure application of the required corrective action referred to in paragraph 2 by all means available to them under the law of the Member State concerned.

Article 25

Penalties

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council ([23]), Member States shall lay down rules on penalties applicable to infringements of this Regulation by operators and traders and shall take all measures necessary to ensure that they are implemented. Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.

2. The penalties provided for in paragraph 1 shall be effective, proportionate and dissuasive. Those penalties shall include:

(a) fines proportionate to the environmental damage and the value of the relevant commodities or relevant products concerned, calculating the level of such fines in such way as to ensure that they effectively deprive those responsible of the economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements; in the case of a legal person, the maximum amount of such a fine shall be at least 4 % of the operator's or trader's total annual Union-wide turnover in the financial year preceding the fining decision, calculated in accordance with the calculation of aggregate turnover for undertakings laid down in Article 5(1) of Council Regulation (EC) No 139/2004 ([24]), and shall be increased, where necessary, to exceed the potential economic benefit gained;

(b) confiscation of the relevant products concerned from the operator and/or trader;

(c) confiscation of revenues gained by the operator and/or trader from a transaction with the relevant products concerned;

([23]) Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

([24]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

(d) temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions;

(e) temporary prohibition from placing or making available on the market or exporting relevant commodities and relevant products, in the event of a serious infringement or of repeated infringements;

(f) prohibition from exercising the simplified due diligence set out in Article 13 in the event of a serious infringement or of repeated infringements.

3. Member States shall notify the Commission of final judgments against legal persons for infringements of this Regulation and the penalties imposed on them, within 30 days from the date on which the judgments become final, taking into account the relevant data protection rules. The Commission shall publish on its website a list of such judgments, which shall contain the following elements:

(a) the name of the legal person;

(b) the date of the final judgment;

(c) a summary of the activities for which the legal person was found to have infringed this Regulation; and

(d) the nature and, where financial, the amount of the penalty imposed.

CHAPTER 4

PROCEDURES FOR RELEVANT PRODUCTS ENTERING OR LEAVING THE MARKET

Article 26

Controls

1. Relevant products placed under the customs procedure 'release for free circulation' or 'export' shall be subject to the controls and measures laid down in this Chapter. The application of this Chapter is without prejudice to any other provisions of this Regulation as well as to other Union legal acts governing the release for free circulation or export of goods, in particular Regulation (EU) No 952/2013 and its Articles 46, 47, 134 and 267. Chapter VII of Regulation (EU) 2019/1020 shall however not apply to controls on relevant products entering the market in so far as the application and enforcement of this Regulation is concerned.

2. Competent authorities shall be responsible for the overall enforcement of this Regulation with regard to a relevant product entering or leaving the market. In particular, competent authorities shall be responsible, in accordance with Article 16, for identifying checks to be carried out based on a risk-based approach and for establishing, through the checks referred to in Article 16, whether any such relevant product complies with Article 3. The competent authorities shall carry out those responsibilities in accordance with the relevant provisions of Chapter 3.

3. Without prejudice to paragraph 2 of this Article, customs authorities shall carry out controls on the customs declarations lodged in relation to relevant products entering or leaving the market in accordance with Articles 46 and 48 of Regulation (EU) No 952/2013. Such controls shall primarily be based on risk analysis, as established in Article 46(2) of Regulation (EU) No 952/2013.

4. The reference number of the due diligence statement shall be made available to customs authorities before the release for free circulation or export of a relevant product entering or leaving the market. For that purpose, except where the due diligence statement is made available through the electronic interface referred to in Article 28(2), the person lodging the customs declaration for release for free circulation or export of a relevant product shall make available to customs authorities the reference number of the due diligence statement assigned to that relevant product by the information system referred to in Article 33.

5. For the purpose of taking into account compliance with this Regulation on allowing a relevant product to be released for free circulation or exported:

(a) until the electronic interface referred to in Article 28(1) is in place, paragraphs 6 to 9 of this Article shall not apply, and customs authorities shall exchange information and cooperate with competent authorities in accordance with Article 27, and, where necessary, shall take into account such exchange of information and cooperation on allowing relevant products to be released for free circulation or exported;

(b) once the electronic interface referred to in Article 28(1) is in place, paragraphs 6 to 9 of this Article shall apply, and notifications and requests under paragraphs 6 to 9 of this Article shall take place by means of that electronic interface.

6. When carrying out controls on customs declarations for release for free circulation or export of a relevant product entering or leaving the market, customs authorities shall examine, using the electronic interface referred to in Article 28(1), the status assigned to the corresponding due diligence statement by competent authorities in the information system referred to in Article 33.

7. Where the status referred to in paragraph 6 of this Article indicates that the relevant product entering or leaving the market has been identified, pursuant to Article 17(2), as requiring to be checked before it is placed or made available on the market or exported, customs authorities shall suspend the release for free circulation or export of that relevant product.

8. Where all other requirements and formalities under Union or national law relating to the release for free circulation or export have been fulfilled, customs authorities shall allow a relevant product entering or leaving the market to be released for free circulation or exported in any of the following circumstances:

(a) the status referred to in paragraph 6 of this Article does not indicate that the relevant product has been identified, pursuant to Article 17(2), as requiring to be checked before it is placed or made available on the market or exported;

(b) the release for free circulation or export has been suspended in accordance with paragraph 7 of this Article, and the competent authorities have not requested to maintain the suspension in accordance with Article 17(3);

(c) the release for free circulation or export has been suspended in accordance with paragraph 7 and the competent authorities have notified customs authorities that the suspension of the release for free circulation or export of the relevant products can be lifted.

9. Where the competent authorities conclude that a relevant product entering or leaving the market is non-compliant, they shall notify the customs authorities accordingly and the customs authorities shall not allow the release for free circulation or export of that relevant product.

10. The release for free circulation or export shall not be deemed proof of compliance with Union law and, in particular, with this Regulation.

Article 27

Cooperation and exchange of information among authorities

1. To enable the risk-based approach referred to in Article 16(5) for relevant products entering or leaving the market and to ensure that checks are effective and carried out in accordance with this Regulation, the Commission, competent authorities and customs authorities shall cooperate closely and exchange information.

2. Customs authorities and competent authorities shall cooperate in accordance with Article 47(2) of Regulation (EU) No 952/2013 and exchange information necessary for the fulfilment of their functions under this Regulation, including through electronic means.

3. The customs authorities may communicate, in accordance with Article 12(1) of Regulation (EU) No 952/2013, confidential information acquired by the customs authorities in the course of performing their duties, or provided to the customs authorities on a confidential basis, to the competent authority of the Member State in which the operator, trader or authorised representative is established.

4. Where the competent authorities have received information in accordance with this Article, those competent authorities may communicate that information to competent authorities of other Member States in accordance with Article 21(3).

5. Risk-related information shall be exchanged as follows:

(a) between customs authorities in accordance with Article 46(5) of Regulation (EU) No 952/2013;

(b) between customs authorities and the Commission in accordance with Article 47(2) of Regulation (EU) No 952/2013;

(c) between customs authorities and competent authorities, including competent authorities of other Member States, in accordance with Article 47(2) of Regulation (EU) No 952/2013.

Article 28

Electronic interface

1. The Commission shall develop an electronic interface based on the European Union Single Window Environment for Customs, established by Regulation (EU) 2022/2399 of the European Parliament and of the Council ([25]), to enable the transmission of data, in particular the notifications and requests referred to in Article 26(6) to (9) of this Regulation, between national customs systems and the information system referred to in Article 33 of this Regulation. This electronic interface shall be in place by 30 June 2028.

2. The Commission shall develop an electronic interface in accordance with Article 12 of Regulation (EU) 2022/2399 to enable:

(a) operators and traders to comply with the obligation to submit the due diligence statement of a relevant commodity or relevant product pursuant to Article 4 of this Regulation, by making it available through the national single window environment for customs referred to in Article 8 of Regulation (EU) 2022/2399 and receive feedback thereon from competent authorities; and

(b) the transmission of that due diligence statement to the information system referred to in Article 33.

3. The Commission shall adopt implementing acts specifying the details of implementation arrangements for paragraphs 1 and 2 of this Article and, in particular, defining the data, including their format, to be transmitted in accordance with paragraphs 1 and 2 of this Article. The implementing acts shall also clarify how any changes in the status assigned by competent authorities to due diligence statements in the information system referred to in Article 33 shall be notified immediately and automatically to the relevant customs authorities through the electronic interface referred to in paragraph 1 of this Article. The implementing acts may also determine that certain specific data available in the due diligence statement and necessary for activities of customs authorities, including surveillance and fight against fraud, are transmitted and registered in Union and national customs systems. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).

CHAPTER 5

COUNTRY BENCHMARKING SYSTEM AND COOPERATION WITH THIRD COUNTRIES

Article 29

Assessment of countries

1. This Regulation establishes a three-tier system for the assessment of countries or parts thereof. For that purpose, Member States and third countries, or parts thereof, shall be classified into one of the following risk categories:

(a) 'high risk' refers to countries or parts thereof, for which the assessment referred to in paragraph 3 results in the identification of a high risk of producing in such countries or in parts thereof, relevant commodities for which the relevant products do not comply with Article 3, point (a);

(b) 'low risk' refers to countries or parts thereof, for which the assessment referred to in paragraph 3 concludes that there is sufficient assurance that instances of producing in such countries or in parts thereof, relevant commodities for which the relevant products do not comply with Article 3, point (a), are exceptional;

(c) 'standard risk' refers to countries or parts thereof which do not fall in either the category 'high risk' or the category 'low risk'.

2. On 29 June 2023, all countries shall be assigned a standard level of risk. The Commission shall classify countries or parts thereof, that present a low or high risk in accordance with paragraph 1. The list of the countries or parts thereof, that present a low or high risk shall be published by means of implementing acts to be adopted in accordance with the examination procedure referred to in Article 36(2), no later than 30 December 2024. That list shall be reviewed, and updated if appropriate, as often as necessary in light of new evidence.

([25]) Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 (OJ L 317, 9.12.2022, p. 1).

3. The classification of low-risk and high-risk countries or parts thereof, pursuant to paragraph 1 shall be based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources. The classification shall be based primarily on the following assessment criteria:

(a) rate of deforestation and forest degradation;

(b) rate of expansion of agriculture land for relevant commodities;

(c) production trends of relevant commodities and of relevant products.

4. The assessment referred to in paragraph 3 may also take into account:

(a) information submitted by the country concerned, regional authorities concerned, operators, NGOs and third parties, including indigenous peoples, local communities and civil society organisations, with regard to the effective covering of emissions and removals from agriculture, forestry and land use in the nationally determined contribution to the UNFCCC;

(b) agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation and facilitate compliance of relevant commodities and relevant products with Article 3 and their effective implementation;

(c) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to tackle deforestation and forest degradation, and to avoid and penalise activities leading to deforestation and forest degradation and in particular whether it applies penalties of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation;

(d) whether the country concerned makes relevant data available transparently; and, if applicable, the existence, compliance with, or effective enforcement of laws protecting human rights, the rights of indigenous peoples, local communities and other customary tenure rights holders;

(e) sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the relevant commodities and relevant products.

5. The Commission shall engage in a specific dialogue with all countries that are, or risk to be classified as, high risk, with the objective to reduce their level of risk.

6. Without prejudice to paragraph 5, the Commission shall formally notify the country concerned of its intention to classify that country or a part thereof to a different risk category and invite it to provide any information deemed useful in that regard. The Commission shall also inform the competent authorities of such intention.

The Commission shall include the following information in the notification:

(a) the reason or reasons for the intention to change the risk classification of the country or parts thereof;

(b) the invitation to respond to the Commission in writing with regard to the intention to changing the risk classification of the country or parts thereof;

(c) the consequences of its classification as a high or low risk country.

7. The Commission shall allow the country concerned sufficient time to reply to the notification. Where the notification concerns an intention on the part of the Commission to classify the country or a part thereof to a higher risk, in its reply, the country concerned may provide the Commission with information on measures taken by it to remedy the situation.

8. The Commission shall, without delay, notify the country concerned and the competent authorities of inclusion or removal of a country, or parts thereof, from the list referred to in paragraph 2.

Article 30

Cooperation with third countries

1. Within their respective spheres of competence, the Commission, on behalf of the Union, and interested Member States shall engage in a coordinated approach with producer countries and parts thereof that are concerned by this Regulation, in particular those classified as high risk in accordance with Article 29 through existing and future partnerships, and other relevant cooperation mechanisms to jointly address the root causes of deforestation and forest degradation. The Commission shall develop a comprehensive Union strategic framework for such engagement and shall consider mobilising relevant Union instruments. Such partnerships and cooperation mechanisms shall focus on the conservation, restoration and sustainable use of forests, deforestation, forest degradation, and the transition to sustainable commodity production, consumption, processing, and trade methods. Partnerships and cooperation mechanisms may include structured dialogues, administrative arrangements, and existing agreements or provisions thereof, as well as joint roadmaps that enable the transition to an agricultural production that facilitates the compliance with this Regulation, paying particular attention to the needs of indigenous peoples, local communities and smallholders and ensuring the participation of all interested actors.

2. Partnerships and cooperation shall allow the full participation of all stakeholders, including civil society, indigenous peoples, local communities, women, the private sector including microenterprises and other SMEs, and smallholders. Partnerships and cooperation shall also support or initiate inclusive and participatory dialogue towards national legal and governance reform processes to enhance forest governance and address domestic factors contributing to deforestation.

3. Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislation of producer countries, multi-stakeholder processes, fiscal or commercial incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, and the transparency of supply chains, strengthen the rights of forest-dependent communities, including smallholders, local communities, and indigenous peoples, whose rights are set out in the UN Declaration on the Rights of Indigenous Peoples, and ensure public access to forest management documents and other relevant information.

4. Within their respective spheres of competence, the Commission, on behalf of the Union, or Member States, or both, shall engage in international bilateral and multilateral discussion on policies and actions to halt deforestation and forest degradation, including in multilateral fora such as CBD, FAO, UN Convention to Combat Desertification, UN Environment Assembly, UN Forum on Forests, UNFCCC, WTO, G7 and G20. Such engagement shall include the promotion of the transition to sustainable agricultural production and sustainable forest management as well as the development of transparent and sustainable supply chains as well as continued efforts towards identifying and agreeing robust standards and definitions that ensure a high level of protection of forests and other natural ecosystems and related human rights.

5. Within their respective spheres of competence, the Commission, on behalf of the Union, and interested Member States shall engage in dialogue and cooperation with other major consuming countries, to promote the adoption of ambitious requirements to minimise such countries' contribution to deforestation and forest degradation, and a global level playing field.

CHAPTER 6

SUBSTANTIATED CONCERNS

Article 31

Natural or legal persons' substantiated concerns

1. Natural or legal persons may submit substantiated concerns to competent authorities when they consider that one or more operators or traders are not complying with this Regulation.

2. Competent authorities shall, without undue delay, diligently and impartially assess the substantiated concerns, including whether the claims are well-founded, and take the necessary steps, including carrying out checks and conducting hearings of operators and traders, with a view to detecting potential non-compliance with this Regulation and, where appropriate, taking interim measures under Article 23 to prevent the placing or making available on the market and export of relevant products under investigation.

3. Within 30 days of receiving a substantiated concern, if not otherwise stated in national law, the competent authority shall inform the persons referred to in paragraph 1, who submitted the substantiated concerns, of the follow-up given to the submission and shall provide the reasons for it.

4. Without prejudice to the obligations pursuant to Directive (EU) 2019/1937 of the European Parliament and of the Council ([26]), Member States shall provide for measures to protect the identity of the natural or legal persons who submit substantiated concerns or who conduct investigations with the aim of verifying compliance by operators or traders with this Regulation.

Article 32

Access to justice

1. Any natural or legal person having a sufficient interest, as determined in accordance with the existing national systems of legal remedies, including where such persons meet the criteria, if any, laid down in the national law, including persons who have submitted a substantiated concern in accordance with Article 31, shall have access to administrative or judicial procedures to review the legality of the decisions, acts or failure to act of the competent authorities under this Regulation.

2. This Regulation shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

CHAPTER 7

INFORMATION SYSTEM

Article 33

Information system

1. By 30 December 2024, the Commission shall establish and subsequently shall maintain an information system which shall contain the due diligence statements made available pursuant to Article 4(2).

2. Without prejudice to the fulfilment of obligations established in Chapters 2 and 3, the information system shall provide at least the following functionalities:

(a) registration of operators and traders and their authorised representatives in the Union; for operators placing relevant products under the customs procedure 'release for free circulation' or 'export', the Economic Operators Registration and Identification (EORI) number established pursuant to Article 9 of Regulation (EU) No 952/2013, shall be included in their registration profile;

(b) registration of due diligence statements including the communication to the operator or trader concerned of a reference number for each due diligence statement submitted through the information system;

(c) making available the reference number of existing due diligence statements pursuant to Article 4(8) and (9);

(d) where possible, the conversion of data from relevant systems to identify the geolocation;

(e) registration of the outcome of checks on due diligence statements;

(f) interconnection with customs through the European Union Single Window Environment for Customs, in accordance with Article 28, including to allow the notifications and requests referred to in Article 26(6) to (9);

(g) provision of relevant information to support the risk-profiling for the plan of checks referred to in Article 16(5), including results of checks, the risk-profiling of operators, traders and relevant commodities and relevant products for the purpose of identifying, based on electronic data-processing techniques, operators and traders to be checked as referred to in Article 16(5), and relevant products to be checked by competent authorities;

(h) facilitation of administrative assistance and cooperation between competent authorities, and between competent authorities and the Commission, to exchange information and data;

([26]) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

(i) support communication between competent authorities and operators and traders for the purposes of implementation of this Regulation, including, where appropriate, through the use of digital supply management tools.

3. The Commission shall, by means of implementing acts, establish rules for the functioning of the information system under this Article, including rules for the protection of personal data and exchange of data with other IT systems. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).

4. The Commission shall provide access to that information system to customs authorities, competent authorities, operators and traders and, if applicable, their authorised representatives, in accordance with their respective obligations under this Regulation.

5. In line with the Union's Open Data Policy, the Commission shall provide access to the wider public to the complete anonymised datasets of the information system in an open format that can be machine-readable and that ensures interoperability, re-use and accessibility.

CHAPTER 8

REVIEW

Article 34

Review

1. No later than 30 June 2024, the Commission shall present an impact assessment accompanied, if appropriate, by a legislative proposal to extend the scope of this Regulation to include other wooded land. The assessment shall include, *inter alia*, the cut-off date referred to in Article 2, with a view to minimising the Union's contribution to natural ecosystems' conversion and degradation. The review shall include an assessment of the impact of the relevant commodities on deforestation and forest degradation.

2. No later than 30 June 2025, the Commission shall present an impact assessment accompanied, if appropriate, by a legislative proposal to extend the scope of this Regulation to other natural ecosystems, including other land with high carbon stocks and with a high biodiversity value such as grasslands, peatlands and wetlands. The assessment shall cover a potential ecosystem expansion, including on the basis of the cut-off date referred to in Article 2, with a view to minimising the Union's contribution to natural ecosystems' conversion and degradation. The review shall also address the need and the feasibility of extending the scope of this Regulation to further commodities, including maize. The review shall include an assessment of the impact of the relevant commodities on deforestation and forest degradation, as indicated by scientific evidence, and take into account changes in consumption.

3. The impact assessment referred to in paragraph 2 shall also include an assessment of whether it is appropriate to amend or extend the list of relevant products in Annex I in order to ensure that the most relevant products that contain, have been fed with, or have been made using, relevant commodities are included in that list. That assessment shall pay specific attention to the potential inclusion of biofuels (HS code 382600) in Annex I.

4. The impact assessment referred to in paragraph 2 shall also evaluate the role of financial institutions in preventing financial flows that contribute directly or indirectly to deforestation and forest degradation and assess the need to provide for any specific obligations for financial institutions in Union legal acts in that regard, taking into account any relevant existing horizontal and sectoral legislation.

5. The Commission may adopt delegated acts in accordance with Article 35 to amend Annex I with regard to the relevant CN codes of relevant products that contain, have been fed with or have been made using relevant commodities.

6. By 30 June 2028 and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The first of the reports shall include in particular, based on specific studies, an evaluation of:

(a) the need for and feasibility of additional trade facilitation tools – and in particular for LDCs highly impacted by this Regulation and countries or parts thereof classified as standard or high risk – to support the achievement of the objectives of this Regulation;

(b) the impact of this Regulation on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support for the transition towards sustainable supply chains and for smallholders to meet the requirements of this Regulation;

(c) the further extension of the definition of forest degradation, on the basis of an in-depth analysis, and taking into account progress made in international discussions on the matter;

(d) the threshold for mandatory use of polygons as referred to in Article 2, point (28), taking into account its impact on tackling deforestation and forest degradation;

(e) changes in the trade patterns of the relevant commodities and relevant products included in the scope of this Regulation when those changes could be an indication of a practice of circumvention;

(f) an assessment of whether the checks carried out have been effective to ensure that relevant commodities and relevant products made available on the market or exported comply with Article 3.

CHAPTER 9

FINAL PROVISIONS

Article 35

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 34(5) shall be conferred on the Commission for a period of five years from 29 June 2023. The Commission shall draw up a report in respect of the delegation of power at the latest six months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 34(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 34(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 36

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([27]).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 11 thereof.

([27]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Article 37

Repeal

1. Regulation (EU) No 995/2010 is repealed with effect from 30 December 2024.

2. However, Regulation (EU) No 995/2010 shall continue to apply until 31 December 2027 to timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before 29 June 2023 and placed on the market from 30 December 2024.

3. By way of derogation from Article 1(2) of this Regulation, the timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before 29 June 2023 and placed on the market from 31 December 2027 shall comply with Article 3 of this Regulation.

Article 38

Entry into force and date of application

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

2. Subject to paragraph 3 of this Article, Articles 3 to 13, Articles 16 to 24 and Articles 26, 31 and 32 shall apply from 30 December 2024.

3. Except as regards the products covered in the Annex to Regulation (EU) No 995/2010, for operators that by 31 December 2020 were established as micro-undertakings or small undertakings pursuant to Article 3(1) or (2) of Directive 2013/34/EU, respectively, the Articles referred to in paragraph 2 of this Article shall apply from 30 June 2025.

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

Done at Brussels, 31 May 2023.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	P. KULLGREN

ANNEX I

Relevant commodities and relevant products as referred to in Article 1

The following table lists goods as classified in the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87 that are referred to in Article 1 of this Regulation.

Except for by-products of a manufacturing process, where that process involved material that was not waste as defined in Article 3, point (1), of Directive 2008/98/EC, this Regulation does not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste as defined in Article 3, point (1), of that Directive.

Relevant commodity	Relevant products
Cattle	0102 21, 0102 29 Live cattle ex 0201 Meat of cattle, fresh or chilled ex 0202 Meat of cattle, frozen ex 0206 10 Edible offal of cattle, fresh or chilled ex 0206 22 Edible cattle livers, frozen ex 0206 29 Edible cattle offal (excluding tongues and livers), frozen ex 1602 50 Other prepared or preserved meat, meat offal, blood, of cattle ex 4101 Raw hides and skins of cattle (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split ex 4104 Tanned or crust hides and skins of cattle, without hair on, whether or not split, but not further prepared ex 4107 Leather of cattle, further prepared after tanning or crusting, including parchment-dressed leather, without hair on, whether or not split, other than leather of heading 4114
Cocoa	1801 Cocoa beans, whole or broken, raw or roasted 1802 Cocoa shells, husks, skins and other cocoa waste 1803 Cocoa paste, whether or not defatted 1804 Cocoa butter, fat and oil 1805 Cocoa powder, not containing added sugar or other sweetening matter 1806 Chocolate and other food preparations containing cocoa
Coffee	0901 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion

Relevant commodity	Relevant products
Oil palm	1207 10 Palm nuts and kernels 1511 Palm oil and its fractions, whether or not refined, but not chemically modified 1513 21 Crude palm kernel and babassu oil and fractions thereof, whether or not refined, but not chemically modified 1513 29 Palm kernel and babassu oil and their fractions, whether or not refined, but not chemically modified (excluding crude oil) 2306 60 Oilcake and other solid residues of palm nuts or kernels, whether or not ground or in the form of pellets, resulting from the extraction of palm nut or kernel fats or oils ex 2905 45 Glycerol, with a purity of 95 % or more (calculated on the weight of the dry product) 2915 70 Palmitic acid, stearic acid, their salts and esters 2915 90 Saturated acyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives (excluding formic acid, acetic acid, mono-, di- or trichloroacetic acids, propionic acid, butanoic acids, pentanoic acids, palmitic acid, stearic acid, their salts and esters, and acetic anhydride) 3823 11 Stearic acid, industrial 3823 12 Oleic acid, industrial 3823 19 Industrial monocarboxylic fatty acids; acid oils from refining (excluding stearic acid, oleic acid and tall oil fatty acids) 3823 70 Industrial fatty alcohols
Rubber	4001 Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strip ex 4005 Compounded rubber, unvulcanised, in primary forms or in plates, sheets or strip ex 4006 Unvulcanised rubber in other forms (e.g. rods, tubes and profile shapes) and articles (e.g. discs and rings) ex 4007 Vulcanised rubber thread and cord ex 4008 Plates, sheets, strips, rods and profile shapes, of vulcanised rubber other than hard rubber ex 4010 Conveyer or transmission belts or belting, of vulcanised rubber ex 4011 New pneumatic tyres, of rubber ex 4012 Retreaded or used pneumatic tyres of rubber; solid or cushion tyres, tyre treads and tyre flaps, of rubber

Relevant commodity	Relevant products
	ex 4013 Inner tubes, of rubber ex 4015 Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanised rubber other than hard rubber ex 4016 Other articles of vulcanised rubber other than hard rubber, not elsewhere specified in chapter 40 ex 4017 Hard rubber (e.g. ebonite) in all forms including waste and scrap; articles of hard rubber
Soya	1201 Soya beans, whether or not broken 1208 10 Soya bean flour and meal 1507 Soya-bean oil and its fractions, whether or not refined, but not chemically modified 2304 Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil
Wood	4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms 4402 Wood charcoal (including shell or nut charcoal), whether or not agglomerated 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared 4404 Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chipwood and the like 4405 Wood wool; wood flour 4406 Railway or tramway sleepers (cross-ties) of wood 4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm 4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed 4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances

Relevant commodity	Relevant products
	4412 Plywood, veneered panels and similar laminated wood 4413 Densified wood, in blocks, plates, strips or profile shapes 4414 Wooden frames for paintings, photographs, mirrors or similar objects 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (not including packing material used exclusively as packing material to support, protect or carry another product placed on the market) 4416 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves 4417 Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes 4419 Tableware and kitchenware, of wood 4420 Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94 4421 Other articles of wood Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products ex 49 Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans, of paper ex 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, of wood 9403 30, 9403 40, 9403 50, 9403 60 and 9403 91 Wooden furniture, and parts thereof 9406 10 Prefabricated buildings of wood

ANNEX II

Due diligence statement

Information to be contained in the due diligence statement in accordance with Article 4(2):

1. Operator's name, address and, in the event of relevant commodities and relevant products entering or leaving the market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013.

2. Harmonised System code, free-text description, including the trade name as well as, where applicable, the full scientific name, and quantity of the relevant product that the operator intends to place on the market or export. For relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code or, in all other cases, expressed in net mass specifying a percentage estimate or deviation or, where applicable, volume or number of items. A supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement.

3. Country of production and the geolocation of all plots of land where the relevant commodities were produced. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all plots of land shall be included in accordance with Article 9(1), point (d).

4. For operators referring to an existing due diligence statement pursuant to Article 4(8) and (9), the reference number of such due diligence statement.

5. The text: 'By submitting this due diligence statement the operator confirms that due diligence in accordance with Regulation (EU) 2023/1115 was carried out and that no or only a negligible risk was found that the relevant products do not comply with Article 3, point (a) or (b), of that Regulation.'.

6. Signature in the following format:

   'Signed for and on behalf of:

   Date:

   Name and function: Signature:'.

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