



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 Regulatory Technical Standards to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of Regulation (EU) 2023/1114

We welcome the opportunity to provide input on the EBA's Consultation Paper on Draft Regulatory Technical Standards to specify the minimum contents of the liquidity management policy and procedures.

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, reading 'Thaer Sabri', with a long horizontal flourish extending to the right.

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 the wealth of insight that industry efforts to comply with all aspects of this new rulebook will generate and direct, and from 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, and 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 to non-significant issuers), 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. Eventually that compendium may well include all RTS related to MiCAR prudential requirements as they apply to some or all issuers of ARTs and EMTs

That said, we welcome the opportunity to comment on this specific Consultation Paper on Draft Regulatory Technical Standards to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of Regulation (EU) 2023/1114 ("CP" and "RTS"). We would be grateful if our comments were considered for the finalisation of the RTS and stand ready to engage in an ongoing dialogue with the EBA and national competent authorities which we believe is warranted well beyond the close of this consultation.

Question 1. Do respondents have any concerns of Article 1 for the identification, measurement and monitoring of liquidity risk of issuers? Do respondents think that the main aspects in the processes for issuers of tokens to properly manage liquidity risk are captured?

We urge the EBA to make consistent use of the terminology regarding risk appetite and risk appetite frameworks. In our view the term ‘risk tolerance’ in Article 1 (2) should be avoided.

According to Article 1 (2) the requirements in Article 1 (1) to have “*robust strategies, policies, processes and systems ...*” also extends to the issuer’s “*techniques for ensuring the stability of the reserve of assets’ value with respect to the referenced asset(s)*”. We would welcome if the EBA could clarify how this requirement relates to the requirement under Article 36 (8) “*to have a clear and detailed policy describing the stabilisation mechanism of such tokens*”. In our view issuers should be free to organise their documentation of risk management policies and processes, internal control mechanisms and the management of the reserve of assets as they deem fit without necessarily creating a separate stand-alone policy on the stabilisation mechanism. To assist the supervisory dialogue with competent authorities it would be helpful if the EBA could clarify this point in its final draft RTS and/or in its feedback statement.

Regarding Article 1 (5) addressing concentration risks with regard to the use of custodians we reiterate the concerns set out in more detail in our response to the EBA’s Consultation Paper on Regulatory Technical Standards to specify the highly liquid financial instruments in the reserve of assets under Article 38(5) of Regulation (EU) 2023/1114. Custody services for issuers of ARTs and EMTs may not be offered by as many providers as desirable and/or required by Article 1 (5). Due to the “de-risking” by credit institutions issuers are most likely to encounter the same practical problems as set out in our response referred to above.

Question 2. Do respondents have any comment on the minimum content of the liquidity contingency policy proposed in Article 2? In particular, do respondents have any concern on the inclusion of the required indicator to measure deviations between the market value of the token and the market value of the assets referenced as an early warning signal to be calibrated by the issuer?

As also set out in our response to the EBA’s CP on Draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests we would welcome if the EBA could 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 has to be on the (one-way) de-pegging risk (in line with the requirements under Article 36 (7)). There is no added value in monitoring the (two-way) basis risk. In the context of a regulatory framework that eliminates the need for the requirement under Article 36 (6), and instead has opted for mandatory overcollateralization, basis-risk is not the issue anymore. Accordingly, issuers should focus on the de-pegging risk and monitor that risk based upon the de-pegging risk indicator required in the EBA’s draft Guidelines on recovery plans.

Question 3. Do respondents find any challenge in the application of the segregation of the liquidity management policy as envisaged in Article 3?

The application of the segregation requirement under Article 36 (5) first sentence as specified by Article 3 will surely be challenging. We would expect, however, that in practice, depending upon the similarities in the respective risk profile of the different ARTs and EMTs including any related risk correlations, issuers will be able across all aspects referred to in Article 3 (1), to draw on the segregated policies and processes set up for one ART or EMT to inform the segregated policies and processes applicable to a similar ART or EMT. Where risks across different ARTs or EMTs are highly correlated or in any other way interdependent, we believe, segregation should be complemented by, and would benefit from, a parallel more holistic perspective and approach. We therefore urge the EBA to include specific language addressing how issuers are expected to manage such correlations and any other interdependencies between different tokens. The required segregated policies and processes may benefit significantly from an additional more holistic layer.

Whilst Article 3 addresses the segregation requirement under Article 36 (5) first sentence the draft RTS remains silent on Article 36 (5) second sentence requiring in the case of different issuers offering the same ART or EMT to “operate and maintain only one reserve of assets”. We urge the EBA to consider and provide clarification regarding the related, potentially significant issues across the range of requirements the management of the reserve of assets by the different issuers will have to comply with.

In this context, the RTS should also address the case recital 54 refers to. The recital stipulates that “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.” Regarding the related custody requirement recital 54 specifies: “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.”

Finally, we note that the reference in Article 3 (1) to Article 3 should be dropped.

Question 4. Do respondents have any comment regarding the minimum content envisaged in Article 4 of these RTS about the liquidity stress testing under Article 45(4) of MiCAR to be included in the liquidity management policy?

No

Question 5. Do respondents find any provision unclear to apply?

See our comments above regarding questions 2 and 3.

Question 6. Do respondents have any comment on the impact assessment provided?

No

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