

EBA/RTS/2024/05

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Final Report

Draft Regulatory Technical Standards

on the approval process for white papers for ARTs issued by credit institutions under Article 17(8) of Regulation (EU) 2023/1114 on Markets in Crypto-Assets

Contents

1. Executive Summary	3
2. Background and rationale	4
3. Draft regulatory technical standards on the approval process for crypto-asset white papers for asset-referenced tokens issued by credit institutions under Article 17(8), third subparagraph of Regulation (EU) 2023/1114	5
4. Accompanying documents	13
4.1 Impact assessment	13
4.2 Feedback on the public consultation	17

1. Executive Summary

On 29 June 2023, Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR) entered into force in the European Union (EU), and the provisions relating to Asset-Referenced Tokens (ART) will apply from 30 June 2024. MiCAR provides a dedicated and harmonised framework for markets in crypto-assets with the aims to support innovation and fair competition, while ensuring a high level of protection of retail holders and the integrity of markets in crypto-assets.

With a view to ensuring a harmonised approach across the EU to the procedure for the approval of the crypto-asset white papers for ARTs produced by credit institutions, Article 17(8) of MiCAR requires the EBA, in close cooperation with the ESMA and the ECB, to develop draft regulatory technical standards (RTS) to specify the procedure for the approval of the crypto-asset white paper.

The draft RTS aim to harmonize the different steps and timeframes of the approval procedure, to ensure clear expectations and transparency for credit institutions seeking to issue ARTs. To promote a swift and efficient completion of the crypto-asset white paper approval process in the most proportionate way, the draft RTS also harmonise logistical aspects of the approval procedure.

The draft RTS were subject to a public consultation between 20 October 2023 and 22 January 2024. Having assessed the responses, the EBA decided to make a number of targeted amendments to provide greater clarity on a small number of provisions and to ensure that competent authorities have sufficient time to undertake relevant tasks. The changes include an extension of the deadline for competent authorities to inform the issuer of a request of changes or, where applicable, the decision on the approval of the white paper, a clarification under which the competent authority's requests of changes to the white paper shall be duly justified, and a clarification around the relevant provisions that the competent authority should consider for the substantive assessment of the white paper..

Next steps

The draft RTS will be submitted by 30 June 2024 to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

2. Background and rationale

1. In September 2020, the European Commission published its legislative proposal for a regulation on markets in crypto-assets (MiCAR), with a view to creating a holistic approach to the regulation and supervision of crypto-asset activities not already covered by EU law. Following the endorsement of the European Parliament and the Council of the EU, MiCAR was adopted and published in the Official Journal of the EU on 9 June 2023.
2. MiCAR provides for the issuance of ARTs by credit institutions established in the EU and by legal persons or undertakings authorised or exempted under Title III of MiCAR. Credit institutions intending to issue ARTs do not need a specific authorisation under MiCAR. National procedures established under Directive 2013/36/EU (CRD IV) apply regarding the organisational, risk management and prudential requirements. However, pursuant to MiCAR, credit institutions are required to notify the home competent authority designated for the purposes of Title III of MiCAR with elements enabling it to verify the credit institution's ability to issue ARTs. Additionally, the credit institution must produce a crypto-asset white paper to inform potential holders of the tokens about the characteristics and risks of ARTs. The white paper must be approved by the relevant competent authority before publication.
3. With a view to ensuring a harmonised approach across the EU to the procedure for the approval of the crypto-asset white papers for ARTs produced by credit institutions, Article 17(8) of MiCAR mandates the EBA, in close cooperation with the ESMA and the ECB, to develop draft regulatory technical standards (RTS) to specify the procedure for the approval of the crypto-asset white paper.
4. To ensure clear expectations and transparency for credit institutions seeking to issue ARTs, the draft RTS aim to harmonize the different steps and timeframes of the approval procedure. To that end, the draft RTS set out the procedure applicable to the assessment of completeness of the contents of the crypto-asset white paper by the competent authority, as well as to the substantive assessment of the white paper by the competent authority. The draft RTS also clarify expectations regarding cases where the timeline set in MiCAR for the issuance of an opinion by the ECB and other relevant central banks on risks related to the ART expires without an opinion having been submitted to the competent authority.
5. With respect to those parts of the approval procedure, the draft RTS specify the practicalities and logistics of the exchange of information between the credit institution and the competent authority, as well as between the latter and the ECB and other relevant central banks, to ensure a smooth, swift and efficient procedure for the approval of the crypto-asset white paper.

3. Draft regulatory technical standards on the approval process for crypto-asset white papers for asset-referenced tokens issued by credit institutions under Article 17(8), third subparagraph of Regulation (EU) 2023/1114

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets with regard to regulatory technical standards further specifying the procedure for the approval of a crypto-asset white paper referred to in Article 17(1), point (a) of Regulation (EU) 2023/1114

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114/ on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937¹, and in particular to Article 17(8), third subparagraph thereof,

Whereas:

- (1) The procedure for the approval of a crypto-asset white paper pursuant to Article 17(1), point (a) of Regulation (EU) 2023/1114 is very closely linked to the procedure applicable for the notification of relevant information to the competent authority pursuant to Article 17(1), point (b) of that Regulation. Their link is rendered obvious especially by the fact that the relevant competent authority cannot provide its approval of the crypto-asset white paper in the case of a negative opinion from the European Central Bank and, where applicable, other relevant central bank pursuant to Article 17(5), third subparagraph. As a result, rules further specifying the procedure for the approval of a crypto-asset white paper referred to in Article 17(1)(a) of Regulation

¹ OJ L 150, 9.6.2023, p. 40, ELI: <http://data.europa.eu/eli/reg/2023/1114/oj>.

(EU) 2023/1114 should establish a similar process to the one set out in Article 17(3) of that Regulation (which is applicable to the notification to the competent authority of other information). Further, such rules should also specify any aspects of the 'common' procedure that is applicable to both the approval of the crypto-asset white paper as well as the notification of other information to the competent authority- such as the part of the procedure that relates to the ECB and, as applicable, other central bank opinion.

- (2) Article 17(3) of Regulation (EU) 2023/1114, which relates to the notification of relevant information to the competent authority pursuant to Article 17(1), point (b) of that Regulation, relates to the phase of confirming the *completeness* of the items notified to the competent authority. Article 17(5) first subparagraph of that Regulation then provides that the competent authority can submit the complete information received under Article 17(1) of that Regulation, i.e. the notified information *as well as* the crypto-asset white paper, to the ECB and, as applicable, other relevant central bank (as provided for in that Article). Therefore, the same approach should apply with regard to the procedure for the white paper approval, so that the competent authority should first be required to check the completeness of the crypto-asset white paper. And the same rules and timelines as set out in Article 17(3) of Regulation (EU) 2023/1114 (in relation to the assessment of the completeness of the information notified pursuant to Article 17(1), point (b) of that Regulation) also for the procedure applicable to the assessment of the completeness of the contents of the crypto-asset white paper pursuant to Article 17(1), point (a) of that Regulation.
- (3) Where a competent authority finds that the crypto-asset white paper is missing some of the elements required by Article 19(1) of Regulation (EU) 2023/1114, and requests the credit institutions to resubmit the crypto-asset white paper with these additional elements, the credit institution should be able to demonstrate to the competent authority how the additional information in the revised white paper addresses this request. It is therefore necessary to provide that each revised version of the crypto-asset white paper submitted to the competent authority contains such an explanation, as well as a marked-up file of the crypto-asset white paper that clearly highlights all changes made since the previously submitted version, and a clean file where such changes are not highlighted.
- (4) In terms of the further specification of the procedure that is common to the approval of the crypto-asset white paper and the notification to the competent authority, and in particular with regard to that part of the procedure that relates to the competent authority's communication of the complete information to the ECB and, where applicable, the relevant central bank, it is necessary to specify the practicalities and logistics of that exchange of information so as to ensure its smooth and efficient running.
- (5) A further specification of the procedure that relates to the ECB or the relevant central bank is needed: Article 17(5) of Regulation (EU) 2023/1114 requires the issuance of an opinion by the ECB, and, where the credit institution is established in a Member State whose official currency is not the euro or where an official currency of a Member State that is not the euro is referenced by the asset-referenced token, the central bank of that Member State. The same Article provides that, in the event of those opinions being negative, the competent authority shall require the credit institution not to offer to the public or seek the admission to trading of the asset-referenced token. This Article

sets out a timeline for the issuance of the ECB's and, as applicable, other relevant central bank's opinion, but it does not explicitly set out what happens where the timeline for the issuance of such opinion has expired, and therefore this element should be further specified in this Regulation on the procedure for the crypto-asset white paper approval. Despite the lack of explicit mention, a systematic reading of the whole of Article 17 of Regulation (EU) 2023/1114 suggests that in such a scenario the competent authority can consider that no objection has been raised by the ECB or relevant central bank and can thus proceed to either provide its approval or reject the application based on its substantive assessment of the requirements for the crypto-asset white paper as set out in Article 19 of Regulation (EU) 2023/1114. This understanding is consistent with the fact that Article 17 of Regulation (EU) 2023/1114 entrusts the approval of the crypto-asset white paper with the competent authority, limiting the views of the ECB or relevant central bank to any objections of a 'monetary' nature which then the competent authority should take into account in its substantive assessment of the white paper. That Article establishes a 'veto' by the ECB or relevant central bank only where they give a negative opinion. Therefore, any other readings would result in either expanding that 'veto' beyond what the law has provided, would affect/limit the competent authority's competences as set out in the law and could also have the potential of indefinitely delaying the approval procedure which would be disproportionate to the credit institutions and the achievement of the objectives of Regulation (EU) 2023/1114.

- (6) Following the submission by the ECB or relevant central bank of their opinion, or the expiration of the timeline for the issuance of such opinion, the substantive assessment of the crypto-asset white paper by the competent authority, which aims to ensure compliance of the crypto-asset white paper with the requirements of Article 19 of Regulation (EU) 2023/1114, could result in an iterative process, whereby the competent authority requests improvements to the crypto-asset white paper submitted by the credit institution to the competent authority. This can also result from the case of a positive opinion by the ECB and, as applicable, other relevant central bank that makes comments and suggestions which the competent authority takes into account and adopts. This is necessary to ensure that the crypto-asset white paper meets the requirements set out in that Regulation in the most efficient manner, i.e. without having to re-start anew the whole procedure for the crypto-asset white paper approval, which could disproportionately delay the launch of the asset reference token. In other words, such an approach is necessary to allow the swift launching of tokens into the market, where all complete information has been provided meeting all substantive requirements in Regulation (EU) 2023/1114. In any case, the timelines for the competent authority's request and the credit institution's reaction are short (and shorter than the ones provided with regard to the assessment of the completeness phase of the procedure), especially given that the competent authority can commence its substantive assessment of the crypto-asset white paper already once it confirms completeness, and while it awaits the ECB and, as applicable, other central bank's opinion. This ensures minimising the burden on credit institutions.
- (7) Logistical aspects of the part of the procedure for the crypto-asset white paper approval that relates to the final decision of the competent authority should also be further specified, such as the timeline or contact points, in order to allow for a smooth and harmonised approach to the approval procedure.

- (8) As the procedure for the crypto-asset white paper approval necessarily involves submission of documents and exchange of information between the credit institution and the competent authority as well as between the latter and the ECB and, as applicable, other relevant central bank, it is also necessary to set out rules on the logistics of these exchanges, and in particular on the practical means of submitting such information. In order to ensure the swift and efficient completion of the crypto-asset white paper approval process in the most proportionate way, such exchanges should be made via electronic means, which allow easier and faster communication and record-keeping while, given the high expectations of care on both public authorities and institutions, a high level of security should be expected to be achieved.
- (9) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority. The European Banking Authority has developed these draft regulatory technical standards in close cooperation with the European Securities and Market Authority and with the European Central Bank.
- (10) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council².

HAS ADOPTED THIS REGULATION:

Article 1

Submission of an application for approval of a crypto-asset white paper

When a credit institution submits the crypto-asset white paper to the competent authority for the purpose of its approval in accordance with Article 17(1), point (a) of Regulation (EU) 2023/1114, the following shall apply:

- (a) the credit institution shall make this submission by electronic means;
- (b) the credit institution shall provide a contact point for the competent authority to submit all communications to it.

Article 2

Acknowledgement of the receipt and processing of an application for approval of a crypto-asset white paper

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331 15.12.2010, p. 12, , ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>)

- 1 The competent authority shall acknowledge receipt of the application for approval of a crypto-asset white paper by electronic means no later than by close of business on the second working day following the receipt of the application.
- 2 The acknowledgement referred to in paragraph 1 shall include the following information:
 - (a) the reference number of the application;
 - (b) the contact point within the competent authority to which queries regarding the application may be addressed.

Article 3

Assessment of completeness of the crypto-asset white paper

- 1 The competent authority shall, within 20 working days of receipt of the application for approval of a crypto-asset white paper, assess the completeness of the crypto-asset white paper against the requirements referred to in Article 19(1) of Regulation (EU) 2023/1114.
- 2 When the crypto-asset white paper is assessed as complete by the competent authority in accordance with paragraph 1, the competent authority shall issue an acknowledgement of receipt of the complete crypto-asset white paper to the applicant by electronic means setting the date at which the crypto-asset white paper is deemed complete.

Article 4

Request of missing information to a crypto-asset white paper

- 1 Where the competent authority concludes that the crypto-asset white paper is not complete against the requirements of Article 19(1) of Regulation (EU) 2023/1114, the competent authority shall inform the credit institution, by electronic means, of the missing information and shall set a deadline by which that credit institution is required to provide the missing information.
- 2 The deadline for providing any missing information referred to in paragraph 1 shall not exceed 20 working days from the date of the request. Until the expiry of this deadline, the period set by Article 3(1) shall be suspended. Any further requests by the competent authority for completion or clarification of the information for the assessment under Article 3(1) shall be at their discretion but shall not result in a suspension of the period set by therein.

- 3 Following any request from the competent authority referred to in paragraph 1, the credit institution shall submit a revised crypto-asset white paper to the competent authority within the deadline set out by the request. The credit institution's submission shall include the following:
 - (a) the revised crypto-asset white paper in a 'clean', unmarked version;
 - (b) the revised crypto-asset white paper in a version with all the changes clearly marked, highlighting all supplementary information that is new compared to the original version of the crypto-asset white paper submitted in accordance with Article 1;
 - (c) an explanation as to how the supplementary information, reflected in the version referred to in point (b), addresses the competent authority's request, pursuant to paragraph 1, for providing missing information.

Article 5

Information exchange between the competent authority and the ECB and, as applicable, other central banks

- 1 For the purposes of communicating 'without delay' the complete information received to the ECB and, where applicable, to a central bank in accordance with Article 17(5) first subparagraph of Regulation (EU) 2023/1114, that communication shall be made by electronic means no later than two working days from the acknowledgement of receipt issued by the competent authority of the complete crypto-asset white paper to the credit institution.
- 2 The ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation 2023/1114, shall, within no later than two working days of the receipt of the information, provide the competent authority with both of the following:
 - (a) acknowledgement, by electronic means, of receipt of the information;
 - (b) the contact point to which queries regarding the application may be addressed.

Article 6

Assessment of the crypto-asset white paper in the absence of the ECB's or another central bank's opinion

Where the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, do not transmit an opinion to the relevant competent authority within the 20 working days' period indicated in Article 17(5) second subparagraph of that Regulation, the relevant competent authority may consider this as

an indication that there is no negative opinion on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty as referred to in Article 17(5) third subparagraph.

Article 7

Request of changes to a crypto-asset white paper

- 1 Following a positive opinion by the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, or following the expiration of the 20 working days' period indicated in Article 17(5) second subparagraph of that Regulation without any opinion issued by them, and in the context of the competent authority's substantive review of the crypto-asset white paper in accordance with Article 19 of that Regulation, that competent authority may issue to the credit institution a duly justified request for changes of the crypto-asset white paper. It shall inform the credit institution accordingly by electronic means and it shall set a deadline by which that credit institution is required to provide the updated crypto-asset white paper. The competent authority shall inform the institution within a maximum of 10 working days from a positive opinion by the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, or following the expiration of the 20 working days' period indicated in Article 17(5) second subparagraph of that Regulation without any opinion issued by them.
 - 2 The deadline for providing the updated crypto-asset white paper requested by the competent authority as referred to in paragraph 1 shall not exceed 10 working days following the issuance of the request for changes by the competent authority.
 - 3 Following any request from the competent authority referred to in paragraph 1, the credit institution shall submit a revised crypto-asset white paper to the competent authority within the deadline set out by the request. The credit institution's submission shall include all of the following:
 - (a) the revised crypto-asset white paper in a 'clean', unmarked version;
 - (b) the revised crypto-asset white paper in a version with all the changes clearly marked, highlighting all changes made compared to the version of the crypto-asset white paper submitted either in accordance with Article 1, or, where additional information had been requested by the competent authority, in accordance with Article 4;
 - (c) an explanation as to how the changes made information, reflected in the version referred to in point (b), address the competent authority's request, pursuant to paragraph 1, for making substantive changes to the crypto-asset white paper.
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Article 8

Approval of the crypto-asset white paper

- 1 Competent authorities shall provide on their website contact details for the purposes of crypto-asset white paper approvals.
- 2 The competent authority shall notify the credit institution of its final decision regarding the approval of the crypto-asset white paper by electronic means. It shall do so within 10 working days from the receipt of the new crypto-asset white paper referred to in Article 7(2) or, where no changes to the crypto-asset white paper are requested, 10 working days from a positive opinion by the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, or following the expiration of the 20 working days' period indicated in Article 17(5) second subparagraph of that Regulation without any opinion issued by them.
- 3 The crypto-asset white paper shall not be published until the competent authority of the home Member State has approved it.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President
[Position]

4. Accompanying documents

4.1 Impact assessment

As per Article 10(1) and Article 15(1) of Regulation (EU) No 1093/2010 (EBA Regulation), regulatory technical standards shall be accompanied by an Impact Assessment (IA) which analysis 'the potential related costs and benefits.' This section presents the IA of the main policy options included in this Consultation Paper (CP) on draft regulatory technical standards (RTS) on the approval process for crypto-asset white papers for asset referenced tokens ('ARTs') issued by credit institutions under Article 17(8) third subparagraph of Regulation (EU) 2023/1114 (MiCAR').

MiCAR sets out a new legal framework applicable to credit institutions intending to offer to the public or to seek admission to trading of ARTs, requiring them to submit an application for authorisation containing all the information set out in Article 17(1) MiCAR, which includes a crypto-asset white paper, whose content and form is specified in Article 19 MiCAR and Annex II MiCAR.

A. Problem identification

MiCAR does not require authorisation for a credit institution intending to offer to the public or admit to trading an ART. Instead, MiCAR establishes a notification procedure, within which a credit institution is required to submit a crypto-asset white paper for approval. MiCAR regulates the content and form of the white paper, and establishes that it has to be transmitted to the ECB or other central bank for their adoption of the Opinion on the interaction of the envisaged issuance of ARTs with monetary policy, monetary sovereignty, smooth functioning of the payment system and financial stability. However, because credit institutions are not required to apply for authorisation to offer an ART to the public or admit it to trading, and instead establishes that notification procedure, it is necessary that the approval process for white papers are harmonised in the EU.

Lack of a standardised approval process for white papers of ARTs issued by credit institutions may lead to diverging approaches and different practices across Member States, including vis-à-vis the white papers of ARTs issued by other legal undertakings, hindering the level playing field and leading to regulatory arbitrage across EU Member States. Against this background, the new EU regulatory framework mandates the EBA, in close cooperation with ESMA and the ECB, to develop an RTS to further specify the procedure for the approval of a crypto-asset white paper.

B. Policy objectives

The strategic objective of the RTS is the harmonisation of the approval process for crypto-asset white papers of ARTs issued by credit institutions. The operational objective of the RTS is to clarify

the approval process, including the deadlines for each decision or request notified by competent authorities and each submission and communication by credit institutions.

C. Baseline scenario

In a baseline scenario no harmonisation of the approval process would be made, and the CAs would establish an approval process based on the rules already set out in Article 17 MiCAR. This may ultimately lead to regulatory arbitrage across MSs, with credit institutions choosing the MSs with a more lenient approach to approve a white paper for ARTs.

D. Options considered

Section D presents the main policy options discussed and the decisions made during the development of the draft RTS. Advantages and disadvantages of the policy options and the preferred options resulting from this analysis are assessed below.

Policy issue 1: interaction with the information to be notified under Article 17(1)(b) MiCAR

Option 1a: the approval process of the white paper and the notification of information under Article 17(1)(b) MiCAR do not necessarily follow the same process and deadlines.

Option 1b: the approval process of the white paper must recognize that the notification of information under Article 17(1)(b) MiCAR is very closely linked to the general procedure, but can include additional rules that contribute to harmonising the approval process.

The procedure for the approval of a crypto-asset white paper pursuant to Article 17(1)(a) MiCAR is very closely linked to the procedure applicable for the notification of relevant information to the competent authority pursuant to Article 17(1)(b) MiCAR. Their link is rendered obvious especially by the fact that the relevant competent authority cannot provide its approval of the crypto-asset white paper in the case of a negative opinion from the European Central Bank and, where applicable, other relevant central bank pursuant to Article 17(5), third subparagraph.

As a result, rules further specifying the procedure for the approval of a crypto-asset white paper referred to in Article 17(1)(a) MiCAR should establish a similar process to the one set out in Article 17(1)(3) MiCAR. Further, such rules should also specify any aspects of the 'common' procedure that is applicable to both the approval of the crypto-asset white paper as well as the notification of other information to the competent authority (e.g. the part of the procedure that relates to the ECB and, as applicable, other central bank opinion).

Additionally, Article 17(3) MiCAR, which relates to the notification of relevant information to the competent authority pursuant to Article 17(1)(b) MiCAR, relates to the phase of confirming the completeness of the items notified to the competent authority. Article 17(5) first subparagraph MiCAR then provides that the competent authority can submit the complete information received under Article 17(1) of that Regulation to the ECB and, as applicable, other relevant central bank.

Therefore, the same approach should apply with regard to the procedure for the white paper approval, so that the competent authority should first be required to check the completeness of the crypto-asset white paper. And the same rules and timelines as set out in Article 17(3) MiCAR should apply also for the procedure applicable to the assessment of the completeness of the contents of the crypto-asset white paper pursuant to Article 17(1)(a) MiCAR.

Furthermore, Option 1b allows the competent authority to request the credit institution to resubmit the white paper, where it finds that the submitted white paper is missing some of the elements required by Article 19(1) MiCAR. Option 1a, in turn, would hardly allow the competent authority to undertake this necessary task.

Option 1b has therefore been chosen as the preferred option.

Policy issue 2: impact on the approval process of the potential non-issuance of an Opinion by the ECB and, where applicable, other central bank

Option 2a: Require a suspension of the deadlines applicable to the competent authority, until delivery of the opinion.

Option 2b: Introduce an assumption that where an opinion is not delivered, or the deadline for its delivery has expired, the competent authority can consider that the ECB and, where applicable, other central bank, have no objection to the offering to the public and admission to trading of the ART.

Article 17(5) MiCAR requires the issuance of an opinion by the ECB, and, where the credit institution is established in a Member State whose official currency is not the euro or where an official currency of a Member State that is not the euro is referenced by the ART, the central bank of that Member State. The same Article provides that, in the event of those opinions being negative, the competent authority shall require the credit institution not to offer to the public or seek the admission to trading of the ART. This Article sets out a timeline (of 20 working days since receipt of complete information) for the issuance of the ECB's and, as applicable, other relevant central bank's opinion, but it does not explicitly set out what happens where the timeline for the issuance of such opinion has expired.

Option 2a would require the competent authority to suspend its deadline for approving the white paper until delivery of the ECB/other central bank's opinion. This option could be costly for credit institutions that have submitted a white paper that is compliant with MiCAR requirements, as the approval process could get too long.

Option 2b would propose that despite the lack of explicit mention, a systematic reading of the whole of Article 17 MiCAR suggests that in such a scenario the competent authority can consider that no objection has been raised by the ECB/other central bank. In this case, the competent authority can proceed to either provide its approval or reject the white paper, making the process more agile in the interest of the credit institution. This understanding is consistent with the fact that Article 17 MiCAR entrusts the approval of the crypto-asset white paper with the competent

authority, limiting the views of the ECB/other central bank to any objections of a ‘monetary’ nature which then the competent authority should take into account in its substantive assessment of the white paper.

Option 2b has therefore been chosen as the preferred option.

Policy issue 3: Extent to which the competent authority can undertake a substantive assessment of the white paper.

Option 3a: the competent authority shall limit its role to assess the completeness of the white paper.

Option 3b: the competent authority should assess the completeness of the white paper, but should also undertake a substantive assessment of the white paper before approval.

Following the submission by the ECB/other central bank of their opinion, under Article 17(5) MiCAR, or the expiration of the timeline for the issuance of such opinion, MiCAR does not explicitly set out additional assessments to be done by the competent authority.

Option 3a would contemplate the scenario where, if the white paper has been deemed complete and the ECB/other central bank have not delivered a negative opinion, a competent authority would be forced or obliged to approve a white paper. In such a scenario, white papers with misleading, unfair or unclear wording could be deemed approved by competent authorities, where they include all the information required under MiCAR.

Option 3b, instead, would extend the role of the competent authority. This approach would recognize the fact that the completeness assessment shall be done in a first stage because the competent authority is required to notify ‘complete’ information to the ECB/other central bank, but that at a later stage, the competent authority should still assess substantively the rest of the more qualitative requirements on white papers under Article 19 MiCAR.

The substantive assessment of the white paper by the competent authority could result in an iterative process, whereby the competent authority requests improvements to the crypto-asset white paper to the credit institution. However, the cost of this iterations are not expected to be significant, and are necessary to ensure that the crypto-asset white paper meets the requirements set out in MiCAR in the most efficient manner, i.e. without having to re-start anew the whole procedure for the white paper approval, which could disproportionately delay the launch of the ART.

Option 3b has therefore been chosen as the preferred option.

4.2 Feedback on the public consultation

1. The EBA conducted a public consultation on the draft RTS referred to in this paper over a three-month period, ending on 22 January 2024; a public hearing was held on 11 January 2024. 4 responses were received, and all were published on the EBA website.
2. This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them, if deemed necessary.

4.2.1 Main comments received during public consultation

3. Respondents broadly acknowledged the efforts undertaken by the EBA to promote operational efficiency, namely by supporting flexibility and proposing short deadlines for the completeness and qualitative checks to be made by the competent authority. However, respondents also provided feedback that highlighted some concerns. In a few cases, industry bodies made similar comments. In such cases, the comments and the EBA analysis are included in the section of this paper where EBA considers them most appropriate.
4. Respondents considered that there may be a potential misalignment in the approach to the assessment of the completeness of the white paper when the ART issuer is a credit institution compared to when the issuer is another type of legal undertaking.
5. Respondents suggested that qualitative standards could be issued by the EBA addressed to both competent authorities and to issuers providing guidance on the qualitative aspects that will be assessed during the white paper approval process.
6. Respondents suggested that requests of changes as a result of the substantive review of the white paper should be duly justified, and that they could be made public and available through a pan-European repository.
7. Respondents suggested that the RTS should enable crypto-asset white papers to be published prior to approval by the competent authority as long as it is clearly indicated that approval is pending.

4.2.2 The EBA's update of the draft RTS

8. The EBA has taken into account and provided detailed feedback on the comments received during the public consultation. The following table provides a summary of the responses to the consultation and of the EBA's analysis.
9. Having assessed the responses, the EBA decided to make a small number of targeted amendments to provide greater clarity on a small number of provisions and to ensure that competent authorities have sufficient time to undertake relevant tasks. The changes include an extension of the deadline for competent authorities to inform the issuer of a request of changes

or, where applicable, the decision on the approval of the white paper, a clarification under which the competent authority's requests of changes to the white paper shall be duly justified, and a clarification around the relevant provisions that the competent authority should consider for the substantive assessment of the white paper.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
<p>One respondent suggested that the flexibility provided to competent authorities under the draft RTS could be further enhanced by extending deadlines proposed by the EBA in the consultation paper. The respondent indicated that flexibility could be offset by enabling crypto-asset white papers to be published prior to approval by the competent authority of the home Member State, as long as it is clearly indicated that approval is pending.</p>	<p>Under Article 17(1) of MICAR a credit institution must notify information on the ART to the competent authority at least 90 working days before issuing the ART. Therefore, in order to set out a procedure with a timeline that does not extend to the full 90 working days, also taking into account the possibility for competent authorities to issue requests of missing information and of changes to the issuer, the EBA considers that the 10 working days established in Article 7 of the draft RTS provide an adequate balance between efficiency and sufficient time for the issuer.</p>	<p>However, the EBA recognizes that the deadlines established for the competent authority to inform the issuer of the request of changes or, where applicable, the decision on the approval of the white paper, can be extended to provide competent authorities further flexibility and sufficient time. This extension should provide more flexibility, for instance, in cases where the competent authority for the approval of the white paper may need to consult another relevant authority within the home Member State.</p>	<p>Amendment to Article 7(1) of the draft RTS:</p>
			<p><i>“Following a positive opinion by the ECB and, where applicable, a central bank [...] the competent authority [...] shall inform the credit institution accordingly by electronic means and it shall set a deadline by which that credit institution is required to provide the updated crypto-asset white paper. The competent authority shall inform the institution within a maximum of <u>105</u> working days from a positive opinion by the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, or following the expiration of the 20 working days’ period indicated in Article 17(5) second subparagraph of that Regulation without any opinion issued by them.”</i></p>
		<p>Therefore, the EBA proposes to amend Article 7(1) and Article 8(2) of the draft RTS to extend the deadlines provided for the competent authority from 5 working days to 10 working days.</p>	<p>Amendment to Article 8(2) of the draft RTS:</p>
			<p><i>“The competent authority shall notify the credit institution of its final decision</i></p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p><i>regarding the approval of the crypto-asset white paper by electronic means. It shall do so within 105 working days from the receipt of the new crypto-asset white paper referred to in Article 7(2) or, where no changes to the crypto-asset white paper are requested, 105 working days from a positive opinion by the ECB and, where applicable, a central bank as referred to in Article 17(5) first subparagraph of Regulation (EU) 2023/1114, or following the expiration of the 20 working days' period indicated in Article 17(5) second subparagraph of that Regulation without any opinion issued by them."</i></p>
Responses to questions in Consultation Paper EBA/CP/2023/21			
Question 1. Do you agree with the 20-working day period for the assessment of completeness of the crypto-asset white paper, as regulated under Article 3?			
<p>Alignment with the approach adopted by MiCAR for white papers for ARTs issued by other legal undertakings</p>	<p>One respondent expressed concerns on the misalignment in the approach between the assessment of the completeness of the white paper when the entity issuing the ART is a credit institution compared to when it is not.</p>	<p>Regarding the assessment of completeness of crypto-asset white papers, MiCAR introduces distinct and different processes depending on whether ARTs are issued by credit institutions or by other legal undertakings.</p> <p>A key distinction is that MiCAR requires credit institutions to notify certain information and get the white paper approved (but not to obtain authorization), while other legal undertakings are required to obtain full authorization for the issuance of an ART.</p>	<p>None</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>As a consequence, Article 17 and Article 20 of MiCAR already set out a different process for the assessment check on the white paper. While Article 17(3) of MiCAR establishes that competent authorities shall assess the complete information notified by credit institutions in a period of 20 working days, Article 20(1) of MiCAR establishes a period of 25 working days for the equivalent assessment check.</p> <p>Additionally, Article 17(5) of MiCAR establishes that competent authorities shall communicate the complete information to the ECB without delay, whereas Article 20 does not contemplate such a step, and instead contemplates different timelines and steps.</p>	
Sufficient time for assessment	One respondent expressed concerns about the possibility that competent authorities may not be in a position to meet the tight deadlines outlined in Article 3 of the draft RTS.	The deadline set out in Article 3 of the draft RTS is aligned with the deadline set out in Article 17(3) of MiCAR with respect to the information to be notified by the issuer to the competent authority on the ART. As explained in Recital 1 of the draft RTS, both the notification of information outlined in Article 17(1)(b) of MiCAR and the approval of the white paper follow processes that are very closely linked.	None
Harmonised standards for qualitative aspects of a white paper	One respondent suggested that qualitative standards be issued to both competent authorities and to issuers of ARTs to guide them in the qualitative aspect of the production of a white paper. According to the respondent, guidelines should, based on non-exhaustive examples, illustrate what is	As explained in Recitals 5 and 6 of the draft RTS, the substantive assessment of the crypto-asset white paper shall be based on requirements set out in Article 19 of MiCAR. For instance, that provision requires that all information contained in the white paper shall be fair, clear and not misleading, that the white paper shall not contain material omissions and shall be presented in a concise and comprehensible form, that the white paper shall not contain any assertions as regards the future	<p>Amendment to Recital 6 of the draft RTS:</p> <p><i>“Following the submission by the ECB or relevant central bank of their opinion, or the expiration of the timeline for the issuance of such opinion, the substantive assessment of the crypto-asset white paper by the competent</i></p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	and what is not qualitatively acceptable in a white paper.	<p>value of the crypto-assets, and that the white paper shall contain a clear and unambiguous statement.</p> <p>Therefore, the EBA considers that MiCAR already provides sufficient guidance for competent authorities' qualitative assessment of white papers.</p> <p>However, the EBA proposes to clarify in Recital 6 that the competent authority's substantive assessment shall be carried out on the basis of requirements set out in Article 19, not limited to paragraph 2 of that Article.</p>	<p><i>authority, which aims to ensure compliance of the crypto-asset white paper with the requirements of Article 19(2) of Regulation (EU) 2023/1114 [...]."</i></p>
<p>Question 3. Do you agree with the rule, as regulated under Article 6, that where the ECB and, where applicable, another central bank do not transmit an opinion to the relevant competent authority within the set deadline, the latter may consider this as an indication that there is no negative opinion on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty?</p>			
Possibility for delayed negative opinions	<p>One respondent suggested that Article 6 of the draft RTS leaves the door open for delayed negative opinions that can be detrimental for both the ART and to the industry as a whole. The respondent considers that requesting multiple positive confirmations can stress the operational capabilities of the related Central Banks and/or could lead to longer time delays for the approval of a whitepaper. As a result, the respondent suggests that competent authorities, especially in the Eurozone, could holistically support the ECB and/or other central bank in the issuance of a positive confirmation.</p>	<p>As explained in recital 5 of this draft RTS, Article 17(5) of MiCAR does not explicitly set out what happens where the timeline for the issuance of such opinion has expired, but a systematic reading of Article 17 of MiCAR suggests that in such a scenario the competent authority can consider that no objection has been raised by the ECB or relevant central bank. In such a scenario, it is indeed possible that the ECB or other central bank may submit a delayed negative opinion to the competent authority, and the EBA considers that there should not be a restriction in the draft RTS for the ECB or the central bank to do that.</p> <p>As a consequence, the EBA considers that the competent authority should be able to take into account a delayed negative opinion by the ECB or other central bank, as long</p>	None

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		as it respects the deadlines set in the draft RTS and in MiCAR for the approval process of the white paper.	
Settlement of divergent opinions	One respondent recommends including information about the settlement of divergent opinions in the case of the involvement of several central banks. According to the respondent, this would provide more clarity to the promoters/issuers of ARTs, and the industry as a whole.	Article 17(5) paragraph 3 of MiCAR states that the competent authority shall require the credit institution not to offer to the public or seek the admission to trading of the ART in cases where the ECB <i>or</i> , where applicable, the relevant central bank gives a negative opinion on risk grounds. The EBA considers that the use of ‘or’ instead of ‘and’ in that provision provides sufficient clarity with regards to cases where divergent opinions may exist between the ECB and another relevant central bank. As long as either of them issues a negative opinion, the competent authority shall require the credit institution not to offer to the public or seek admission to the trading of the ART.	None
Question 4. Do you agree with the possibility that, in the context of the substantive review of the crypto-asset white paper, the competent authority can request changes to a crypto-asset white paper, and the rules on that request, as regulated under Article 7?			
Public repository of requests of changes	One respondent suggested that requests of changes should be made public and available through a pan-European repository of decisions.	Under Article 17 of MiCAR, and as further specified in Recital 44 of MiCAR, the issuer is only required to publish the approved crypto-asset white paper. The EBA considers that the different draft versions of a crypto-asset white paper and the changes requested by the competent authority to the issuer form part of the supervisory information that is not subject to a publication requirement.	None
Justification of requests of changes	Two respondents suggested that the requests of changes of the competent authority should be duly justified.	The EBA agrees with the respondent that the request of changes issued by the competent authority shall be duly	Amendment to Article 7(1) of the draft RTS:

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
to a crypto-asset white paper	<p>Additionally, one respondent emphasized that qualitative criteria must ensure the quality of the information provided in the crypto-asset white paper. In particular, that respondent stressed that technical jargon should not be used throughout a white paper if not previously defined, to ensure consumers are protected and information is clear.</p>	<p>justified, pursuant to seeking compliance with the requirements in Article 19 of MiCAR.</p> <p>Therefore, the EBA proposes to clarify in Article 7(1) of the draft RTS that the request of changes shall be duly justified by the competent authority.</p>	<p><i>“Following a positive opinion by the ECB [...] that competent authority may issue to the credit institution a <u>duly justified</u> request for changes of the crypto-asset white paper.”</i></p>
	<p>One respondent suggested that the deadline for providing the updated crypto-asset white paper requested by the competent authority (paragraph 2 of Article 7 of the draft RTS) should not exceed 20 working days (instead of 10 working days) following the issuance of the request for changes by the competent authority. This in order to have it aligned with previous, 20-working-day deadlines included in the RTS.</p>	<p>Under Article 17(1) of MiCAR a credit institution must notify information on the ART to the competent authority at least 90 working days before issuing the ART. Therefore, in order to set out a procedure with a timeline that does not extend to the full 90 working days, also considering the possibility for competent authorities to issue requests of missing information and of changes to the issuer, the EBA considers that the 10 working days established in Article 7 of the draft RTS provide an adequate balance between efficiency and sufficient time for the issuer.</p>	None

