



Electronic Money Association

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By online submission

08 February 2024

Dear Sir/Madam

Re: EMA response to EBA Consultation Paper on Draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) Regulation (EU) 2023/1114

We welcome the opportunity to provide input on the EBA's Consultation Paper referred to above.

The EMA represents payments, crypto-asset and FinTech firms, engaging in the provision of innovative payment services, including the issuance of e-money, stable coins (including e-money tokens as covered by the EU's MiCAR), open banking payment services, and crypto-asset-related services. A full list of our members is provided in the appendix to this document.

The EMA was established some 20 years ago and has a wealth of experience in regulatory policy relating to payments, electronic money and more recently crypto-assets.

We would be grateful for your consideration of our comments, which are set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA responses

The ESAs face an enormous challenge of producing a complex, comprehensive and highly technical body of MiCAR level 2 regulatory instruments and related guidelines within a tight timeframe. We are grateful for the staggered consultation process launched several months ago, but remain concerned that each instrument, the interdependencies between, and the consistency across, these instruments cannot be given the required full and holistic consideration. We therefore urge the EBA to keep the instruments that are now being developed under review well beyond the consultation phase and to engage in a close ongoing dialogue with national competent authorities who will be implementing the instruments in their evolving supervisory practices. This ongoing dialogue would also have to include the crypto-asset industry to benefit from both the wealth of insight that industry efforts to comply with all aspects of this new rulebook will generate and direct, first line feedback the industry can offer on the still rapidly evolving crypto-asset markets. The objective would have to be not only to translate the rulebook into effective and EU-wide fully harmonised supervisory practices, but also to provide assistance for the analysis needed to inform the review and reform of the MiCAR level 1 text wherever needed.

We note that according to Article 140 the European Commission will have to present by 30 June 2025 a report to the European Parliament and the Council on the application of MiCAR accompanied as appropriate by a legislative proposal. EBA and ESMA will be consulted, and we urge the EBA to engage in a dialogue with the industry to help identify and shape necessary amendments as early as possible.

Regarding specifically the regulatory technical standards addressing different aspects of issuers' liquidity risk management as applicable to some or all issuers (depending either upon their significance or upon the discretionary extension of the scope of application of related MiCAR requirements by competent authorities) we encourage the EBA to work together with the European Commission towards a consolidation of the different level 2 instruments. It would be most helpful to merge the different instruments into a single consistent compendium covering all regulatory technical standards pertaining to liquidity risks and their management under MiCAR. Such a comprehensive and consistent compendium of technical standards would facilitate implementation and compliance by both competent authorities and issuers.

That said, we welcome the opportunity to comment on this specific Consultation Paper on Draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) Regulation (EU) 2023/1114 ("MiCAR"; "CP" and "Guidelines") and would be grateful if the following comments were considered. We stand ready to engage in a dialogue with the EBA and national competent authorities well beyond the close of this consultation.

Question 1. *Do respondents have any comment with respect to the proposed non-restrictive list of parameters of the stress test scenarios that need to be considered for the calibration of the stress factors?*

Generally, the proposed non-restrictive list of parameters is sufficiently clear. Further clarification would be welcome regarding the following:

Paragraph 18 seems to suggest the need for additional overcollateralization beyond the mandatory level established in the RTS further specifying the liquidity requirements of the reserve of assets under Article 36(4). However, this additional and already the mandatory overcollateralisation may well give rise e.g. in the case of a redemption of ARTs or EMTs to not engage, as required according to Article 36 (6), in a corresponding decrease in the reserve of assets fully matching the redemption. Issuers may also choose when issuing additional ARTs or EMTs or independently of any redemption or issuance of tokens to increase or decrease the reserve of assets in order to ensure the required or desired level of overcollateralization. We do not oppose the concept of mandatory overcollateralization but would welcome clarification confirming that what issuers do or refrain from doing in order to ensure compliance with mandatory or any required additional overcollateralization does not infringe the requirements according to Article 36 (6). This is all the more important given the obligation of issuers under Article 36 (8) to have "... a clear and detailed policy describing the stabilisation mechanism ..." including according to Article 36 (8) (d) a description of "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". That policy would have to set out instances where the build-up of the mandatory overcollateralization and, as the case may be, additional collateralization beyond the mandatory minimum does require not to comply with Article 36 (6). To assist the supervisory dialogue with competent authorities it would be helpful if the EBA could clarify this point in its final Guidelines and/or in its feedback statement.

Moreover, we would welcome clarification that the outcome of an issuer's stress testing suggesting the need for additional overcollateralisation may give rise to the competent authority requesting additional overcollateralization, but that it should not justify a discretionary increase of own funds requirements under Article 35 (5). Overcollateralization is an ongoing, necessarily flexible process of managing the reserve of assets, which cannot be replaced by much less flexible own funds requirements driven by size (Article 35 (1): average amount of reserve of assets) and supervisory discretion (Article 35 (5)). Moreover, a supervisory request to an issuer to increase its overcollateralization would, via the corresponding increase of the reserve of assets, automatically also generate higher mandatory and, as the case may be, discretionary own funds requirements.

Paragraph 19 under the heading of "De-pegging risk" requires issuers to assess the risk that the market value of the issued ART or EMT differs from the market value of the asset referenced. Similarly, the proposed Guidelines on recovery plans requires issuers to include a de-pegging risk indicator, aimed at keeping track of the alignment between the market price of the token and the market value of the referenced asset(s). In contrast, the EBA CP on the draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) discusses a basis-risk test, which the BCBS decided not to include in its approach to the treatment of banks' exposure to crypto-assets. We encourage the EBA to clarify whether the focus and primary concern in its RTS and Guidelines is related to the basis-risk or the de-pegging risk. In a regulatory environment requiring overcollateralization we believe the emphasis should be on the (one-way) de-

pegging risk (in line with the requirements under Article 36 (7)) and not on the (two-way) basis risk (in line with the requirement under Article 36 (6)). The issue is obviously closely related to our comments related to paragraph 18.

Paragraph 27 would benefit from further clarification regarding the risk it is meant to cover.

Question 2. Do respondents have any comment about the risks identified that need to be covered by the parameters of the stress test scenarios? Do respondents think that any other risk should be included?

Regarding risk related to deposits with credit institutions as addressed in **paragraphs 15 and 16** we believe the most relevant stress issuers will be facing is finding and keeping enough eligible credit institutions willing to provide banking services. We commented on the most problematic concentration risk limitations for bank deposits in our response to the EBA Consultation Paper on Draft Regulatory Technical Standards to further specify the liquidity requirements of the reserve of assets under Article 36(4). Losing a banking partner such as to not comply any longer with the set concentration risk limitations may well trigger a downwards spiral with further banking partners terminating their services and most severe regulatory intervention leading to the wind-down of the issuer.

Question 3. Do respondents find operational challenges in the implementation of the guidelines?

We refer to our comments above. The operational challenges are considerable.

Question 4. Do respondents find any piece of the guidelines confusing or difficult to understand?

We refer to our comments above. We urge the EBA to provide further clarification regarding paragraphs 15,16, 18, 19 and 27.

Members of the EMA, as of February 2024

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