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John Berrigan
Director-General
DG FISMA,
European Commission

19 March 2025

Dear Mr Berrigan

Re: EMA submission regarding the European Commission's interim report under Article 140 (1) second sentence MiCAR on the application of the regulation

During the course of the series of consultations the EBA conducted on MiCAR level 2 instruments, a number of issues were identified that could not be addressed in the EBA's draft level 2 instruments as they related to the MiCAR level 1 text. In this regard the EBA noted in several of its final reports on its draft instruments "*that according to Article 140 of Regulation (EU) 2023/1114 by 30 June 2025, the Commission (after consulting EBA and ESMA) shall present an interim report to the European Parliament and the Council on the application of this Regulation accompanied, where appropriate, by a legislative proposal. EBA suggest the stakeholders to make use of this timeframe to highlight to the Commission some of the concerns that have been raised in this consultation paper.*"

The attached note sets out key concerns regarding the MiCAR level 1 text, which we urge the European Commission to address in its interim report. In addition, we will also comment on some of the issues specified in Article 140 (2) (a) to (ag) and (3) MiCAR, which the European Commission is tasked to address in its interim report.

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, 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, and would welcome to discuss the issues raised at your convenience.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA input to European Commission interim report under Article 140 (1) second sentence MiCAR

We welcome that according to Article 140 the European Commission (EC) is tasked to prepare an interim report and, as needed, legislative proposals at an early stage into the application of MiCAR. Due by mid-2025, the report will allow the Commission to draw on experience from the application of MiCAR and the initial wave of authorisations granted to issuers and offerors of ARTs and EMTs and to Crypto-Asset Service Providers (CASPs).

As importantly, the report will provide a welcome opportunity to address identified shortcomings of this particularly comprehensive regulation, which was finalised under significant time pressure. MiCAR covers a broad range of crypto-asset products and related services, which given the dynamics of the crypto-asset market continue to evolve and change. The regulatory framework it sets for this market draws on a range of existing financial services directives and regulations targeted at a variety of financial services across different sectors of the financial market and exposed to and posing widely varying risks. Given the challenging task of merging different regulatory concepts we encourage the EC and the European co-legislators to seize the opportunity for a thorough review of all aspects of MiCAR. Beyond fixing identified shortcomings, the analyses should be forward-looking and address upcoming challenges that the rapidly evolving crypto-asset market is likely to pose.

That said we would highlight upfront in our general comments key issues where we believe a review of, and amendments to, the current MiCAR text need to be considered. More detailed comments on some of these issues will follow further below:

General comments

1) MiCAR and the global dimension of genuinely cross-border crypto-asset markets

We are concerned that MiCAR as it stands, by creating a closed internal EU market for crypto-assets, not only harms the prospects of that internal market but also misses the historic chance of establishing the EU as a key international hub for the rapidly growing global crypto-asset markets.

The current MiCAR location requirements effectively shut the internal crypto-asset market for 3rd country-based businesses and products. The approach turns the EU-market into a secluded crypto asset island, thus undermining key benefits that DLT as the global technology underpinning crypto-asset markets offers: the creation and borderless circulation of crypto-assets at global scale. The tight location requirements run counter to key MiCAR objectives, in particular the setting of global gold standards for regulating crypto-assets at jurisdictional level. We see in particular two aspects that we would urge the EC to address in its interim report and the corresponding legislative proposals: the introduction of an equivalence regime (explicitly referred to in Article 140 (2) (v) MiCAR) and the review and refinement of the regulatory approach to dual/multi issuance of globally fungible EMTs and ARTs.

a) Equivalence regime:

An equivalence regime should be introduced as a matter of urgency. Crypto-assets issued in non-EU countries subject to regulations recognized as equivalent should be given access to the EU internal market and, by the same token, MiCAR-regulated CASPs should be allowed to provide the full range of related crypto-asset services. An equivalence regime would not only help the internal market and MiCAR-regulated firms to thrive. It would also assist the objective of establishing MiCAR as the global gold standard for regulating crypto-assets. It would set much stronger incentives for non-EU jurisdictions to follow the MiCAR example in order to be rewarded by recognition of their regulations as equivalent.

The shaping of this regime will require a comparative assessment of MiCAR against the evolving regulation of crypto-assets in other key jurisdictions. The assessment will surely benefit from the findings of the pending peer review on the FSB's Global Regulatory Framework for Crypto-asset Activities. We have little doubt that the assessment will confirm many of the findings from our analysis of disproportionate aspects of MiCAR and their harmful impact on the EU internal crypto-asset market (see section 2) as well as more specific examples of disproportionality discussed throughout the remainder of this note). Where that is the case, the introduction of an equivalence regime should be accompanied by reasonable alignments of the EU regime to the evolving international standards. Equivalence will assist in establishing MiCAR as the global gold standard, and will promote a strong and thriving EU internal crypto-asset market – but only if the robust regulatory framework that MiCAR has set is adjusted towards improved risk-adequacy and better proportionality.

As a further, preferably complementary option to equivalence, the interim report should also consider the example of Singapore's Payment Services Act, 2019. It introduced a targeted regime for so-called "digital payment tokens services". These regulated services allow for the use of 3rd country-issued stablecoins as a means of payment, subject to AML and CFT requirements and provisions ensuring consumer protection and market integrity.

Whatever the regulatory approach and policy mix the EC wants to opt for, to ensure that MiCAR fully delivers on its objectives it is crucial to dismantle the current market entry barriers for 3rd country products and businesses and to allow circulation of non-EU stablecoins in the EU, subject to reasonable and proportionate safeguards.

b) Dual/multi issuance of globally fungible ARTs and EMTs:

MiCAR's regulatory approach to dual/multi-issuance of globally fungible CA products, particularly EMTs, is welcome. In the absence of an equivalence regime we believe facilitating dual/multi issuance subject to robust regulatory safeguards is vital for retaining some integration of the EU internal and the global crypto-asset markets. The current approach does, however, require further development and formalization. We fully concur with the basic principle as articulated in recital 54. The reserve of assets must be available to cover the liabilities towards EU holders and, therefore, a corresponding portion of the reserve must be held with firms subject to EU regulation. The more specific requirements in level 2 instruments[1] confirm this concept and provide helpful clarification regarding the split calculations needed to determine the EU-related portion of the reserve of assets and of the market capitalization of the dual/multi issued product (the latter relevant according to Article 43 (1) (b) for the potential classification as significant).

Yet, many aspects of the regulatory treatment of dual/multi issuance products remain to be addressed. The existing provisions need to be built out to a consistent, sufficiently formalized and pragmatic regime informing competent authorities' application of MiCAR requirements.

We therefore urge the EC to develop workable solutions for dual/multi issuance in- and outside the EU as a matter of urgency. Continued access to globally fungible CA products through MiCAR-regulated firms is in the best interest of EU clients and vital for the EU internal crypto-asset market. In particular, the EU must not be cut off from the important and well-established market segment of globally fungible EMTs. Expanding upon the basic principle articulated in recital 54, the EC should provide legislative proposals, as needed, in its interim report.

2) Proportionality

With 166 pages of level 1 text and 57 different sets of level 2 rules and guidance, many of them very detailed and highly technical, the sheer size of MiCAR demonstrates a regulatory approach that is out of step with an industry which is still in its early stages of development. This disproportionality is partly due to the read-across of regulatory concepts and standards that have been developed over many years responding to, but also shaping, evolving financial markets, in particular the market for financial instruments.

However, MiCAR's disproportionality is not just "imported" from the existing rulebooks it draws on. An arguably more important source has been the initially profound reservations of regulators vis-à-vis this new market, the underlying advanced and disruptive technology, the associated, as yet not well understood, market, credit, liquidity, operational and systemic risks, and finally towards tech companies, which so far have been operating outside the regulatory perimeter of financial markets and are now playing a crucial role in driving change that transforms financial services, products and ecosystems.

In combination these different root causes have resulted in a lack of proportionality and risk-adequacy across a wide range of important aspects of the MiCAR regime. The overly restrictive thrust of the MiCAR location requirements - which effectively shut the EU internal market for 3rd country crypto-asset products - has been addressed already above (see section 1)). The disproportionate features of the MiCAR significance regime, in particular the excessive increase of prudential requirements applicable to ARTs and EMTs qualified as significant, are discussed at some length in section 4 below.

[1] see EU Commission delegated act C(2024)906 (p.6), EBA final report on the implementing technical standards on reporting obligations under MiCA Article 22(7) (p.11, point 27); EU Commission Implementing Regulation (EU) 2024/2902 (p.39, point 21).

More specific examples of disproportionate, not sufficiently risk-adequate MiCAR provisions will be addressed throughout the remainder of this note.

We do acknowledge that the EU crypto-asset market stands to gain from a good dose of regulatory conservatism and caution. MiCAR's robust regulatory framework offers significant benefits to a rapidly maturing industry. However, the lack of proportionality does have a major adverse impact and runs counter to key MiCAR objectives. Scaling crypto-asset businesses becomes prohibitively expensive when approaching and exceeding the significance thresholds of Article 43. However, the lack of proportionality and risk adequacy is arguably even more problematic for those smaller firms that often drive the financial and technological innovation that MiCAR and the internal market it promotes are expected to deliver. Instead of setting a framework for regulatory agility and, ideally, sandboxing allowing for the lowering of market entry barriers for these smaller firms, MiCAR provides NCAs with discretion to apply the disproportionate prudential requirements set for ARTs and EMTs classified as significant to non-significant issuers. Flexibility and NCA discretion are provided in the exact opposite direction of where they are needed. In our view this lack of built-in regulatory agility is particularly harmful and runs counter to the very purpose of MiCAR.

Since the drafting of MiCAR, the understanding of crypto-asset markets, of the associated risks and of the industry driving the change has evolved. Over recent years industry and regulators have benefited from a steep learning curve. The interim report offers an ideal opportunity the EC should seize to review and recalibrate the regulatory approach. Targeted changes are needed to ensure that key MiCAR objectives can be achieved.

We therefore urge the EC to address proportionality and desirable regulatory agility in its report and to develop legislative proposals that dismantle disproportionate requirements as much as possible. Less restrictive level 1 requirements should be combined with more room for regulatory discretion allowing for risk-adequate solutions that help lower market entry barriers for both small EU and 3rd country businesses and products and facilitate controlled scaling of well-established crypto-asset businesses.

3) Prudential requirements for CASPs (Article 140 (2) (r))

We acknowledge the need for a thorough assessment whether the prudential requirements for crypto-asset service providers are appropriate and whether an alignment with the requirements for initial capital and own funds applicable to investment firms is warranted. However, the setting of proportionate and risk-adjusted prudential requirements for CASPs presupposes a thorough initial analysis of risks and risk trends across the full spectrum of crypto-asset services and products. The analysis must then extend to how these risks relate to the risks targeted by the prudential regime for investment firms, and whether alignments of MiCAR to the corresponding own funds requirements applicable to investment firms are warranted.

We welcome and encourage any analytical work furthering the understanding of risks and risk profiles associated with the broad range of crypto-asset activities and MiCAR-regulated firms. However, at this stage of the development of crypto-asset services, products and markets, it may well be too early to draw firm conclusions. Generating the evidence needed for properly calibrating additional prudential requirements that are commensurate with actual risks and properly aligned to the requirements investment firms have to comply with will be difficult to achieve. In the absence of such evidence, prudential requirements should not be carved into the stone of amended MiCAR level 1 text.

Instead, competent authorities should be given reasonably framed supervisory discretion to set additional prudential requirements on a case-by-case basis drawing on a developed understanding of a firm's business model and risk profile.

4) The Significance concept (Article 140 (2) (s) MiCAR)

A comprehensive review and readjustment of the MiCAR regime built around the concept of significance of ARTs and EMTs is in our view needed as a matter of urgency and well beyond the assessment of the appropriateness of the significance thresholds (referred to specifically in Article 140 (2) (s)):

a) The dual-purpose classification according to Article 43 that triggers both the transfer of supervisory responsibility from NCAs to the EBA and at the same time the application of much increased prudential requirements is in our view misconceived. We're not putting into question the introduction of direct and fully integrated supervision by the EBA. Centralised EU-wide supervision of an evolving internal market that is as genuinely cross-border as the crypto-asset market makes perfect sense. However, the proper shaping of the institutional set-up and of the division of supervisory responsibilities between the national and the EU level is one thing.

   In contrast, the classification of ARTs and EMTs with a view to heightened systemic risks they allegedly pose, therefore potentially warranting application of increased prudential requirements to contain these risks, is a fundamentally different matter. Tangible systemic risks posed by individual firms for the EU financial system may well warrant increased prudential requirements and direct supervision by a regulatory authority with EU-wide responsibilities. However, for a genuinely cross-border market, the proper remit of direct and fully integrated supervision should surely also include products and firms that do **not** pose the sort of systemic risks that warrant the enormous increase of prudential requirements the MiCAR significance regime imposes. We therefore urge the EC to develop legislative proposals aimed at disentangling the dual-purpose concept underlying Article 43.

b) A proper disentangling of Article 43 will have to draw for the two distinct regulatory objectives two distinct dividing lines setting criteria and thresholds calibrated appropriately for the distinct classification purposes. As it stands Article 43 may well be suitable for determining the remit of direct and fully integrated supervision by the EBA. The criteria and thresholds appear to be broadly aligned to and in the same order of magnitude as the criteria and thresholds applicable for the classification of credit institutions as significant under the SSM Framework Regulation triggering the transfer of supervisory responsibility from NCAs to the ECB.

In contrast, these thresholds are in our view far too low to be indicative of heightened systemic risks posed by individual firms warranting the application of the massively increased prudential requirements the classification as significant currently triggers.

We also note that regarding EMTs - which anyhow have a risk profile that is materially different from, and arguably much more benign than, the risk profile of ARTs – raising the thresholds would still leave ample supervisory discretion to set increased own funds requirements. In particular, it would not affect the power of regulators under Article 58 (2) MiCAR to apply on a discretionary basis the increased prudential requirements specified in Article 58 (1) MiCAR to non-significant EMTs and their issuers. It would simply provide more leeway for regulatory agility, which we believe is needed in the supervision of crypto-asset markets anyhow.

c) Disentangling Article 43 would also allow to provide for a much-needed differentiated approach to the frequency of evaluation of thresholds. Thresholds for determining the remit of direct and fully integrated supervision by a European regulatory authority should ideally remain the same for as long as possible. Moving supervisory responsibilities up and down between the national and the European level is not a matter that should be up for periodic reconsideration.

   In contrast, the understanding and analysis of systemic risks posed by ARTs and EMTs is still in its infancy. Periodic evaluations of thresholds triggering increased prudential requirements to contain these risks are therefore in our view a must.

d) However, the review, recalibration and, going forward, periodic evaluation should not be limited to these thresholds. It must extend to the increase of prudential requirements that the classification as significant currently entails. These requirements are in our view excessive and prohibitive. Whether triggered by classification as significant or applied to non-significant EMTs on a discretionary basis, application of the increased prudential requirements results in a dramatic and most harmful cliff-edge effect. The increase of own funds requirements alone, combining the initial, mandatory 50% boost (move from 2 to 3% of average amount of the reserve of assets according to Article 45 (5) MiCAR) with the additional two layers of discretionary own funds requirements (capital add-on of 20% and another 20 to 40% of the increased own funds requirements according to Article 35 (3) and (5) MiCAR respectively) can amount to as much as a doubling of own funds requirements.

   With a cliff-edge effect of that magnitude, the viability and sustainability of firms approaching these thresholds is acutely threatened. Moreover, and beyond the much-increased capital requirements, severe additional restrictions related in particular to the reserve of assets are triggered, resulting in subdued profitability adversely affecting not least the potential to build up loss absorbing capacity to meet the increased own funds requirements. Given this multi-faceted cliff-edge effect, steady scaling of the business is impossible. Firms will likely have to either terminate their business, thus disrupting the provision of services to clients, or fundamentally rebuild their business model, if this is even possible. In the medium- and long-term, the MiCAR significance regime as it stands is most likely to cause serious harm to the development of EU crypto-asset markets.

Besides resulting in this prohibitive cliff-edge effect, the jump in own funds requirements also lacks crucial risk-sensitivity. There is no, and it can be safely assumed there never will be, evidence that classification as significant based upon the thresholds and criteria as specified in Article 43 (1) MiCAR is reflective of an increase of risks warranting a mandatory 50% increase of own funds requirements (possibly combined with additional discretionary capital add-ons). A single-step increase of that order of magnitude is per se disproportionate, and not commensurate with the actual increase of systemic risks it is meant to contain.

Moreover, applying this increase uniformly to all products and issuing firms qualifying for classification as significant lacks crucial "relative" risk-sensitivity. Products and issuers exceeding and/or meeting Article 43 (1) MiCAR thresholds and/or criteria will vary widely in terms of the risk profile of the issued products but also in terms of the business model of the issuing firms, the corresponding risk profiles and the resulting systemic risks they pose. Already the two distinct product categories of ARTs and EMTs whilst using the same or similar technologies are nonetheless fundamentally different products. Major differences relate not least to key aspects of systemic risks as interconnectedness, contagion channels and potentially affected markets. Competent authorities should be given the necessary leeway for case-by-case discretionary adjustments to reflect potentially major differences in risks and risk profiles.

We note that in this regard the qualitative criteria in Article 43 (1) (d) to (g) MiCAR are particularly problematic. It is not plausible that the systemic risk posed e.g. by an ART or EMT exceeding two quantitative thresholds warrants a 50% increase of own funds requirements as soon as the issuing firm also "issues at least one additional asset-referenced token or e-money token, and provides at least one crypto-asset service". This and other qualitative criteria are based upon digital Yes/No decisions and thus are by their very nature blind to the amount of additional risks incurred when the criterion is met.

In order to introduce some degree of risk-sensitivity to the MiCAR significance regime, a more differentiated assessment and a corresponding layering of increased own funds requirements would be needed. Conceptually the bucketing approach as developed by the BCBS for the application of increased prudential requirements aimed at containing systemic risks posed by Global Systemically Important Banks ("G-SIBs") could be drawn upon. However, developing such an approach presupposes again a proper analysis of systemic risks as driven by the size of business and the (systemic) risk profile of products and business activities. The BCBS when devising its approach was able to draw on ample experience with, and evidence of, systemic risks as they materialized during the financial crisis unfolding from 2007 onwards. In contrast, even during the recent large scale crisis that crypto-asset markets experienced, systemic risks did not materialize. The interconnectedness between crypto-assets and other parts of financial markets appear to be not yet sufficiently developed for potential contagion to represent a threat of systemic dimension.

Accordingly, at this stage, in the absence of evidence for systemic risks posed by ARTs or EMTs and their respective issuers, one could conclude that an additional capital charge is neither warranted nor can it be calibrated properly. Especially given the dynamics of crypto-asset markets that may change going forward. However, in cases where data and concluding analysis needed for a risk-sensitive calibration of mandatory minimum own funds requirements are not available, legislation should instead opt for supervisory discretion. Related amendments to the MiCAR level 1 text should at a minimum shift additional own funds requirements to contain systemic risks from the binding 50% increase according to Article 45 (5) MiCAR – say by reducing the 3% to 2.5 % - to discretionary capital add-ons set by regulators for individual firms based on a case-by-case assessment e.g. by allowing for higher percentage increases under Article 35 (3) and (5).

5) MiCAR prudential requirements amplifying (systemic) risks

The EC's work on the interim report should also extend to a thorough and comprehensive analysis of the overall effect of MiCAR prudential requirements applicable to ARTs and EMTs. In some cases, including under the MiCAR significance regime, restrictions aimed at securing a highly liquid, low risk reserve of assets effectively result not in the reduction, but instead in the amplification of liquidity, credit and eventually potential systemic risks. Such provisions run obviously counter the very objective of MiCAR and should therefore be revisited and amended appropriately. Two instances of such requirements are discussed in our more specific comments below under "7) Prudential Requirements amplifying systemic risks". We note in this regard that for one of these cases even the EBA acknowledged that (systemic) risks are being amplified.

6) Competition

Though not specifically addressed under Article 140 (2) MiCAR, we urge the EC to also explore and cover in the interim report any adverse impact of the current MiCAR level 1 text on competition and, related to that, potentially on consumer choice and protection (see Article 140 (2) (z)).

Use of electronic money for redemption

We note that Articles 39 (2) and 49 (4) MiCAR require redemption of ARTs and EMTs respectively "… by paying an amount in funds, other than electronic money …". As we highlighted repeatedly already during the legislative process leading to the adoption of MiCAR we cannot see any justification for excluding electronic money as an eligible means of payment for redemption purposes.

Unlevel playing field between credit institutions and other issuers of ARTs and EMTs[2]

Moreover, we urge the EC to examine thoroughly the exemptions granted to credit institutions as issuers of ARTs and EMTs from obligations that other issuers have to comply with. Since credit institutions are exempted from reserve of assets requirements and since funds received in exchange for issued ARTs and EMTs are not covered by deposit guarantee schemes, the customer protection will not meet equivalent standards. At a minimum, credit institutions should be required to have in place substantive redemption plans ensuring a level of protection of customers' redemption rights comparable to that of other issuers subject to stringent requirements regarding the reserve of assets and the obligation to establish and maintain comprehensive redemption plans.

A further, more specific aspect of MiCAR-induced distortions of competition relates to the provisions regarding the investments of the reserve of assets and the safeguarding requirements. By forcing non-bank issuers of ARTs and EMTs into extensive contractual relationships with banks these provisions not only amplify systemic risks (see also section 8) they also provide banks with an important competitive edge. They allow banks providing these services to monitor their competitors' operations including progress in their business development and profitability.[1]

We urge the EC to address in its interim report the unintended consequences of MiCAR significantly distorting the competition between bank and non-bank issuance of crypto-assets and the related amplification of systemic risk through heightened interconnectedness and contagion. Legislative proposals allowing non-bank issuers direct access to central banks would go a long way in removing both the distortions of competition and the increase of systemic risks caused by MiCAR.

Prohibition of granting interest

We also urge the EC to revisit the prohibition of granting interest as imposed for electronic money by Article 12 EMD2, read across for ARTs and EMTs by Article 40 (1) and 50 (1) MiCAR and extended by Article 40 (2) and 50 (2) MiCAR to CASPs providing related crypto-asset services. The implications of the prohibition of granting interest for competition and consumer choice between these different products and between the different categories of firms providing related services are significant. The prohibition was introduced with the initial launch of the EU electronic money regime in order to clearly distinguish electronic money as a distinct product justifying a stand-alone regulation different from the regulation of deposit-taking. In the meantime, use of e-money and potentially of EMTs is broadening, and restricting the benefit that accrues from payment of interest to deposits only, increasingly penalises the consumer or holder who wishes to utilise these alternative payment products.

Moreover, the read-across of the prohibition to both EMTs and ARTs does not take into account the fundamental differences between these two types of products. EMTs are by their very nature payment products, ARTs are not. At the same time, crypto-asset services related to both ARTs and

[2] for a comprehensive discussion of distortions of competition and increase of systemic risks caused by MiCAR see Jón Egilsson, "MiCAR's Antitrust Concerns: The Potential Impact of Protecting Banks' Interests on Innovation and Growth in Europe", June 2024, and "Not on the money - Competition concerns in the EU Markets in Crypto-Assets Regulation", in Competition Law Insight, Volume 23 Issue 4

EMTs are subject to a MiCAR regime that draws on MiFID concepts applicable to financial instruments. Under MiFID there are no such restrictions.

Finally, we note that the prohibition as it applies under MiCAR to EMTs is more restrictive than under EMD2 since it extends to CASPs providing related crypto-asset services. It thus distorts competition between traditional e-money and EMTs.

In summary, we believe the prohibition of granting interest should be abolished for all 3 product types. The interim report should address the issue and the competitive implications. If a prohibition is retained for any of these 3 products the report should set out as a minimum the respective regulatory rationale.

7) Reporting requirements

The MiCAR reporting requirements are burdensome and raise concerns in terms of proportionality and data privacy, as addressed in more detail below:

a) Proportionality

We noted and welcome the EC's recent initiative to propose Omnibus legislation aimed at reducing the reporting burden the EU economy is facing in relation to sustainability rules. Though unrelated to sustainability, we see significant potential for reducing disproportionate reporting requirements also under MiCAR. We refer in particular to reporting in the context of the classification of ARTs and EMTs as significant under Article 43 (1) and reporting for the monitoring and enforcement of issuance restrictions under Article 23 (1).

Both provisions are aimed at containing systemic risks: in the case of Article 43, systemic risk triggered by interconnectedness with and contagion of the financial system, and in the case of Article 23, systemic risks in the form of threats to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty. These systemic risks are important and give rise to understandable regulatory concerns, which we fully share. They are, however, notoriously difficult to measure. Accordingly, the risk assessment is often based upon a broad set of metrics and related thresholds, operating in some combination as an initial indicator of systemic risk, but usually with considerable room left for expert opinion as a key element of the assessment process. This is often built-in at various levels. Therefore, if the purpose of the collection of this data is in order to support potentially very intrusive regulatory intervention (in extremis withdrawal of authorization), but the systemic risk assessment will in all events be based upon case-by-case expert opinion anyway, we question whether burdensome reporting imposed across the crypto-asset industry adds enough value to justify the related reporting burden.

Additionally, the restrictions and thresholds set in Articles 23 and 43 respectively are in our view far too low to capture systemic risks of a magnitude warranting regulatory attention let alone intervention. By much the same token, we believe that for the vast majority of small- and medium-sized MiCAR-regulated firms, beyond the financial and risk information provided for the purpose of ongoing prudential supervision for regulators to conclude that no systemic risks whatsoever are at stake, additional regulatory reporting is entirely unnecessary. Accordingly, we consider additional reporting as required for the purpose of assessing systemic risks in the context of Articles 23 and 43 to be unnecessary in order to reliably exclude systemic risks.

We urge the EC to consider the issue in its interim report and develop legislative proposals removing the current reporting requirements aimed at informing the assessment of systemic risks and instead introducing discretion for regulators to impose on a case-by-case basis targeted, ad hoc and/or regular reporting requirements for the monitoring of firms that have been identified as potentially posing systemic risks. This regulatory discretion could be combined with a simple size-related threshold below which firms would be exempted from the reporting requirement. The reporting requirements as they currently stand risk generating a vast amount of data that regulators - for very good reason based on sensible and risk-adequate allocation of scarce resources - will simply not look at.

b) Data privacy

Mostly related to the reporting of data for the assessment of systemic risks under Articles 23 and 43, CASPs are obliged to share client-related data with issuers of EMTs and ARTs. In many cases this client-specific data is privacy-sensitive and the sharing with issuers, therefore, problematic. We urge the EC to consider the issue and develop, as needed, legislative proposals ensuring that CASPs can comply with reporting requirements in such a manner as not to infringe privacy obligations towards their customers.

Specific comments

Expanding upon section 2 above, the following more specific comments offer additional background and further details regarding key issues related to the MiCAR significance regime and the enormous cliff-edge effect it generates.

8) Disentangling Article 43 MiCAR

As mentioned before useful references for devising a more suitable significance regime are the BCBS approach to higher loss absorbency requirements for global systemically important banks[3] and the classification of credit institutions as significant under the SSM Framework regulation[4]. The key elements of the BCBS concept including the assessment methodology, the built-in supervisory discretion, the allocation of banks to five pre-defined buckets in accordance with their perceived relative systemic relevance and the corresponding layering of additional own funds requirements commensurate with the identified systemic risks are in our view excellent examples to draw on. It should be noted that the imposed additional loss absorbency requirements increase by relatively

[3] Basel Committee on Banking Supervision, Global systemically important banks: revised assessment methodology and the higher loss absorbency requirement, July 2018

[4] European SSM Framework (Council Regulation (EU) No 1024/2013 of 15 October 2013 EU legislation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions)

moderate 0.5% of common equity tier 1 across the five buckets from 1 to 3.5% (a final 1% step applies for the last most risky bucket). We do acknowledge, however, that given the lack of data and hence the so far limited understanding of systemic risks as posed by ARTs, EMTs and their respective issuers it may well be premature to attempt devising a similarly comprehensive approach to the setting of risk-adjusted additional own funds requirements.

In contrast, the classification as significant in order to determine the remit of direct and fully integrated supervision by the EBA can reasonably easily be aligned to the corresponding example in the SSM Framework regulation. As set out before, we tend to believe that the current criteria and thresholds though tangibly lower than those set in the SSM Framework Regulation are in the same order of magnitude and could probably be read-across to a disentangled Article 43 MiCAR.

We will not enter into further detail and instead refer to a paper published in January 2024 on "MiCA's Significance Regime for Stablecoins - A Sledgehammer to Crack a Nut?".[5] It offers a comprehensive analysis and comparison of regulatory significance concepts including the ECB's PISA Framework and also provides additional detail on the cliff-edge effect the current MiCAR significance regime generates.

9) Prudential requirements amplifying (systemic) risks

As already indicated under section 3. above there are in particular two instances of MiCAR prudential requirements applicable to ARTs and EMTs that run counter the ultimate objective of MiCAR by amplifying (potential systemic) risks.

a) The MiCAR significance regime not only triggers the application of disproportionate increases in prudential requirements vastly overstating the actual (systemic) risks, if any (see our general comments in section 2. d) above). At least one amongst the many increased prudential requirements effectively amplifies these risks.

   According to Article 45 (7) (b) the EBA when developing the draft RTS on the minimum contents of the liquidity management policy and procedures and on liquidity requirements for ARTs shall specify "the minimum amount of deposits in each official currency referenced, which cannot be lower than 60 % of the amount referenced in each official currency". According to the EBA's interpretation of the reference in Article 58 (1) to Article 45 (1) to (4) MiCAR and as stated in its "Draft Regulatory Technical Standards to further specify the liquidity requirements of the reserve of assets under Article 36(4) of Regulation (EU) 2023/1114" this 60% de minimis threshold for bank deposits also applies to EMTs classified as significant.

   Yet, the EBA acknowledges

[5] Hansen/Bauer, MiCA's Significance Regime for Stablecoins - A Sledgehammer to Crack a Nut?, January 2024. The paper also covers the ECB's oversight framework for electronic payment instruments, schemes and arrangements (Eurosystem oversight framework for electronic payment instruments, schemes and arrangements, 2021)

"that an amount of bank deposits in the reserve of assets higher than those percentages (i.e. 30% and, for ARTs and EMTs classified as significant, 60%) of the amount of assets referenced in tokens might trigger concerns from the perspective of the liquidity of the reserve assets overall and their exposure to credit risk. The EBA considers that it is key to keep a relevant amount of the reserve of assets as susceptible to be liquidated in the market and not just with specific counterparties. Furthermore, the interconnectedness between the banking system and crypto-asset sector should be well controlled to avoid reciprocal contagion effects in case of distress of one of them. Therefore, the EBA considers that the minimum amount of bank deposits in the reserve assets should not be set at a higher default level than those percentages of the amount referenced in each official currency."

We fully concur with the EBA's analysis. The application of the 60% de minimis threshold to significant ARTs and EMTs runs counter the very objective of MiCAR to contain (systemic) risks. In contrast, we very much doubt that the reference in Article 58 (1) and (2) to Article 45 (1) to (4) MiCAR can be interpreted as requiring application of the increased threshold pursuant to Article 45 (7) MiCAR – a provision Article 58 (1) MiCAR does NOT refer to – also to significant EMTs.

A debate as to whether this interpretation can be upheld or not is futile. Instead, we urge the EC to develop as a matter of urgency legislative proposals abolishing the harmful 60% de minimis threshold for bank deposits for both ARTs and EMTs. A provision that clearly amplifies systemic risks and, hence, runs counter the very objective of MiCAR should be removed as soon as possible.

b) A similar problem with a prudential requirement resulting in additional risks including potential systemic risks and, in this instance, affecting both significant and non-significant ARTs and EMTs relates to the EBA's "Draft Regulatory Technical Standards to specify the highly liquid financial instruments in the reserve of assets Article 38(5) of Regulation (EU) 2023/1114". According to Article 38 (5) (c) MiCAR the EBA when developing these RTS was bound to "take into account […] the liquidity coverage requirement as referred to in Article 412 of Regulation (EU) No 575/2013 and as further specified in Commission Delegated Regulation (EU) 2015/61 (41)."

Referring to these regulations, the EBA's draft RTS imposes in Article 1 (1) (c) (ii) a cap of 35% of the value of the reserve of assets for level 1 assets (i.e. assets qualifying as exposures in the form of extremely high-quality covered bonds, as referred to in Article 10(1), point (f), of Delegated Regulation (EU) 2015/61). Accordingly, a USD-referencing EMT could only invest up to 35% of its reserve in US government bonds (or assets backed by such bonds). If non-significant, 30% of the reserve assets of that EMT would have to be deposited with a credit institution. The remaining 35% could be either invested into covered bonds or deposited with credit institutions. Accordingly, the 35% cap forces investment into covered bonds or bank deposits instead of government bonds (the latter representing level 1 assets according to Article 10 of Delegated Regulation (EU) 2015/61 since the safest and most liquid assets available in the financial system).

As a consequence the EMT is exposed to significantly higher risks with, in the case of US government bonds, limited additional exposure to concentration risks, if at all. The same amplification of risk would occur for significant EMTs if, as suggested above, the 60% de minimis threshold for bank deposits were removed.

10) The regime for ARTs used as a means of exchange and EMTs denominated in a currency that is not an official currency of a Member State

The specific regime for ARTs used widely as a means of exchange and of EMTs denominated in a currency which is not an official currency of a Member State is another example of a disproportionate regulatory approach adversely affecting in particular EMTs used in a non-EU specific economic context. According to Article 23 (1) (for EMTs as referred to in Article 58 (3)) these products are subject to extremely tight limitations. Article 23 (1) stipulates that the estimated quarterly average number and average aggregate value of transactions per day associated to the use of these products as a means of exchange must not be higher than 1 million transactions and EUR 200,000,000, respectively. Whilst the term "means of exchange" is undefined and hence introduces significant legal uncertainty, it is certain that the reporting requirements imposed to monitor and enforce these limitations represent a considerable operational burden, which we believe to be disproportionate.

The rationale of these tight limitations is documented in the related provision of Article 24 (4) allowing NCAs to withdraw the authorization of an issuer of such products "when the ECB or, where applicable, the central bank referred to in Article 20(4), issues an opinion that the asset-referenced token poses a <u>serious threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty</u>". We do understand the regulatory concern. However, in the absence of any evidence, that reaching or exceeding the set thresholds would pose such a threat, we believe that the draconian measures imposed, in extremis the withdrawal of the authorization, would be justified only if the seriousness of the threat had been evidenced by a comprehensive assessment of the product, its actual use as a means of exchange and the specific circumstances including as they relate to the operation of payment system and monetary policy transmission and monetary sovereignty. That the required burdensome reporting would not provide information reliably indicating such a threat is evidenced by Article 23 (2) stipulating that "(t)he competent authority shall use the information provided by the issuer, its own estimates, or the estimates provided by the ECB or, where applicable, by the central bank referred to in Article 20(4), whichever is higher". However, since reported data can anyhow be overridden by estimates of NCAs and the relevant central bank and since Article 24 (2) allows the withdrawal of authorization based upon expert opinion by the relevant central bank - even if the set thresholds are not exceeded - the significant reporting burden created by Article 23 is in our view disproportionate.

We believe adherence to the principle of proportionality would require removing the limitations and reporting requirements imposed by Article 22 and 23, and retaining only the powers of competent authorities as specified in Article 24 (2). We urge the EC to address the issue in its interim report and develop legislative proposals ensuring a proportionate regulatory approach.

11) <u>Interplay between MiCAR and the regulation of payment services (Articles 140 (3), 142 (2) (c)</u>

The complexities of the interplay between MiCAR and the regulation of payment services have been debated at length. Council negotiations on how to address the issue in PSD3/PSR are still pending. The significant uncertainties resulting from a dual classification of EMTs as crypto-assets subject to MiCAR and e-money/funds subject to payment services regulations must be resolved. EMTs risk being subject to duplicative, potentially conflicting compliance requirements causing a significant administrative burden.

We urge the EC to address the issue in its interim report and clarify the regulatory status and treatment of EMT-related services. Legislative proposals should be developed if needed in order to ensure a coherent regulatory approach recognizing that EMT-related services including transfers for reasons other than buying goods and services are and must remain subject to MiCAR as the "lex specialis" regulation for crypto-assets and crypto-asset activities. We may comment on the issue in more detail at a later stage.

Conclusion

The above comments address key aspects of the current MiCAR level 1 text, which we believe should give rise to in-depth analysis informing the EC's interim report and related legislative proposals. We are keen to help ensure delivery of the MiCAR objectives in terms of both setting a well-balanced regulatory framework that assists the thriving of the EU internal crypto-asset market to the benefit of consumers and the EU financial system and that contains the associated (potentially systemic) risks as effectively as possible. We are looking forward to the EC's interim report and stand ready to contribute in related formal and informal consultations to further what has been achieved with the MiCAR regulatory framework as it stands.

List of EMA members as of March 2025

Airbnb Inc
Aircash
Airwallex (UK) Limited
Amazon
Ambr
American Express
Banked
Benjamin Finance Ltd.
Bitstamp
Blackhawk Network EMEA Limited
Boku Inc
Booking Holdings Financial Services International Limited
BVNK
Cardaq Ltd
CashFlows
Circle
Coinbase
Contis
Crypto.com
Currenxie Technologies Limited
Curve UK LTD
Decta Limited
Deel
eBay Sarl
ECOMMPAY Limited
Em@ney Plc
emerchantpay Group Ltd
EPG Financial Services Limited
eToro Money
Etsy Ireland UC
Euronet Worldwide Inc
Facebook Payments International Ltd
Finance Incorporated Limited
Financial House Limited
FinXP
First Rate Exchange Services
Fiserv
Flywire
Gemini
Globepay Limited
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited
iFAST Global Bank Limited
Imagor SA
Ixaris Systems Ltd
J. P. Morgan Mobility Payments Solutions S. A.
Kraken
Lightspark Group, Inc.
Modulr Finance B.V.
MONAVATE
MONETLEY LTD
Moneyhub Financial Technology Ltd
Moorwand Ltd
MuchBetter
myPOS Payments Ltd
Navro Group Limited
Nuvei Financial Services Ltd
OFX
OKG Payment Services Ltd
OKTO
OpenPayd
Owl Payments Europe Limited
Own.Solutions
Papaya Global / Azimo
Park Card Services Limited
Payhawk Financial Services Limited
Paymentsense Limited
Paynt
Payoneer Europe Limited
PayPal
Paysafe Group
Paysend EU DAC
Plaid B.V.
Pleo Financial Services A/S
PPS
Push Labs Limited
Remitly
Revolut
Ripple
Satispay Europe S.A.
Securiclick Limited
Segpay
Soldo Financial Services Ireland DAC
Square
Stripe
SumUp Limited
Syspay Ltd
TransactPay
TransferGo Ltd
TransferMate Global Payments
TrueLayer Limited
Uber BV
Unzer Luxembourg SA
VallettaPay
Vitesse PSP Ltd
Viva Payments SA
Weavr Limited
WEX Europe UK Limited
Wise
WorldFirst
Worldpay