Markets in Crypto-Assets (MiCA) Regulation

Analysis of the key dispositions and requirements contained in the final text of the Regulation on Markets in Crypto-Assets (MiCAR) prepared for the Members of Blockchain for Europe.

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Executive Summary

The recently finalised Markets-in-Crypto-Assets (MiCA) Regulation establishes **fully harmonised requirements** for offerors that seek to offer their crypto-assets across the EU and crypto-asset service providers wishing to apply for an authorisation to provide their services in the Single Market. The Regulation will **replace existing national frameworks** applicable to **crypto-assets** not covered by existing EU financial services legislation and also establish specific rules for '**stablecoins'** (called asset-referenced token) including when these are considered e-money (defined as e-money tokens). A separate proposal has also established a **pilot regime for DLT-based market infrastructures** (thus covering crypto-assets considered as financial instruments under the scope of existing EU rules).

The lengthy proposal contains **126 articles** which address the **scope and definitions** of the Regulation, the offering and marketing of **crypto-assets**, the issuance of **asset-referenced tokens and e- money tokens**, **authorisation** and operating conditions for **crypto-asset service providers**, prevention of **market abuse** involving crypto-assets, and the role of **competent Authorities, ESMA and EBA**. The regulation will impose a more **lenient regime** on smaller crypto-assets issuers, while (significant) "asset-backed" ones will be subject to a **stricter** regime.

Regarding the **timeline**, MiCA enters into force on the twentieth day following its publication in the Official Journal (OJ) of the EU, and it will **apply from 18 months after the date of entry into force. Title III** (on asset-referenced tokens) and **Title IV** (on e-money tokens) **will apply from 12 months** after MiCA's entry into force.

Concretely, due to the expected delay in the translation of the text into the EU official languages, the **Regulation will only be published in the OJ by Q1 2023.** This means that **rules on stablecoins** will apply as of **Q1 2024,** while **all other rules** will apply only as of **Q3 2024.**

ASSETS TAXONOMY

This Regulation introduces a taxonomy distinguishing between **"crypto-asset"**, **"asset-referenced tokens" (ARTs)** (backed by a basket of currencies) and **"e-money tokens" (EMTs)** (denominated in a single fiat currency). A **"crypto-asset"** is defined as a "digital representation of value or rights, which may be transferred and stored electronically, using distributed ledger or similar technology". A **"utility token"** is defined as a type of crypto-assets, "which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token".

Additionally, this Regulation introduces a distinction based on the reach of "asset-referenced tokens" and "e-money tokens" by making the distinction between *regular* and "significant" tokens. **Significant asset-referenced tokens (SARTs) and significant e-money tokens (SEMTs) are subject to stricter requirements.**

A token will be considered **significant** if it meets **three of the following criteria**. Note that the **thresholds indicated are the minimal requirements** as the European Commission will be empowered to further set higher ones:

- **Size of the customer base** (at least 2 million);
- **Value of the asset-referenced issued** or market cap (at least €1bn);
- **Number and value of transaction** (at least 500 thousand transactions per day or €100 million worth of transaction per day);
- **Size of reserve of assets** (at least €1 bn);
- **Number of Member states where the issuer operates** (at least 7 Member States);
- **Interconnectedness with the financial system**; no additional explanations are provided for this criterion that need to be clarified through a delegated act of the Commission.

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SPECIFIC REQUIREMENTS FOR OFFERORS OF CRYPTO-ASSETS

- Drafting **a detailed white paper** (smaller issuers and utility tokens are exempt) aimed at informing and protecting investors.
- Including in the white paper **information** about the **project**, the **offeror**, the **risks**, but also about the **environmental impact** of the DLT technology used.
- **Notifying** the white paper **to the competent authority** at least **20 days** before publishing it.
- **Updating** the white paper in case of **significant changes**.
- Acting **honestly, fairly and professionally.**
- **Communicating** with the holders of crypto-assets in a fair, clear and not misleading manner.
- Preventing, identifying, managing and disclosing any **conflicts of interest** that may arise.
- Having effective **administrative arrangements** and maintaining all **systems and security access protocols** to appropriate EU standards.
- Offering **a right of withdrawal to any retail holder** who buys their crypto-assets, giving them a period of **14 calendar days to withdraw** their agreement to purchase those assets **without incurring in fees**.
- Acting in the **best interests of the crypto-assets holders.**
- Establishing effective arrangements to monitor and **safeguard funds raised during an offering**.
- Where an offering of crypto-assets is **cancelled** for any reason, the offeror shall ensure that any funds collected from the purchasers are **duly returned** to them no later than 25 days after the date of cancellation.
- Any **marketing communications** of crypto-assets shall be clearly identifiable, containing fair clear and non-misleading information and notified to the competent authority.

SPECIFIC REQUIREMENTS FOR SIGNIFICANT ASSET-REFERENCED TOKENS

- Publication of a **white paper** containing all relevant information.
- **Incorporation** in the form of a legal entity established in the EU.
- **Own funds requirement:** a minimum of 350.000 EUR or 3% of the average amount of the reserve assets (vs 2% for regular ARTs). Besides, the competent authority may require additional funds (20% higher than the amount abovementioned) based on an assessment of the financial risks.
- **Reserve management:** The reserve should be segregated from the issuer's own assets and held by an authorised CASP for crypto-assets, or within a credit institution or investment firms for other assets. A regulatory technical standard by EBA, in collaboration with ESMA and ECB, will define which assets are considered highly liquid to serve in such reserve. Additionally, if more than one asset-referenced token is issued, the issuer needs one separate reserve for each.
- **Interoperability:** significant asset-referenced tokens issuers should ensure that tokens can be held in custody by other CASPs authorised for this service.
- **Governance arrangements:** transparent and clear procedures should be in place for the most significant aspect of the business (stabilisation mechanism, custody of the reserve…)
- **Orderly wind-down:** issuers shall have in place an appropriate planning to support an orderly wind-down of their activities.

SPECIFIC REQUIREMENTS FOR SIGNIFICANT E-MONEY TOKENS

- **Authorisation** as e-money institution under the E-Money Directive.
- **Publication of a white paper** containing all relevant information.
- E-money tokens should be **issued** and **redeemed** at par value.
- E-money token issuers are prohibited from granting **interests** to holders of e-money tokens.
- **Investment of the funds** received in exchange of EMT issuers. Those funds should be invested in secure, low-risk assets denominated in the same currency as the one referenced by the e-money token and deposited in a separate account in a credit institution: at least 30% of such funds shall always be deposited in a separate account.
- Issuers of **significant EMTs** shall also comply with the following requirements applicable to SARTs:

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- Own funds requirement
- Reserve management
- Interoperability
- Governance arrangements
- Orderly wind-down

SPECIFIC REQUIREMENTS FOR CRYPTO-ASSETS SERVICE PROVIDERS

All providers who offer **crypto-asset services (CASPs) such as wallets and crypto exchanges** are required to comply with requirements on:

- Obligation to **act honestly**, fairly and professional in the **best interest of clients** and information to client (Art. 59),
- **Prudential** requirements (Art. 60),
- **Organisational** requirements (Art. 61),
- **Information** to competent authorities (Art. 62),
- **Safekeeping** of clients' crypto-assets and **funds** (Art. 63),
- **Complaint** handling procedure (Art. 64),
- Prevention, identification, management and disclosure of **conflicts of interest** (Art. 65),
- **Outsourcing** (Art. 66),
- **Orderly wind-down** of providers or CASPs carrying out one of the services referred under specific types of CASPs (Art. 67-71).

In addition, each type of CASP should comply with **specific requirements as a pre-condition for authorisation**. For **custody and administration of crypto-assets** on behalf of third parties of crypto-assets or access to crypto-assets they are required to:

- Enter into an **agreement with their clients** defining their duties and their responsibilities.
- Keep a **register of positions** and communicate those positions to clients.
- Establish a **custody policy**, facilitating the exercise of rights attached to crypto-assets.
- **Segregate holdings** on behalf of clients.
- Be **liable for the loss of clients' crypto-assets** due to malfunctions or cyber-attacks.

For the **operation of a trading platform** for crypto-assets, CASPs are required to:

- Develop **operating rules** and ensure crypto-assets comply with them,
- Establish effective systems, **procedures and arrangements** to ensure its trading system is resilient; has sufficient capacity; is able to reject orders; is fully tested; and is subject to effective business continuity arrangements; is able to prevent or detect market abuse; is sufficiently robust and that any cases of (attempted) market abuse are reported.
- Make **public the current bid and ask prices** and the depth of trading interests at those prices, the price, volume and time of the transactions executed.
- Initiate the **final settlement of a crypto-asset transaction on the DLT** within 24 hours of the transaction of the transaction being executed on the trading platform.

For the **exchange of crypto-assets** against funds or exchange of crypto-assets against other crypto-assets requirements include:

- Establishing a **non-discriminatory commercial policy.**
- **Publishing a firm price** of the crypto-assets or a method for determining the price.
- **Executing the clients' orders** at the prices displayed at the time of their receipt.
- **Publishing the details of the orders** and the transactions concluded, including transaction volumes and prices.

In case of **execution of orders for crypto-assets on behalf of clients** the CASPs are obliged to:

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- Take all sufficient steps to obtain, when **executing orders**, the **best possible result** for their clients,
- Establish and implement effective **execution arrangements**,
- Provide appropriate and **clean information** to their clients on their **order execution policy.**

For the **placement of crypto-assets,** it is required to:

- **Communicate the type of placement**; amount of transaction **fees**; **timing**; information about the **targeted purchasers,**
- Obtain **agreement of the issuer** before carrying out the placement,
- Place appropriate procedure in order to prevent, monitor, manage and potentially disclose any **conflicts of interest.**

For the **reception and transmission of orders** related to crypto-assets, requirements relate to:

- Establishing and implementing procedures on **proper transaction of orders**,
- **Receiving any remuneration**, or other benefits for routing clients' orders,
- **Misusing** information.

For **advice on crypto-assets** and **portfolio management** of crypto-assets it is required to:

- **Assess suitability** of crypto-assets for clients considering, among others, their knowledge and risk tolerance,
- Providing appropriate analysis of **sufficiently diversified** crypto-assets,
- Comply with **additional requirements** dependent on whether the advice is provided on independent or non-independent basis.

For **CASPs that were licensed under national frameworks** to provide services prior to MiCA's entry into application:

- They may **continue to do so until 18 months** after the date of application of MiCA,
- They may **benefit from a simplified procedure** for applications for an authorisation until 18 months after MiCA's entry into application.

IMPLICATIONS FOR BC4EU

Under the definitions agreed, the **crypto-assets (including utility tokens)** issued by BC4EU members will be covered by the scope of the Regulation as they represent value/rights, which may be transferred and stored electronically, using DLT/Blockchain. As such, BC4EU members issuing such assets would be obliged to **be a legal person**, publish and notify to the competent authority a detailed **white paper**, have **safeguards** in place to prevent **conflicts of interests** and **protect funds** raised in ICOs and ensure **marketing communications** are sufficiently clear. Those crypto-assets will be subject to supervision by **National Competent Authorities (NCA)**.

Some BC4EU members may be the target of the additional rules applicable to **ARTs and EMTs** when they are backed by a basket of currencies or a single currency. **In the case of the former,** the issuers would be obliged to seek authorisation from an NCA, publish a white paper approved by the NCA and **be established in the EU**. **In the case of EMTs,** BC4EU members would need to **acquire an e-money license** in an EU Member State, issue a white paper for EMTs and marketing communications, offer issuance and **redeemability of the tokens at par value** and make sure that the funds **are invested in secure assets,** denominated in the same currency, and that at least 30% of them is always deposited in a separate account in a credit institution.

For those **BC4EU members issuing "significant" ARTs and EMTs**, would be subject to the supervision of the **European Banking Authority** and would need to comply with **additional capital, interoperability, governance, liquidity** and **redeemability requirements**.

With regards to **the definition of an ART as significant,** the **interconnectedness with financial institutions** criteria remains the most unclear and **open to further clarification** from the Commission through a **delegated**

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act, in accordance with Article 121. Some issuers could potentially at first only satisfy a limited number of the criteria, therefore being out of the scope until it does fulfil them. Therefore, **the vagueness of the interconnectedness criteria** could potentially be used by the Commission as a trigger to classify certain issuers as a significant token from the start.

In addition, BC4EU members would need to comply with the **general requirements for CASPs,** including prudential safeguards, organisational requirements, rules on the safekeeping of clients' funds, rules on the information provided to clients, the obligation to establish a complaint handling procedure, and rules on conflict of interests. Certain **specific rules are also in place for custodies, trade platforms and exchanges.**

Finally, particularly relevant to highlight is also the aspect of the **liability over the information included in the whitepaper.** Article 14 clarifies that **holders of crypto-assets may claim damages from the entity that was responsible for issuing the white paper**, in case there was an infringement of the requirements established by Article 5. A **BC4EU Member** running an exchange / trade platform which wants to **make available for trading a crypto-asset with no identifiable issuer**, such as those issued by **decentralised entities**, will thus be **required to comply with the white paper requirement**, as clarified by Article 4a. This means effectively that **exchanges could be held liable for any wrong information they include in the white paper of crypto assets they want to offer for trading on their platform**. It will be key to clarify in the coming months how this process should look like for entities that are required to draft a white paper for a crypto asset that they have not issued.

Overall, the Regulation remains **positive for BC4EU** as it will result in legal certainty and harmonisation across the EU. Furthermore, the act adopts a **technology-neutral and risk-based approach** as it treats certain types of crypto-assets and issuers differently based on the risk they pose. However, sticking points remain as many of the technicalities will be clarified through separate delegated acts in so-called Level 2 legislation.

ASPECTS THAT WILL REQUIRE FURTHER CLARIFICATION

At the end of the legislative process, there are only **three key aspects** of the Regulation that **still need further clarification** through delegated acts and other "Level 2" measures, such as guidelines and Regulatory Technical Standards.

NFTs: The Regulation introduced **unclear rules** for BC4EU members who provide services related to **crypto-assets that are unique and not fungible**, often referred to as Non-fungible Tokens (NFTs). While Article 2(2a), and the related recital 6b, **clearly says that NFTs should remain outside of the scope of Regulation**, a new Recital 6c suggests that if **NFTs are issued in a "large series or collection"** they may **not be considered non-fungible**, meaning they could be subject to MiCA requirements like any other fungible crypto-assets. Further **clarification is expected to be provided by the EBA** under the secondary legislation on what this ***"indicator of fungibility"*** means and how this concept should be applied by NCAs when potentially reclassifying NFT collections as fungible crypto-assets.

USD denominated stablecoins: A key issue in the final phases of negotiations was related to the **limits imposed on Asset-Referenced Tokens**, and e-Money tokens denominated in a foreign currency, with regards to **their use as "means of exchange".** This approach was pushed by EU Member States in the **Council** proposal as they wanted to **preserve the monetary sovereignty of the EU and the role of the Euro** for payments in the EU, as well as the potential future role of the Digital Euro and **Euro-stablecoins**. The initial wording of the provision however seemed to suggest that also the **USD-stablecoins widely used for trading** in the cryptocurrencies market could be captured by these thresholds. The **final clarification** provided in the last phases of the negotiations at least ensures that **USD-stablecoins used for spot trading would not be captured by these limits.** What would instead be captured, and capped, are the **USD-stablecoins used for settling transactions** between other crypto-assets. While this practice is not as common as the use of USD-stablecoins for spot trading, **it may still cause issues on smaller providers and exchanges that have lower liquidity** and thus use this system for settling transactions between other crypto-assets. Level 2 legislation will again be useful to **clarify exactly which transactions would be counted** for these limits, and **how to distinguish** between settlement transactions and all others.

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Clarification on undertakings/Decentralised Finance: The Council deemed it was necessary to **include "undertakings" in the scope** of MiCA, which would include entities not considered as having legal personalities by national law. This may have affected the requirement for an entity to be legally established in the EU, in order to legally issue a token – potentially causing DeFi entities to be captured in scope. However, as clarified by policymakers and outlined in Recital 12a, **DeFi arrangements and other decentralised entities remain out of scope**, as the notion of "undertaking" was introduced to put in scope certain specific economic arrangements recognised as such e.g. in the German and Austrian legal systems, which however **does not refer to DeFi protocols**.

Title I: Subject Matter, Scope and Definitions

The Regulation lays down **requirements for entities that offer crypto assets** and place them on the market or that **provide services** related to crypto-assets in the EU. The text introduces **transparency and disclosure requirements** for the issuance of crypto-assets, outline the rules for **authorisation, supervision, organisation** and **governance** of crypto-assets service providers, introduces rules for **protecting consumers** and measures to **prevent insider dealing** and **market manipulation** (Art. 1).

The Regulation applies to **natural and legal persons** and other **undertakings** engaged in the **issuance of crypto-assets and services related to crypto-assets in the EU**. However, it does not apply to crypto-assets that qualify as **financial instruments, deposits**, **structured deposits, funds** that are not e-Money Tokens or **securitisation positions**, certain classes of insurance products, pension products and schemes, social-security schemes. The ESMA is tasked with defining the criteria to qualify crypto-assets as financial instruments within 18 months (Art. 2).

The Regulation also **does not apply** to crypto-assets that are **unique and not fungible** with other crypto-assets, so-called **Non-Fungible Tokens (NFTs).** However, the **definition** of what will eventually count as NFTs **still needs to be clarified.** Recital 6c introduced the idea that the **issuance of crypto-assets as NFTs in a large series** or collection should be considered as an **indicator of their fungibility**, meaning that a large collection of NFTs might be captured in the scope of the Regulation (Art. 2a).

Moreover, the **rules do not apply** to the **European Central Bank** and **national central banks** of the Member States, to **liquidators** or administrators acting in the course of an **insolvency procedure**, persons who provide crypto-asset services **exclusively for their parent companies/subsidiaries**, the **European Investment Bank**, the **Financial Stability Board**, the **European Stability Mechanism** and to **public international organisations** (Art. 2(2)).

The Regulation introduces **definitions** for **distributed-ledger** and **distributed-ledger technologies** (DLT), **crypto-assets**, **asset-referenced tokens, e-money** tokens and **utility tokens**. Crypto-assets are defined as digital representation of a value or a right, which may be transferred and stored electronically, using distributed ledger technology or similar technology. Utility tokens are defined as "a type of crypto-asset which is **only** intended to provide digital access to a good or service a service supplied by the issuer of that token".

Asset-referenced tokens (ART) are distinct from E-Money Tokens (EMTs) in the way their value is stabilised. For **ARTs**, this is done by **referencing the value to any other value or right**, or a combination thereof, including one or more official currencies. **EMTs** are instead those crypto-assets that purports to **maintain a stable value by referencing to the value of one official currency.** Furthermore, the Regulation makes a distinction between ARTs and "**significant**" asset-referenced tokens (Art. 15), as well as between EMTs and "significant" e-money tokens (Art. 50), introducing stricter requirements for the issuers of these significant tokens.

Other interesting definitions introduced by the Regulation are those for **crypto-asset service providers (CASPs)** and the **activities that would be considered as crypto-asset services**, such as the **custody** of crypto-assets on behalf of third parties, operating a **trading platform**, the **exchange of assets for funds** or for other crypto-assets, the **placing** of crypto-assets, **providing advice** and **portfolio management** on crypto-assets (Art. 3(1)).

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The Commission may adopt delegated acts to supplement this Regulation by further specifying technical elements of the definitions, to adjust them to market and technological developments.

Title II: Crypto-assets other than asset-referenced tokens or e-money tokens

Title II sets out the obligations crypto-asset offerors need to comply with when offering and marketing crypto-assets, or when seeking admission of their tokens to a trading platform. The Regulation clarifies that no one shall offer crypto-assets unless is a legal person and has complied with the relevant provisions. It also clarifies that the requirements in Title II do not apply in situations where the crypto-assets are offered for free, or if these are automatically created as a reward for the maintenance of the DLT or the validation of transactions, nor it applies to utility tokens for existing services, or when the tokens are only usable within a limited network of merchants (Art. 4). There is also no need for an authorisation for the custody, administration and transfer of crypto-assets in these specific situations, unless there was already another offer that would benefit from the exemption, or if the assets are admitted to a trading platform (Art. 4b).
The requirements for offerors of crypto assets include drafting a white paper, which should contain relevant information concerning the crypto-asset project, the underlying technology used, the rights and obligations attached to the tokens, information about the offeror of the crypto-asset and on the planned offering or admission to trading on a trading platform, as well as risks warnings that the assets may lose value and are not covered by investor compensation schemes or the deposit guarantee scheme. Finally, as part of their compromise agreement, EU institutions added a requirement for the white paper to include information on adverse environmental and climate impact related of the consensus mechanism used (Art. 5).

The details around these sustainability indicators would be defined through regulatory technical standards that will be developed by the ESMA, in cooperation with the EBA, within 12 months from the entry into force of the Regulation. These standards would 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 emission (Art. 5(11)).

Offerors are then also required to ensure their marketing communications are clearly identifiable as such, contain fair, clear and not misleading information, which is consistent with those included in the white paper, and include the website and contact information of the entity that drafted the white paper. If a white paper is required, no marketing communication can be disseminated before the white paper has been published (Art. 6).

Finally, offerors are required to notify the white paper to the competent authority 20 days before they publish it on their website (Art. 7). The publication of the white paper on the website should always happen before the crypto assets are offered to the public or admitted to trading on a trading platform.

In case there has been a significant new factor, material mistake or material inaccuracy with regards the content of the white paper, offerors are required to update the content of the white paper and notify competent authorities at least seven days before the amended white paper is published (Art. 11). Importantly, following notification of the white paper, competent authorities can decide to suspend or prohibit the offering, require additional information or make public the non-compliance of the offeror, in case they believe the Regulation's requirements have not been met (Art. 82(1)).

The other provisions in the title outline other requirements for offerors, such as the obligation to offer a right of withdrawal to any retail holder who buys their crypto assets (Art 12). Other requirements are to communicate in a fair and not misleading manner with crypto-assets holders, to act honestly, fairly and professionally, identify, prevent, manage and disclose any conflicts of interests and maintain all of its systems and security access protocols up to the appropriate EU standards (to be determined by ESMA) (Art. 13). Other relevant provision is related to the liability for the information given in a crypto-asset white paper, which

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clarifies how a **holder of crypto-assets may claim damages from the entity that was responsible for issuing the white paper**, in case there was an infringement of the requirement (Art. 14).

Finally, a new important article added by the Council relates to the **admission of crypto-assets to trading on a trading platform** (Art. 4a). Compared to the original proposal, the final text differentiates between the "offering of crypto-assets" and their "admission to trading on a trading platform". The new article reiterates that no one should seek admission of a crypto asset to trading on a platform unless is a legal person and has drafted, notified, and published the relevant white paper and any other marketing communication. The interesting aspect is that the **operators of trading platforms** would then be **requested to comply with these requirements when crypto assets are admitted** to trading on their platform **at their own initiative**. This would be relevant especially in cases where **"crypto-assets have no identifiable issuers",** as outlined in the key Recital 12a which relates to Decentralised entities and DeFi. In those cases, the crypto-assets **do not fall within Title II, III or IV of this Regulation,** but the **CASPs providing services** to these crypto-assets (so including admitting these assets to trading on a trading platform) would be **fully covered** by the rules. This means that to offer on their trading platform crypto assets issued by a decentralised entity, where no identifiable issuer exists, the operator of the trading platform will be required to comply with the Regulation's requirements and prepare a white paper for the crypto asset in question.

Title III: Asset-referenced tokens

<u>Chapter 1: Authorisation to offer asset-referenced tokens to the public and to seek their admission to trading on a trading platform for crypto-assets</u>

This chapter lays down the **requirements for issuers of asset-referenced tokens (ART), that are defined in recital 9 as tokens that aim at "maintaining a stable value by referencing to any other value or right" including any other crypto-asset than e-money token and utility tokens.** Article 15 specifies that ARTs cannot be offered in the EU or admitted to trading if the issuer is not **authorised** in the EU, and it does not publish a **white paper for every ART issued**. Furthermore, it includes a requirement to be **established** as a legal entity, credit institution (art. 15a) or other undertaking in the EU. Small-scale ARTs and ARTs which are marketed to qualified investors are exempt but should produce a white paper upon request of the competent authority in their Member State. The authorisation issued by the competent authority is valid in all the European Union. The chapter also covers the requirements of the application for the authorisation (art. 16) and the content of the white paper (art. 17), and the possible modifications of such white paper (art. 21).

The white paper should contain a description of the risks for holders of crypto-assets, but such obligation finds a limit in recital 14, which specifies that the white paper is not expected to present the description of risks which are unforeseeable and very unlikely to materialise. Furthermore, articles **19a and 19b** set respectively rules on monitoring and restrictions: art. 19a imposes an **obligation of quarterly report** for ARTs with a value higher than EUR 100 million; art. 19b sets **limitation for ARTs that are used as means of exchange** and that exceed a daily value of 1.000.000 transactions and EUR 200 million, imposing that the issuer stops issuing the ART and, at the same time, presents a plan to competent authorities to ensure that the number of transactions and value is kept below the limit.

Article 19a(1) and recital 42a mandate that**, in order to capture all transactions** conducted with any given ART, **the monitoring of transactions should include transactions that are settled on-chain and off-chain**, including those between the clients of the same CASP. In addition, recital 42b explains that **transactions that are associated with the exchange of other crypto-assets or with CASPs should not be considered as means of payment, unless there is evidence that the ART is used for settlement of transaction in other crypto-assets**. This means that crypto-asset transactions that are used as means of exchange and as means of settlement intra-crypto are kept in consideration and account for the limit for ARTs. The choice that stemmed from the political agreement and from the **final text leaves room for clarification**, since it is **very hard to estimate the exact amount and value of transactions which account as means of payment or as means of settlement** intra-crypto: to find a solution to this issue, the

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text delegates to the EBA in cooperation with the ESCB the development of regulatory technical standards to specify the methodology to estimate the value of transactions associated to uses as means of payment. According to article 52(3), these provisions on monitoring and limiting the issuance of AMT also apply to non-euro denominated EMTs. The authorisation for issuing ARTs can be withdrew (art. 20).

Chapter 2: Obligations of all issuers of asset-referenced tokens

The chapter also lays down the conditions for authorisation to operate in the EU. This includes a requirement to act honestly, fairly and professionally (Art. 23). Article 25 covers the marketing of ARTs. The chapter also covers ongoing information obligations (Art. 26) as article 26 and recital 31 set out the additional disclosures requirements and information required on a continuous basis from the issuer in its white paper. Other articles establish a complaint handling procedure (Art. 27) and prevention of conflicts of interest (Art. 28). Article 30 requires specific governance arrangements. Furthermore, there are own funds requirements (Art. 31) for ARTs. The own fund required is set at a minimum of 350.000 EUR or 2% of the average amount of the reserve assets (3% for significant ARTs).

Chapter 3: Reserve of Assets

This Chapter addresses the requirements on the reserve of assets for ARTs, including an obligation to have a reserve of assets, and composition and management of such reserve of assets (Art. 32). While recital 37 mandates that the reserve amounts should at least represent the corresponding value of tokens in circulation, article 32(1d) affirms that the EBA shall publish RTS in collaboration with ESMA and ECB specifying the liquidity requirements. Other articles address the custody of reserve assets (Art. 33), on the investment of the reserve assets (Art. 34), rights on issuers of asset-referenced tokens (Art. 35), and a prohibition on granting interest (Art. 36). Article 35 grants holders with minimum rights when there are no redemption rights attached to the reserve.

Chapter 4: Acquisitions of issuers of asset-referenced tokens

This Chapter includes provisions on the assessment of intended acquisitions of issuers of asset-referenced tokens (Art. 37) and content of the assessment of intended acquisitions of issuers of asset-referenced tokens (Art 38).

Chapter 5: Significant Asset-Referenced Tokens

This Chapter contains a classification of asset-referenced tokens as significant asset-referenced tokens (Art. 39). Importantly, article 39 sets-out the additional requirements for issuers of significant ARTs. The article provides for six criteria for the identification of a significant ART (SART), since due to their large scale they can pose greater risks to financial stability than other crypto assets. An ART fulfilling at least three of these criteria shall be considered significant.

- The criteria relate to the number of holders, if they are more than 10 million,
- Value of the ARTs issued, their market capitalisation or the size of the reserve of assets, if higher than EUR 5 million,
- The number and value of transactions in the ARTs, higher than 2.500.000 transactions and EUR 500 million respectively pe day,
- If the issuer is designated as gatekeeper according to the Digital Markets Act,
- Significance of the issuer's activities on an international scale,
- Interconnectedness with the financial system,
- If the issuer also issues one additional ART or EMT and provides at least one crypto-asset service.

Article 39 also establishes minimum thresholds for these criteria which shall be further specified through a Commission Delegated Regulation. As indicated by the recital 66, ARTs can be used as a means of exchange of large volumes, that can pose specific risks to monetary system: for this reason, the task of supervising the issuer of a significant ART is assigned to EBA. Provided that the criteria are met, the EBA shall prepare a draft decision that an asset-referenced token is significant. The specific additional obligations for issuers of significant asset-referenced tokens (Art. 41) include an obligation to adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not

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create incentives to relax risk standards and to assess and monitor the liquidity needs to meet redemption requests or the exercise of rights. Furthermore, issuers of SART must **conduct stress testing on a regular basis**, on the outcome of such the EBA might decide to strengthen the liquidity requirements.

Chapter 6: Orderly wind-down

This chapter addresses the recovery and orderly redemption of ARTs issuers' activities.

Title IV: Electronic money tokens

Chapter 1: Requirements to be fulfilled by all issuers of electronic money tokens

This chapter covers **requirements for issuers of EMTs**. The holders of EMTs must be provided with a claim against the issuer. EMTs also need to be **issued at par value**, on the receipt of funds, and upon request by the holder of e-money tokens, **redeemed at par value** (Art. 44). The **issuance of EMTs** shall be **accompanied** by a **white paper** including an information of the issuer, **information** about the offer to the public of EMTs or their admission to trading, as well as information on the **risks relating to the e-money**, the e-money tokens and the implementation of any potential project, and **information about the environmental and climate impact** of the consensus mechanism to issue the crypto-asset (Art. 46). Article 49 covers the investment of funds received in exchange of e-money tokens.

Chapter 2: Significant e-money tokens

Article 50 sets out the classification of e-money tokens as **significant e-money tokens on the basis of the criteria referred to in article 39**. Article 51 covers voluntary classification of e-money tokens as significant e-money tokens. Article 52 sets out **specific additional obligations for issuers of e-money tokens**: In particular, the article adds that national authorities may ask non-significant EMT issuers to comply with the norms for significant EMTs in case of liquidity and operational risks. Lastly, as indicated before, **article 52 (3) also imposes on EMTs denominated in a currency that is not an official currency of the EU the same restrictions and reporting obligations for ARTs indicated at the articles 19a and 19b**. As indicated in recital 68, both national competent authorities and EBA are tasked with the duty of supervision of issuers of significant e-money tokens.

Title V: Authorisation and operating conditions for Crypto-Asset Service providers

Chapter 1: Authorisation of crypto-asset service providers

This chapter covers the authorisation of crypto-asset service providers (CASPs) (Art. 53) and the **application for authorisation** (Art. 54), including for the **provision of crypto-assets services by authorised credit institutions**, CSDs, investment firms, market operators, e-money institutions, management companies of UCTs and alternative investment fund managers (Art. 53a), and the provision of services at the **exclusive initiative of the client** (Art. 53b). Article 54 covers the application for **authorisation for legal persons and other undertakings.** It also designates **NCAs as a competent authority** to authorise CASPs. The chapter also covers the **assessment of the application** for authorisation and grant or refusal of authorisation (Art. 55), including on ground of an **exposure to a serious risk of ML/TF** (Art. 55(5)), withdrawal of authorisation (Art. 56), rules for **cross-border provision** of crypto-asset services (Art. 58) and an obligation to act honestly and in the best interest of client (Art. 59), including a requirement to **provide information** related to principal adverse **environmental and climate-related impact of the consensus mechanisms used to issue each crypto-assets in relation to which they provide services** (Art. 59(4a)).

Hardware or software providers of **non-custodial wallets do not fall within the scope** of regulation. (Recital 59)

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Chapter 2: Obligations for all CASPs

The Chapter entails **obligations that need to be fulfilled** by all types of CASPs:

- Obligation to **act honestly** and in the best interest of clients (Art. 59),
- Fulfilment of **prudential requirements** for CASPs (Art. 60),
- Appropriate **governance and operational requirements** (Art. 61),
- Fulfilment of **obligations related to the information of competent authorities** (Art. 62),
- **Safekeeping of clients' crypto-assets** and funds (Art. 63),
- Appropriate c**omplaint handling procedure** (Art. 64),
- Identification, prevention, management and disclosure of **conflicts of interest** (Art. 65),
- Fulfilment of **rules on outsourcing** (Art. 66), and
- **Orderly wind-down of providers or CASPs** carrying out one of the services referred to in articles 67 to 71. (Art. 66a).

Chapter 3: Obligations for the provision of specific crypto-asset services

This chapter sets out specific obligations to be complied with by each type of crypto-asset service as a pre-condition for authorisation.

Custody and administration of crypto-assets on behalf of third parties (Art. 67)

Article 67 requires CASPs that provide **custody and administration** of crypto-assets **on behalf of third parties** to **enter into an agreement** with their clients **defining their duties and their responsibilities**, including the:

- **identity of the parties**. (Art. 67(1)(a)),
- **nature and description** of the service provided. (Art. 67(1)(b)),
- **means of communication** between the crypto-asset service provider and the client including the client's authentication system. (Art. 67(1)(c)),
- a **description of the security systems** used by the crypto-assets service provider. (Art. 67(1)(d)),
- **fees, costs and charges** applied by the crypto-asset service provider. (Art. 67(1)(e)),
- the **law applicable** to the agreement. (Art. 67(1)(f)), and
- **Custody policy** ((Art. 67(1)(g).

Other requirements include:

- keeping a **register of positions** opened in the name of each client and corresponding to each client's rights to the crypto-assets. (Art. 67(2)),
- establishment of a **custody policy** with internal rules and procedures that minimise the risk of a loss of client's crypto-assets or the rights related to those assets or the means of access to the crypto-assets due to frauds, cyber threats or negligence (Art. 67(3)),
- facilitating the **exercise of rights** attached to crypto-assets. In addition, in case of c**hanges to the underlying DLT** or any other event likely to create or modify the client's rights, the client is entitled to any newly created crypto-asset or rights, except agreed otherwise. (Art 67(4)).
- providing clients with their **crypto balance** (Art. 67(5)),
- ensuring **procedures to return crypto-assets** held on behalf of clients or **the means of access** (Art. 67(6)),
- **segregating holdings** on behalf of clients from their own holdings, ensuring that the means of access to crypto-assets of their clients are clearly identified and that client's assets are held on separate addresses from their own crypto holdings (Art. 67(7)).

In addition, CASPs are **liable for the loss of any crypto-assets or access to them** as a result of an incident that is attributable to the provision of the **relevant service or the operation of the service provide.** It is also the CASPs' r**esponsibility to demonstrate that a particular event is not attributable to it** and occurred independently of the provision of services. (Art. 67(8)). Moreover, CASPs are obliged to inform clients in case

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they **use custody service** of other CASPs, (Art. 67(8a)). They need to **insulate and operationally segregate** (Art. 67(10a)) **crypto-assets held in custody from CASPs' real estate** so that no recourse on those assets can be made in the event of insolvency. (Art. 67(10)).

Operation of a trading platform for crypto-assets (Art. 68)

Article 68 requires trading platforms to develop **operating rules** to:

- **set the approval processes**, including **customer due diligence requirements** the proportionate to the ML/TF risk presented by the applicant that are applied before admitting crypto-assets to the trading platform (crypto-assets whose white paper has not been published and who have inbuilt anonymisation functions shall not be admitted to trading). (Art. 68(1)(a)),
- **define exclusion categories**, i.e. the types of crypto-assets that will not be admitted to trading on the trading platform, if any. (Art. 68(1)(b)),
- **set the policies and procedures** around the **levels of compensation**, if any, for the admission of trading of crypto-assets to the trading platform. (Art. 68(1)(c)),
- **set objective non-discriminatory and proportionate criteria for participation**, which promote fair and open access for customers willing to trade. (Art. 68(1)(d)),
- **set non-discretionary rules and procedures** requirements to ensure fair and orderly trading and objective criteria for the efficient execution of orders. (Art. 68(1)(e)),
- **set conditions for crypto-assets to remain accessible** for trading, such as liquidity thresholds and periodic disclosure requirements. (Art. 68(1)(f)),
- **set conditions under which trading of crypto-assets can be suspended**. (Art. 68(1)(g)),
- **set procedures to ensure efficient settlement** of both crypto-asset and funds. (Art. 68(1)(h)).

CASPs need to also ensure **crypto-assets complies with operating rules of the trading platform** and **asses the suitability** of the crypto-asset concerned, in particular the reliability of the solutions used and the potential association to illicit or fraudulent activities taking into account the experience track record and reputation of the issuer and its development team. (Art. 68(1) 3rd para)) it should prevent admission to trading of crypto-assets which have inbuilt anonymisation function unless the holders and their transaction history can be identified by the CASP. (Art. 68(1) 4th para))

CASPs shall have in place **effective systems, procedures and arrangements** to ensure their trading systems:

- are **resilient** (Art. 68(4)(a)),
- have sufficient **capacity to deal with peak order** and message volumes. (Art. 68(4)(b)),
- are **able to ensure orderly trading** under conditions of severe market stress (Art. 68(4)(ba)),
- are **able to reject orders** that exceed pre-determined volume and price thresholds or are clearly erroneous. (Art. 68(4)(c)),
- are **fully tested** to ensure that conditions under (a), (b) and (c) are met. (Art. 68(4)(d)),
- are subject to **effective business continuity arrangements** to ensure continuity of their services if there is any failure of the trading system. (Art. 68(4)(e)),
- are able to **prevent or detect market abuse** (Art. 68(4)(f)),
- are **sufficiently robust** to prevent their abuse for ML/TF purposes ((Art. 68(4)(g)), **report any cases of (attempted) market abuse** occurring on or through its systems to their competent authority (Art. 68(4a)).

In addition, CASPs are required to **make public the current bid and ask prices** and **the depth of trading interests** at those prices (Art. 68(5)), the price, volume and time of the transactions executed (Art. 68(6)). The **final settlement of a crypto-asset transaction on the DLT** shall be **initiated within 24 hours of the transaction** being executed on the trading platform or in the case of transactions settled outside the DLT, on **the closing of the day at the latest** (Art. 68(8)).

CASPs need to also ensure their **fee structures to be 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 could lead to market abuse (Art. 68(9)), as well as **maintain resources and have back-up facilities** in place to be **capable**

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of reporting to their competent authority at all times (Art. 68(10)). CASPs must keep at the disposal of the competent authority the **relevant data relating to all orders** in crypto-assets which are advertised through their system, **for at least five years**, or give access to such order book to competent authority (to allow monitoring of trading) (Art. 68(10a)

Exchange of crypto-assets against funds or exchange of crypto-assets against other crypto-assets (Art. 69)

CASPs that provide **services of exchanging crypto-assets against funds or other crypto-assets** are obliged to:

- establish a **non-discriminatory commercial policy** (Art. 69(1)),
- **publish a firm price of the crypto-assets or a method for determining the price** as well as any applicable limit defined by the crypto-asset service provider to the amount to be exchanged (Art. 69(2)),
- **execute the clients' orders at the prices displayed** at the time where the order is final (CASPs need to inform their client on the conditions to consider their order as final) (Art. 69(3)),
- **publish the details of the transactions concluded**, including transaction volumes and prices. (Art. 69(4)).

Execution of orders for crypto-assets on behalf of clients (Art. 70)

Under article 70 CASP executing orders for crypto-assets on behalf of clients are obliged to:

- **take all sufficient steps to obtain, when executing orders, the best possible result for their clients** (Art. 70(1)),
- establish and implement **effective execution arrangements** (Art. 70(2)),
- provide appropriate and clear information to their clients and to the competent authority on their order execution policy (Art. 70(3),(4),(5) and (6)).

Placement of crypto-assets (Art. 71)

Requirements under article 71 oblige CASPs to **communicate:**

- **the type of placement** (Art. 71(1)(a)),
- an indication of **the amount of transaction fees a**ssociated with the service (Art. 71(1)(b)),
- **considered timing,** process and price for the operation (Art. 71(1)(c)),
- **information about the targeted purchasers** (Art. 71(1)(d)),

In addition, CASPs must obtain the **agreement** of the issuer before carrying out the placement (Art. 71(1)), and place appropriate procedure in order to **prevent, as well as monitor and manage disclose** any **conflicts of interest**. (Art. 71(2)) arising from certain situations defined under articles 71(2)(a-c).

Reception and transmission of orders related to crypto-assets (Art. 72)

The requirements in Article 72 relate to:

- **establishing and implementing procedures** and arrangements which provide for the **prompt and proper transmission** of client's orders for execution (Art. 72(1)),
- receiving any remuneration, discount or non-monetary benefit for routing clients' orders (Art. 72(2)),
- misusing information relating to pending clients' orders (Art. 72(3)).

Advice on crypto-assets and portfolio management of crypto-assets (Art. 73)

According to article 73, **CASPs providing advice or portfolio management of crypto-assets**, shall:

- **assess whether the crypto-asset service or crypto-assets are suitable for the clients**, considering 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 (Art. 73(1)),

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- **inform** – before providing advice – **whether the advice is provided on an independent basis** (Art. 73(1a)(a)), whether the advice is based on an analysis of different crypto-assets (Art. 73(1a)(b)) and on all costs and associated charges.

In case of CASPs **providing advice on an independent basis** the provider is obliged to:

- comply with further requirements on **sufficient diversification of crypto-assets**,
- **not accept and retain any monetary/non-monetary benefits** provided in relation to the provision of the service to their clients, thus acting in the best interest of the client.

In case the CASP informs the client that **advice is provided on a non-independent basis** that provider can receive inducements provided that:

- it is designed to enhance the quality of the relevant service,
- It does not impair compliance with the CASPs duty to act honestly and in the best interest of the client. The nature amount and method of the payment must be disclosed to the client.

CASPs **providing advice on crypto-assets** are also obliged to 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 -** Member States are required to publish the criteria to be used for the assessment of knowledge and competences (Art. 73(2)).

In addition, CASPs providing crypto advice or portfolio management of crypto-assets are required to:

- obtain **information about the client or prospective client's knowledge** of, and experience in investing including in crypto-assets, of risk tolerance, financial situation, ability to bear losses and understanding of risks – in order to prepare a suitable advice. (Art. 73(3)),
- **inform those clients** or prospective clients that the crypto-assets or **crypto-asset services may be inappropriate for them** and issue them a warning on the risks; provide the client with a report summarising the advice given (Art. 73(3)), and implement policies and procedures to collect and assess all information necessary to conduct the assessment for each client (Art. 73(4)).

Under article 73a CASPs providing transfer services on behalf of third parties are obliged to **enter into an agreement with their clients to specify their duties and responsibilities**.

Chapter 4: Acquisition of crypto-asset service providers

Chapter 4 sets out the procedure for the assessment of intended acquisitions of crypto-asset service providers and the content of the assessment of intended acquisitions of issuers of asset-referenced tokens. (Art. 74 & 75)

Chapter 5: Significant CASP

CASP is considered as significant if it has at least **15 million active users** on average, in one calendar year in the EU – the average is calculated as the average of the daily number of active users throughout the previous calendar year. (Art. 75a (1)). Such CASP is **obliged to notify its competent authority within 2 months** after that threshold is satisfied – the Competent authority is then obliged to notify ESMA.

The Competent authorities of the home Member states are obliged to update ESMA on key developments - ongoing or concluded authorisation or withdrawal of authorisations.

Title VI: Prevention of Market Abuse involving crypto-assets

This title sets out some **standard rules governing disclosure of inside information** (Art. 76, 77 and 79), the **prohibition of insider dealing** (Art.78), the **prohibition of market manipulation** (Art. 80). They apply to acts carried out by any person and transaction, including crypto-assets admitted to trading on a trading platform for crypto-assets operated by a CASP, or for which a request for admission to trading on such a trading platform has been made.

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Inside information comprises non-public information relating to issuers, offerors or persons seeking admission to trading, as well as information conveyed by a client and relating to the client's pending orders in crypto-assets, which, if made public, would have a significant effect on prices of related crypto-assets. Issuers, offerors or persons seeking admission to trading shall inform the public as soon as possible of inside information which directly concerns them, and to maintain it on their respective website for at least five years. No person possessing inside information shall unlawfully disclose such information to any other person, except where such disclosure is made in the normal exercise of professional duties.

ESMA will develop draft implementing technical standards to determine the technical means for appropriate public disclosure of inside information, and the technical means for delaying it under outlined circumstances.

Insider dealing, which is strictly prohibited, is considered as such when a person possesses and uses inside information by acquiring crypto-assets, amending or cancelling related orders to which that information relates.

Market manipulation comprises placing an order to trade or any other behaviour which gives misleading signals to the supply, demand and price of a crypto-asset, secures the price of a crypto-asset at an abnormal or artificial level, dissemination of information through media giving false signals to the price, demand and supply of a crypto-asset (where the person who made the dissemination knew or ought to have known that the information was misleading).

Any person professionally arranging or executing transactions in crypto-assets shall have in place procedures to monitor and detect market abuse, and shall submit to the competent authority any suspicion regarding orders and transactions that indicate that a market abuse may be committed.

ESMA will develop draft regulatory technical standards to specify appropriate arrangements for persons to comply with market manipulation prevention requirements, and the notification template to be used by providers.

Title VII: Competent Authorities, ESMA and EBA

Chapter 1: Powers of competent authorities and cooperation between competent authorities, ESMA and EBA

Member States are obliged to designate the competent authorities responsible for carrying out the functions and duties provided in the Regulation and inform EBA and ESMA (Art. 81(1).

This chapter notably indicates the minimal list of supervisory and investigative powers of competent authorities (Art. 82), including:

- require any natural or legal person to provide information and documents which the competent authority considers could be relevant (Art. 82(1)),
- temporarily suspend (Art. 82(1)(c)) or prohibit (Art. 82(1)(d)) of service provision if the Regulation has been infringed,
- disclose all information which may have an effect on the provision of the crypto-asset services in order to ensure the protection of clients (Art. 82(1)(e)),
- make public the fact that a crypto-asset service provider is failing to comply with its obligation (Art. 82(1)(f)),
- suspend services if it would be detrimental to client's interest (Art. 82(1)(g)),
- require the transfer of existing contracts to another CASP in case the authorisation has been withdrawn – subject to the agreement of the clients and the receiving CASP,
- order the immediate cessation of the activity if services are provided with no authorisation (art 82(1)(k)).

Similar powers were designated to the competent authority vis-a-vis the offerors or of crypto-assets or issuers of ARTs or EMTs.

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Article 83 describes the **means of cooperation** between European Competent Authorities based on regulatory technical standards developed by ESMA and EBA with ESMA (Art. 84). Under Article 84a ESMA EIOPA and EBA are required to promote work on the convergence on the classification of crypto-assets by publishing guidelines and cooperation with Member States.

Under articles 89a and 89b **ESMA and EBA are given temporary intervention powers to prohibit or restrict marketing, distribution or sale of certain crypto-assets** other than ARTs and EMTs, type of crypto-asset activity or practice, on the ground of significant investor protection concern. Article 90 describes the cooperation among competent authority, ESMA and EBA with third countries, whereas article 91 how external complaints from clients and other parties should be handled by competent authorities (Art. 91).

Article 91a establishes ESMA **register of crypto-asset white papers**, issuers of ARTs and EMTs and CASPs. A similar register of entities that have been providing CASPs in violation of authorisation process will also be established (Art. 91(ab)).

Chapter 2: Administrative measures and penalties by competent authorities

This chapter details the **penalties** that can be imposed for the infringement of this regulation. Depending on the infringement, administrative penalties include temporary or permanent ban as CASP, financial penalties amounting to, in case of legal persons: **€5M** or, depending on the nature of the infringement from 3-12,5% of the total annual turnover of the legal person and, in case of natural person: **€700,000**, or twice the amount of the benefit derived from the infringement (Art. 92).

Chapter 3: Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

This Chapter sets out the **supervisory responsibilities of EBA** on issuers of significant asset-referenced tokens and issuers of significant e-money tokens (Art 98). In addition, EBA is requested to create a permanent crypto-assets internal committee for the purpose of preparing decision to be taken by the EBA. (Art. 98a).

Within 30 days following the classification of an **ART or EMT as significant** EBA is required to **establish and chair a consultative college for each issuer of a significant ART or EMT** to facilitate and coordinate supervisory activities (Art. 99). The college consists of the EBA, ESMA, the competent authorities: of the home Member State of the issuer of ARTs or EMTs; most relevant credit institutions, investment firms or CASPs; most relevant trading platforms for crypto-assets where such significant ARTs or EMTs are admitted to trading; most relevant payment service providers; entities ensuring the functions as referred in article 30(5) point (h); most relevant CASP; the ECB or other national central bank in case established in a non-euro member state; relevant supervisory authorities of third countries; of Member States where ARTs or EMTs are used at large scale upon their request; other relevant authorities. Any other Competent authority may request any information relevant for the performance of its supervisory duties (Art. 99(3)).

Power of the College (Art. 99(4))

- Preparation of the non-binding opinion on:
    - supervisory reassessment,
    - any decision to require holding higher amount of own funds (Art. 100(1)),
    - update on recovery plan or redemption plan (Art. 100(1)),
    - change to the issuer business model,
    - Draft amended crypto-asset white paper,
    - Measures envisaged in accordance with article 21(3),
    - Supervisory measures pursuant to article 112,
    - Agreement of exchange of information with a third-country supervisory authority,
    - Delegation of supervisory tasks for the EBA to a competent authority,
    - Envisaged change in the authorisation or supervisory measure on the entities and CASPs.

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Chapter 4: EBA's powers and competences on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

This chapter grants specific powers to the EBA when **dealing with significant asset-referenced or e-money issuers**, including the request for records of telephone and data traffic (Art. 105) and to conduct on-site inspections (Art 106). If the EBA finds that an issuer of a significant ART has committed an infringement (listed in Annex V), it may:

- Require the issuer to bring the infringement to an end,
- Impose fines or periodic penalty payments,
- Where necessary, require the issuer to transmit supplementary information for the protection of holders of ARTs,
- Require the issuer to suspend an offer to the public of crypto-assets for a maximum period of 30 working days,
- Prohibit an offer to the public of significant ARTs,
- Require the relevant trading platform for crypto-assets that admitted to trading significant ARTs to suspend trading of such crypto-assets for a maximum of 30 consecutive working days,
- Require issuers of significant ARTs to amend or suspend marketing communications,
- Withdraw the authorisation of the issuer of significant ARTs.

It also includes specific fines for a **maximum amount of 12.5%** of the annual turnover **for significant asset-referenced** issuer or **10% for significant e-money tokens issuers**.

Title VIII: Delegated acts and implementing acts

The proposal empowers the Commission to adopt **delegated acts** to further specify certain details, requirements and arrangements, for a period of 36 month from the date of entry into force of the regulation

Title IX: Transitional and final provisions

This title outlines the obligation for the Commission to provide a report **evaluating the impact of the Regulation** (Art. 122) and a **grandfathering clause** for crypto-assets issued before the entry into force of this Regulation, with the exception of asset-referenced tokens and e-money tokens (Art. 123). This specifies that Member States may apply a simplified authorisation procedure in the period between the date of entry into force of the Regulation and the date of entry into application of the Regulation.

By 48 months after the date of entry into force of MiCAR, the Commission will present the **report on the application of the regulation**. An **interim report** shall be presented **by 24 months after the date of entry into force** of this regulation, where appropriate accompanied by a legislative proposal. The report will cover crypto market and technology trends, as well as related economic, consumer protection, marketing communications, environmental and other political considerations.

Notably, the report shall contain:

- An assessment of whether the **scope of crypto-asset services covered by MiCA** is appropriate and whether any adjustment to the definitions set out in this Regulation is needed; and whether any additional innovative crypto-asset forms would need to be added to this regulation.
- An assessment of whether the prudential requirements for crypto-assets service providers are appropriate and whether they should be aligned with the requirements for initial capital and own funds applicable to investment firms.
- An assessment of the **appropriateness of the thresholds to determine significant ARTs and significant EMTs** set out in Article 39 of this Regulation, and an assessment if the thresholds should be evaluated periodically.
- An assessment of the **development of decentralised-finance** in the crypto-assets markets and of the adequate regulatory treatment of decentralised crypto-asset systems.

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- An assessment of whether an **equivalence regime** should be established for **third-country CASPs**, issuers of ARTs or issuers of EMTs under MiCA.
- A description of developments in business models and technologies in the crypto-asset market with a particular focus on the environmental and climate impact of new technologies, as well as an **assessment of policy options** and where necessary any additional measures that may be warranted to mitigate the **adverse impacts on the climate and environment of the technologies** used in the crypto-assets market and, in particular, of the **consensus mechanisms** used to validate crypto-asset transactions.

By 12 months from the date of application of MiCA and every following year on an annual basis, **ESMA will submit a report on the developments** in crypto-asset markets.

Transitional measures

CASPs which provided their services in accordance with applicable law before MiCA's entry into application may continue to do so until 18 months after the date of application, or until they are granted an authorisation under MiCA. Notably, **Member States may not apply the transitional measure** or may reduce its duration where they consider that CASPs shall be subject to stricter requirements than those set out in their national regulatory framework applicable before MiCA's entry into application.

Member States may apply a **simplified procedure for applications** for an authorisation which are submitted between MiCA's date of application and 18 months after it for entities that (at the time of entry into application of MiCA) were authorised under national law to provide crypto-asset services.

Issuers of ARTs which issued them in accordance before the entry into application of Title III may continue to do so until they are granted an authorisation, provided that they applied for an authorisation until 1 month after entry into application of Title III. The new version of the proposal specifies that the Regulation shall enter into application as soon as it enters into force for crypto-assets other than ARTs and for SARTs. This was the case only for e-money tokens in the past version. For e-money tokens and CASPs on the other hand, the Regulation will now enter into application 18 months after the entry into force.

MiCA will enter into force on the twentieth day following its publication in the Official Journal of the EU. **MiCA will apply from 18 months after the date of entry into force.** Title III and Title IV will apply from 12 months after MiCA's entry into force.