

EBA/CP/2023/33

---

8 November 2023

---

# Consultation Paper

---

Draft Regulatory Technical Standards

on supervisory colleges under Article 119(8) of Regulation (EU) No 2023/1114 (MiCAR)

# Contents

---

<b>1.Responding to this consultation</b>	<b>3</b>
<b>2.Abbreviations</b>	<b>4</b>
<b>3.Executive Summary</b>	<b>5</b>
<b>4.Background and rationale</b>	<b>6</b>
<b>5.Draft regulatory technical standards</b>	<b>20</b>
<b>6.Accompanying documents</b>	<b>31</b>

# 1. Responding to this consultation

---

EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 6.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 08 February 2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section on the EBA website.

## 2. Abbreviations

---

<b>AML</b>	Anti-money laundering
<b>ART</b>	Asset-referenced token
<b>CASP</b>	Crypto-asset service provider
<b>CFT</b>	Countering financing of terrorism
<b>CP</b>	Consultation paper
<b>EBA</b>	European Banking Authority
<b>EMI</b>	Electronic money institution
<b>ECB</b>	European Central Bank
<b>EU</b>	European Union
<b>EMT</b>	E-money token
<b>FTR</b>	Funds Transfer Regulation (Regulation (EU) 2023/1113)
<b>ITS</b>	Implementing technical standards
<b>MiCAR</b>	Regulation on markets in crypto-assets (Regulation (EU) 2023/1114)
<b>PSD2</b>	Payment Services Directive (Directive (EU) 2015/2366)
<b>PSP</b>	Payment service provider
<b>RTS</b>	Regulatory technical standards

## 3. Executive Summary

---

Article 119(1) of Regulation (EU) 2023/1114 (MiCAR) requires the EBA to establish, manage and chair a consultative supervisory college for each issuer of a significant asset referenced token (ART) or of a significant e-money token (EMT). The role of supervisory colleges under MiCAR is to facilitate the exercise of the EBA's supervisory tasks under MiCAR and to facilitate the cooperation and exchange of information among its members.

In support of these provisions, Article 119(8) of MiCAR mandates the EBA to develop, in cooperation with the European Securities and Markets Authority and the European Central Bank, draft regulatory technical standards (RTS) specifying:

- the conditions under which the entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR are to be considered “the most relevant” in their category, and the conditions under which it is considered that ARTs and EMTs are “used at large scale”, as referred to in Article 119(2), point (l) of MiCAR; and
- the details of the practical arrangements regarding the functioning of supervisory colleges under MiCAR referred to in Article 119(6) of MiCAR.

The draft RTS proposed in this Consultation Paper (CP) specify the criteria for determining which are “the most relevant” custodians of the reserve of assets, trading platforms, payment service providers providing payment services in relation to the significant EMTs and crypto-assets service providers providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR. The draft RTS also specify the conditions under which it is considered that ARTs and EMTs are “used at large scale” in a Member State, as referred to in Article 119(2), point (l) of MiCAR, for the purpose of determining the college composition.

In addition, the proposals set out in this CP specify the general conditions for the functioning of supervisory colleges under MiCAR. This includes aspects related to participation in the college meetings, the voting procedures for the adoption of a non-binding opinion by the college, as well as aspects related to the exchange of information and the entrustment of tasks among the college members.

### Next steps

The final draft RTS will be submitted 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.

## 4. Background and rationale

---

### 4.1 Background

1. The Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets (MiCAR) regulates the offering to the public and admission to trading of asset-referenced tokens (ARTs), e-money tokens (EMTs) and other types of crypto-assets, as well as crypto-assets services provided by crypto-asset service providers (CASPs) in the European Union (EU). MiCAR entered into force on 29 June 2023, and will apply from 30 December 2024, except for Titles III and IV regarding the offering to the public and the admission to trading of ARTs and EMTs, that will apply from 30 June 2024.
2. MiCAR requires the EBA to classify an ART or EMT as “significant” when certain criteria specified in Articles 43(1), 44, 56(1) and 57 of MiCAR, as applicable, are met. Upon classification of an ART or an EMT as significant, MiCAR assigns to the EBA the task of supervising (i) all issuers of a significant ART, and (ii) electronic money institutions (EMIs) issuing a significant EMT. According to MiCAR, the supervisory responsibility for a credit institution issuing a significant EMT remains with the relevant competent authority and is not transferred to the EBA.
3. Article 119(1) MiCAR requires the EBA to establish, manage and chair a consultative supervisory college for each issuer of a significant ART/EMT, within 30 calendar days of a decision issued by the EBA to classify an ART or EMT as significant. The role of supervisory colleges under MiCAR is to facilitate the exercise of the EBA’s supervisory tasks under MiCAR and to facilitate the cooperation and exchange of information among its members. A college may issue non-binding opinions, addressed to the EBA and/ or the relevant competent authority, on amongst others, changes to the authorisation of, or supervisory measures concerning, issuers of a significant ART or of a significant EMT<sup>1</sup>.
4. According to Article 119(2) of MiCAR, a supervisory college shall comprise, among others:
  - “the competent authorities of the most relevant crypto-asset service providers, credit institutions or investment firms ensuring the custody of the reserve assets in accordance with Article 37 or of the funds received in exchange of the significant e-money tokens” (Art. 119(2)(d));
  - “where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens or the significant e-money tokens are admitted to trading” (Art. 119(2)(e));
  - “the competent authorities of the most relevant payment service providers providing payment services in relation to the significant e-money tokens” (Art. 119(2)(f));

---

<sup>1</sup> See Article 120 of MiCAR

- “where applicable, the competent authorities of the most relevant crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients in relation to the significant asset-referenced tokens or the significant e-money tokens” (Art. 119(2)(h)); and
  - “competent authorities of Member States where the asset-referenced token or the e-money token is used at large scale, at their request” (Art. 119(2)(l)).
5. Pursuant to Article 119(3) of MiCAR, the EBA may invite other authorities to be members of the college where the entities they supervise are relevant to the work of the college.
6. In support of the above-mentioned provisions, Article 119(8) of MiCAR mandates the EBA, in cooperation with the European Securities and Markets Authority (ESMA) and the European Central Bank (ECB), to develop draft regulatory technical standards (RTS) specifying:
- the conditions under which the entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR are to be considered the most relevant;
  - the conditions under which it is considered that ARTs or EMTs are used at large scale, as referred to in Article 119(2), point (l) of MiCAR; and
  - the details of the practical arrangements regarding the functioning of supervisory colleges under MiCAR referred to in Article 119(6) of MiCAR.
7. EBA is required to submit these draft RTS to the European Commission by 30 June 2024.
8. In what follows in the rationale section below, this Consultation Paper (CP) sets out how the EBA proposes to fulfill this mandate, which includes the assessments of various policy options that have been considered in the process. This is followed by the actual RTS with the draft provisions proposed by the EBA. Questions have been inserted throughout the document to elicit the views of external stakeholders.

## 4.2 Rationale

9. This chapter sets out the approach the EBA has taken to develop the draft RTS and is structured in 4 sections covering:
- the establishment of supervisory colleges for credit institutions issuing a significant EMT;
  - the conditions under which the entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR are to be considered the most relevant;
  - the conditions under which it is considered that ARTs and EMTs are used at large scale, as referred to in Article 119(2), point (l) of MiCAR; and

- general conditions for the functioning of supervisory colleges under MiCAR.

### **The establishment of supervisory colleges for credit institutions issuing a significant EMT**

10. As mentioned above, Article 119(1) of MiCAR requires the EBA to establish, manage and chair a consultative supervisory college for each issuer of a significant ART/EMT, without any distinction as regards the type of issuer. In the EBA's view, it follows from this that the EBA is also required to establish a supervisory college for credit institutions issuing a significant EMT, even if credit institutions issuing a significant EMT will remain subject to supervision by the relevant competent authority and the supervisory responsibility under MiCAR will not be transferred to the EBA.
11. In the EBA's view, in the case of a credit institution issuing a significant EMT, the members of the college may agree on the entrustment of the EBA's tasks referred to in Article 119(7), points (b) to (e) of MiCAR to the relevant competent authority supervising the respective credit institution, in accordance with Article 119(5)(c) and the second subparagraph of Article 119(6) of MiCAR. This includes the tasks of the EBA, as chair of the college, to coordinate all activities of the college and to convene and chair meetings in accordance with Article 119(7) of MiCAR. This entrustment of tasks may include all of the EBA tasks referred to in Article 119(7), points (b) to (e), or only some of them, resulting in a co-chairing of the college. In any case, in accordance with Article 119(7), point (a) of MiCAR, the EBA should remain in charge of establishing written arrangements and procedures for the functioning of the college, after consulting the other members of the college.

### **The conditions under which the entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR are to be considered the most relevant**

12. In line with the mandate in Article 119(8) of MiCAR, the draft RTS specify the conditions for determining most relevant entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR (mentioned in paragraph 4 above).
13. As regards the most relevant entities referred to in Article 119(2), point (d), in the EBA's view, a distinction should be made depending on whether the issuer is: (a) an issuer of a significant ART, or an EMI issuing a significant EMT; or (b) a credit institution issuing a significant EMT. This is because the requirements in MiCAR on the custody of the reserve of assets apply differently to issuers of a significant ART and to EMIs issuing a significant EMT, compared to credit institutions issuing a significant EMT. In this regard, Articles 37, 38 and 58(1) of MiCAR require issuers of a significant ART and EMIs issuing a significant EMT, among others, to:
  - establish a reserve of assets and ensure that the reserve of assets is held in custody by one or more of the entities referred to in Article 37(3) of MiCAR (which can be CASPs, credit institutions, or investment firms, depending on the type of the reserve assets);



- where the issuer invests a part of the reserve of assets, only invest those reserve assets in secure, low-risks assets with minimal market, concentration and credit risk; and
  - ensure that concentrations of the custodians of reserve assets are avoided.
14. The above requirements do not apply to credit institutions issuing an EMT<sup>2</sup>.
15. Accordingly, the EBA is proposing in Article 2(1) of the draft RTS that, for the purpose of determining the most relevant CASPs, credit institutions or investment firms referred to in Article 119(2), point (d) of MiCAR, the EBA should take into account in particular:
- (a) the three entities that held in custody the highest value of the reserve of assets in accordance with Article 37 of MiCAR during the applicable reference period, in the case of a college for an issuer of a significant ART, and in the case of a college for an EMI issuing a significant EMT; and, respectively,
  - (b) the three entities that held in custody the highest percentage of the funds received in exchange of the EMTs during the applicable reference period, in the case of a college for a credit institution issuing a significant EMT.
16. The EBA is proposing to use as reference period for assessing the above criteria the most recent six-month period covered by the reporting obligation referred to in Article 22(1) of MiCAR and to also use the same reference period consistently for the assessment of all the most relevant entities referred to in Article 119(2), points (e), (f) and (h) of MiCAR. This is reflected in Article 4 of the draft RTS.
17. In the EBA's view, the "amount of the funds received in exchange of the significant e-money tokens" referred to in Article 119(2), point (d) refers to the amount of funds received by a credit institution issuing a significant EMT in exchange of the EMTs issued, irrespective of whether the respective credit institution has issued the EMT against a segregated pool of reserve assets, or against its balance sheet.
18. The above is without prejudice to the possibility of the EBA, as chair of the college, to decide to invite the competent authority/ies of only one or two of the entities referred to in paragraph 15 (a) or (b) above to be a member of the college, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college.
19. This could be the case for example where the custody of the reserve of assets is concentrated with less than three entities. In the EBA's view, the RTS should allow flexibility to the EBA, as chair of the college, to determine the number of entities that are deemed as the most relevant depending on the particularities of each case. This proposal aims at striking a suitable balance between ensuring an appropriate representation in colleges of relevant competent authorities,

---

<sup>2</sup> See in this regard Article 58(1) of MiCAR which refers to these requirements being applicable to EMIs issuing a significant EMT, without mentioning also credit institutions issuing a significant EMT, as well as recitals 71 and 103 of MiCAR.

and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning. This is reflected in Article 2(5) of the draft RTS.

20. For determining the most relevant entities referred to in Article 119(2), point (d), the EBA also assessed the option of establishing a minimum threshold of the reserve assets held in custody by CASPs, credit institutions or investment firms as a percentage of the value of all of the reserve assets held in custody. However, in the EBA's view, such a fixed threshold may not be appropriate in all cases, given that the number of the custodians appointed by an issuer, and the value of the reserve of assets held in custody by each custodian, may vary from one case to another. Furthermore, a too high threshold can lead to cases where all custodians would be below the threshold and that would prevent their respective competent authorities to be a member of the college based on Article 119(2), point (d) of MiCAR. For these reasons, the EBA has discarded this option.

**Question 1:** Do you agree with the criteria proposed in Article 2(1), and (5) of the draft RTS for assessing which are the most relevant CASPs, credit institutions or investment firms, as referred to in Article 119(2), point (d) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

21. As regards the most relevant trading platforms referred to in Article 119(2), point (e) of MiCAR, the EBA is proposing in Article 2(2) of the draft RTS that, for the purpose of determining the most relevant entities referred to in Article 119(2), point (e) of MiCAR, the EBA should take into account in particular:
- (a) the three CASPs ensuring the operation of a trading platform for crypto-assets that have executed the highest average number of transactions per day with the significant ART or the significant EMT during the applicable reference period; and
  - (b) the three CASPs ensuring the operation of a trading platform for crypto-assets that have executed the highest average aggregated value of transactions per day with the significant ART or with the significant EMT, during the applicable reference period.
22. For the purpose of these draft RTS, a “transaction”, as referred to above, means any change of the natural or legal person entitled to an ART or EMT as a result of the transfer of that token from one distributed ledger address or account to another, irrespective of whether the transaction is settled on the distributed ledger (‘on-chain’) or outside the distributed ledger (‘off-chain’). This is consistent with the definition of a “transaction” in Article 22(1) of MiCAR, but with the sole difference that this latter Article applies only to ARTs and to EMTs denominated

in a non-EU currency (and not to EMT denominated in an EU currency)<sup>3</sup>, whereas the definition of a “transaction” for the purpose of these draft RTS covers all ARTs and EMTs, including EMTs denominated in a non-EU currency. This is reflected in Article 1, point (1) of the draft RTS.

23. In the EBA’s view, the criteria proposed above are consistent with the criterion for classifying an ART as significant in Article 43(1)(c) of MiCAR, which refers to “the average number and average aggregate value of transactions in that asset-referenced token per day during the relevant period”<sup>4</sup>.
24. The above is without prejudice to the possibility of the EBA, as chair of the college, to decide to invite the competent authority/ies of only one or two of the entities referred to in paragraph 21 (a) or (b) above to be a member of the college, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college. This could be the case, for example, where only one, or two, trading platform(s) have executed the vast majority of transactions per day with the significant ART/EMT during the applicable reference period, and the number and value of transactions executed by other trading platforms (if any) during the same reference period would be insignificant. This is reflected in Article 2(5) of the draft RTS.

**Question 2:** Do you agree with the criteria proposed in Article 2(3), and (5) of the draft RTS for determining which are the most relevant trading platforms, as referred to in Article 119(2), point (e) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

25. Article 119(2), point (f) of MiCAR refers to PSPs “providing payment services in relation to the significant e-money tokens”. In this regard, the EBA took into account that, in accordance with Article 48(2) of MiCAR, EMTs shall be deemed to be electronic money, as defined in Directive (EU) 2009/110 (the Electronic Money Directive, EMD), and, by consequence, they are treated as “funds” as defined in Article 4(25) of Directive (EU) 2015/2366 (PSD2)<sup>5</sup>.
26. As specified in recital 93 of MiCAR, crypto-asset services provided by CASPs associated to the transfer of EMTs “could fall under the definition of payment services in Directive (EU) 2015/2366. In such cases, those transfers should be provided by an entity authorised to provide such payment services in accordance with that Directive”. Relatedly, recital 90 of MiCAR provides that: “Some crypto-asset services, in particular providing custody and administration of crypto-assets on behalf of clients, the placing of crypto-assets, and transfer services for crypto-

<sup>3</sup> According to Article 58(2) of MiCAR, the provisions of Article 22(1) apply to EMTs denominated in a non-EU currency, but not to EMT denominated in an EU currency.

<sup>4</sup> According to Article 56(1) of MiCAR, the criteria in Article 43(1) for classifying an ART as significant also apply to EMTs.

<sup>5</sup> See also in this regard Recitals 18 and 66, and Article 2(4)(c) of MiCAR

assets on behalf of clients, might overlap with payment services as defined in Directive (EU) 2015/2366”. Furthermore, Article 70(4) of MiCAR provides that CASPs “may themselves, or through a third party, provide payment services related to the crypto-asset service they offer provided that the crypto-asset service provider itself, or the third party, is authorised to provide those services under Directive (EU) 2015/2366”.

27. Taking into account the above, the EBA is proposing in Article 2(3) of the draft RTS that, for the purpose of determining the most relevant PSPs referred to in Article 119(2), point (f) of MiCAR, the EBA should take into account in particular:
- (a) the three PSPs that have executed the highest average number of payment transactions in relation to the significant EMT per day, during the applicable reference period; and
  - (b) the three PSPs that have executed the highest average aggregate value of payment transactions in relation to the significant EMT per day, during the applicable reference period.
28. In the EBA’s view, the criteria proposed above are consistent with the criterion for classifying an ART as significant in Article 43(1)(c) of MiCAR, which refers to “the average number and average aggregate value of transactions in that asset-referenced token per day during the relevant period”<sup>6</sup>.
29. The above is without prejudice to the possibility of the EBA, as chair of the college, to decide to invite the competent authority/ies of only one or two of the entities referred to in paragraph 27 (a) or (b) above to be a member of the college, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college. This could be the case, for example, where only one, or two, PSPs have executed the vast majority of payment transactions in relation to the significant EMT per day during the applicable reference period, and the number and value of payment transactions executed by other PSPs in relation to that significant EMT per day during the same reference period would be insignificant. This is reflected in Article 2(5) of the draft RTS.

**Question 3:** Do you agree with the criteria proposed in Article 2(3) and (5) of the draft RTS for assessing which are the most relevant PSPs providing payment services in relation to the significant e-money tokens, as referred to in Article 119(2), point (f) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

---

<sup>6</sup> According to Article 56(1) of MiCAR, the criteria in Article 43(1) for classifying an ART as significant also apply to EMTs.

30. As regards the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients referred to in Article 119(2), point (h) of MiCAR, the EBA is proposing in Article 2(4) of the draft RTS that, for the purpose of determining the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients referred to in Article 119(2), point (h) of MiCAR, the EBA should take into account in particular:
- (a) the three CASPs providing custody and administration of crypto-assets on behalf of clients that have executed the highest average number of transactions per day with the significant ART or the significant EMT, during the applicable reference period; and
  - (b) the three CASPs providing custody and administration of crypto-assets on behalf of clients that have executed the highest average aggregated value of transactions per day with the significant ART or the significant EMT, during the applicable reference period.
31. A “transaction” in this context has the meaning explained in paragraph 22 above, as reflected in Article 1, point (1) of the draft RTS.
32. The above is without prejudice to the possibility of the EBA, as chair of the college, to decide to invite the competent authority/ies of only one or two of the entities referred to in paragraph 30 above (a) or (b) to be a member of the college, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college. This could be the case, for example, where only one, or two, CASPs providing custody and administration of crypto-assets on behalf of clients have executed the vast majority of transactions per day with the significant ART or the significant EMT during the applicable reference period, and the number and value of transactions executed by other CASPs providing custody and administration of crypto-assets on behalf of clients in relation to the respective token during the same reference period would be insignificant. This is reflected in Article 2(5) of the draft RTS.
33. For determining the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients referred to in Article 119(2), point (h) of MiCAR, the EBA also assessed the alternative option of using as a criterion the number of holders of the significant ART/EMT who use the services of such CASPs, similarly to the approach taken in Article 85 of MiCAR for identifying which CASPs are considered “significant” under MiCAR. However, in the EBA’s view, the criteria proposed in paragraph 30 above would be more appropriate for determining which are the most relevant CASPs as referred to in Article 119(2), point (h) compared to the number of holders using such CASPs. This is because, in EBA’s view, solely considering the number of holders would not adequately reflect the relevance of CASPs providing custody and administration of crypto-assets on behalf of clients for the purpose of Article 119(2)(h) of MiCAR, taking into account the role of prudential colleges under MiCAR and the tasks of a supervisory college under MiCAR pursuant to Article 120 of MiCAR.
34. The conditions set out in the draft RTS for determining the most relevant entities referred to in Article 119(2), points (d), (e), (f) and (h) of MiCAR are without prejudice to the possibility for

the EBA to invite additional authorities to be members of the college based on Article 119(3) of MiCAR, where the entities they supervise are relevant to the work of the college.

**Question 4:** Do you agree with the criteria proposed in Article 2(4) and (5) of the draft RTS for assessing which are the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2), point (h) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

#### **The conditions under which it is considered that ARTs and EMTs are used at large scale, as referred to in Article 119(2), point (l) of MiCAR**

35. In accordance with Article 119(2), point (l) of MiCAR, a college shall consist of, among others, the competent authorities of Member States where the ART or EMT is “used at a large scale”, “at their request”. In the EBA’s view, taking into account that in accordance with Article 119(1) of MiCAR, colleges under MiCAR are formed only for issuers of a *significant* ART or of a *significant* EMT, Article 119(2), point (l) of MiCAR should be interpreted as referring to cases where a *significant* ART or a *significant* EMT is used “at large scale” in one or more Member States.
36. Taking into account the above, Article 3(1) of the draft RTS provides that, for the purpose of Article 119(2), point (l) of MiCAR, a significant ART or a significant EMT shall be deemed to be used at large scale in a Member State, where:
- (a) the number of holders of the respective significant ART or of the significant EMT located in that Member State, on at least one day during the applicable reference period, is of at least 20% of the population of that Member State; or
  - (b) the average number and average aggregate value of transactions with the significant ART or the significant EMT per day, where at least one party is located in that Member State, during the applicable reference period is higher than 1 250 000 transactions and 250 000 000 EUR respectively.
37. The condition proposed in point (a) in relation to the number of holders is alternative to the conditions proposed in point (b) above in relation to the average number and average aggregate value of transactions.
38. The 20% threshold proposed in Article 3(1), point (a) of the draft RTS refers to the number of holders of the significant ART or of the significant EMT located in a Member State, as a percentage of the population of that Member State. A holder of a significant ART or of a significant EMT as referred to in point (a) above refers to the holder of that token (which can be a natural person or a legal person), that benefits of redemption rights under MiCAR. The population of a

Member State refers to the number of persons having their usual residence in that Member State, based on the most recent data available published by the Statistical Office of the European Union.

39. For the purpose of Article 3(1), point (b) of the draft RTS, a “transaction” has the meaning explained in paragraph 22 above, as reflected in Article 1(1) of the draft RTS. This includes all transactions with a significant ART or a significant EMT, irrespective of whether that token is used to make payments, for investment purposes or for other purposes. The transactions referred to in Article 3(1), point (b) of the draft RTS refer to transactions where at least one party to that transaction (the sender or the recipient) is located in that Member State.
40. For the purpose of Article 3(1), points (a) and (b) of the draft RTS, the location of a holder of the significant ART or of the significant EMT, or of a party to a transaction with such tokens, refers to: (a) for natural persons, their habitual residence; and (b) for legal persons, their registered office address. The reference to the ‘habitual residence’ of natural persons is in line with the terminology used in other EU legislation and in the Consultation Paper on draft RTS on the use of ARTs and EMTs denominated in a non-EU currency as a means of exchange under Article 22(6) of MiCAR (EBA/CP/2023/31) and the draft EBA guidelines under Regulation (EU) 2023/1113 (the Funds Transfer Regulation or ‘FTR’). This is reflected in Article 3(3) of the draft RTS.
41. The thresholds proposed for the conditions set out in Article 3(1), point (b) of the draft RTS represent 50% of the thresholds set out in Article 43(1)(c) of MiCAR, which refers to “the average number and average aggregate value of transactions in that asset-referenced token per day during the relevant period”<sup>7</sup>.
42. Similarly to the approach proposed in paragraph 16 above, the EBA is proposing to use as reference period for assessing the fulfilment of the conditions set out in Article 3(1) of the draft RTS the most recent six-month period covered by the reporting obligation referred to in Article 22(1) of MiCAR. This is reflected in Article 4 of the draft RTS.
43. In developing the conditions proposed above, the EBA took into account the availability of data sources that could be used to assess the fulfilment of these conditions. More specifically, as regards the condition proposed in (a), the EBA took into account that, in accordance with Articles 22(1)(a) and 58(3) of MiCAR, the issuer of an ART or of an EMT denominated in a non-EU currency is required to report to the competent authority, on a quarterly basis, information on the number of holders of that token. These reporting obligations will be further specified in the implementing technical standards (ITS) referred to in Article 22(7) of MiCAR.
44. In the separate draft ITS on the reporting on ARTs and EMTs denominated in a non-EU currency under Article 22(7) of MiCAR (EBA/CP/2023/32), the EBA is proposing that the issuer of an ART or of an EMT denominated in a non-EU currency should report to the competent authority the

---

<sup>7</sup> The thresholds set in Article 43(1) of MiCAR are of 2,5 million transactions per day, with a total value of EUR 500 000 000 per day.



information in Article 22(1)(a) of MiCAR on the number of holders broken down by each country in scope, at the applicable reference date. In the EBA's view, this data could be used to inform the assessment of whether the condition proposed in Article 3(1), point (a) of the draft RTS is met, as regards issuers of an ART or of an EMT denominated in a non-EU currency. This is without prejudice to any future reporting requirements that may be introduced under MiCAR as regards EMTs denominated in an EU currency.

45. In this regard, the EBA also recalls that the competent authority of the home Member State of the issuer, or as applicable the EBA (where the supervisory responsibility under MiCAR has been transferred to the EBA), is required to share the data reported by issuers under Article 22(1) of MiCAR with “the ECB and, where applicable, the central bank referred to in Article 20(4) and the competent authorities of host Member States”, in accordance with Articles 22(4) and 117(1) and (4) of MiCAR. This includes the information reported by issuers pursuant to Articles 22(1)(a) and 22(7) of MiCAR on the number of holders of an ART or of an EMT denominated in a non-EU currency, broken down by each Member State.
46. The conditions proposed above aim to provide legal clarity and to allow to establish in an objective manner when an ART or EMTs shall be deemed to be used at large scale in a Member State for the purpose of determining the eligibility of a competent authority to become a member of the college based on Article 119(2), point (l) of MiCAR. They aim to strike a suitable balance between ensuring an appropriate representation in colleges of relevant competent authorities, and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning. They also take into account the fact that, in the EBA's view, Article 119(2), point (l) of MiCAR aims to capture competent authorities of Member States where a significant ART or a significant EMT is “used at large scale”, and that do not qualify to be a member of the college under any other point of Article 119(2) of MiCAR.
47. The conditions proposed above for assessing the use “at large scale” of a significant ART or of a significant EMT for the purpose of Article 119(2), point (l) of MiCAR are without prejudice to the possibility for the EBA to invite additional authorities that do not meet these conditions to be members of the college based on Article 119(3) of MiCAR, where the entities they supervise are relevant to the work of the college.
48. For determining the conditions under which it is considered that a significant ART/EMT is “used at large scale” in a Member State, the EBA also assessed the alternative option of establishing a benchmark by reference to the size of the financial market of that Member State. However, defining such a metric would be very challenging taking into account the difficulty of defining and measuring the financial market of each Member State. Also, identifying a suitable comparable metric would be challenging taking into account the type of transactions that should be considered for the purpose of Article 119(2), point (l) of MiCAR. As explained in paragraphs 22 and 39 above, this includes all transactions with a significant ART or a significant EMT, irrespective of whether that token is used to make payments, for investment purposes or for other purposes. For these reasons, the EBA has discarded this option.



49. Furthermore, taking into account that in accordance with Article 119(2), point (l) of MiCAR, the competent authorities of Member States where the token is “used at large scale” shall be members of the college “at their request”, Article 3(4) of the draft RTS provides that a competent authority requesting to become a member of the college based on Article 119(2), point (l) of MiCAR should submit a reasoned request to the EBA and provide data showing that the above criteria are met.

**Question 5:** Do you agree with the criteria proposed in Article 3 of the draft RTS for assessing when a significant ART or a significant EMT is “used at large scale” in a Member State, as referred to in Article 119(2), point (l) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

### General conditions for the functioning of supervisory colleges under MiCAR

50. Pursuant to Article 119(8) of MiCAR, the EBA is required to specify in the RTS the details of practical arrangements referred to in Article 119(6). The latter Article provides that: “The establishment and functioning of the college [...] shall be based on a written agreement between all of its members. The agreement [...] shall determine the practical arrangements for the functioning of the college, including detailed rules on:

- (a) voting procedures as referred in Article 120(3);
- (b) the procedures for setting the agenda of college meetings;
- (c) the frequency of the college meetings;
- (d) the appropriate minimum timeframes for the assessment of the relevant documentation by the members of the college;
- (e) the modalities of communication between the members of the college;
- (f) the creation of several colleges, one for each specific crypto-asset or group of crypto-assets.

The agreement may also determine tasks to be entrusted to the EBA or another member of the college”.

51. In the EBA’s view, it follows from the wording of Article 119(6) that the list of elements mentioned in that Article is not exhaustive. In the EBA’s view, this means that the RTS should specify the elements listed in Article 119(6) as a minimum, but may also specify other elements that are relevant for the functioning of supervisory colleges under MiCAR.

52. In this regard, the EBA has assessed three policy options:

- Option 1 – Specify in the RTS only the elements explicitly mentioned in Article 119(6) and describe the remaining operational arrangements for the functioning of MiCAR supervisory colleges in the EBA’s internal policies/procedures for establishing, managing and chairing MiCAR supervisory colleges.
  - Option 2 – Specify in the RTS a few additional elements beyond those explicitly listed in Article 119(6) that are the most important for the functioning of MiCAR supervisory colleges and specify the remaining operational arrangements for the functioning of MiCAR supervisory colleges in the EBA’s internal policies/procedures for establishing, managing and chairing MiCAR supervisory colleges.
  - Option 3 - Specify in the RTS a comprehensive set of elements relevant for the functioning of MiCAR supervisory colleges, similarly with the approach followed for example for supervisory colleges under Directive 2013/36/EU.
53. In assessing these options, the EBA took into account that the requirement in Article 119(1) of MiCAR to establish supervisory colleges for issuers of significant ARTs/EMTs applies only to the EBA. Where a competent authority is entrusted the specific tasks of managing or chairing the college specified in Article 119(2), points (b) to (e) of MiCAR, in accordance with Article 119(5), point (c) of MiCAR and Article 11 of the draft RTS, it would have to follow the written agreements and procedures established by the EBA, as referred to in Article 119(7) point (a) of MiCAR. Therefore, other competent authorities will not need to establish a supervisory college under MiCAR. Also, EBA took into account that while Option 3 offers more legal certainty, it may also cause procedural challenges for the EBA in case certain provisions of the RTS will need to be updated.
54. Considering the above, as well as the fact that supervisory colleges under MiCAR may vary in size and complexity, the EBA arrived at the view that the RTS should allow for flexibility and should not set too many details as regards the conditions for the functioning of supervisory colleges. Therefore, the EBA came to the view that Option 2 is preferable.
55. Accordingly, the draft RTS specify in Articles 6 to 11 the elements listed in Article 119(6) of MiCAR, as well as some additional aspects regarding the functioning of supervisory colleges under MiCAR. These latter additional aspects relate, in particular, to the conclusion of the written agreement referred to in Article 119(6) of MiCAR, participation in college meetings, operational aspects regarding the college meetings, and the exchange of information between the members of the college.
56. With regard to the conclusion of the written agreement referred to in Article 119(6), the EBA took into account that, in accordance with Articles 119(1) of MiCAR, the EBA is required to establish a supervisory college for each issuer of a significant ART or of a significant EMT within 30 calendar days of a decision to classify an ART or EMT as significant. In accordance with Article 119(6) of MiCAR, the establishment and functioning of the college should be based on a written agreement between all of its members. Taking into account the above, and in particular the 30

calendar days timeline set out in Article 119(1) of MiCAR, Article 6 of the draft RTS specifies the procedure for the conclusion of the agreement referred to in Article 119(6) of MiCAR, including the timeline in which the members of the college may express comments on the proposal for the written agreement referred to above.

57. Article 7 of the draft RTS specifies aspects regarding the participation in college meetings, including aspects related to the exercise of voting rights for the purpose of Article 120(2) and (3) of MiCAR. In particular, Article 7(4) of the draft RTS provides that the chair of the college may invite other authorities which are not members of the college to attend a college meeting, or a particular agenda item. This may include for example the consolidating supervisor (as defined in Article 4(1), point (41) of Regulation (EU) No 575/2013) of a credit institution issuing a significant ART or a significant EMT, or the lead supervisor of the relevant AML/CFT college, as defined in the Joint Committee Guidelines on cooperation and information exchange for AML/CFT supervision purposes (JC 2019 81). The chair of the college should decide what information is relevant for those authorities and involve them in the relevant college meeting or activity accordingly.
58. Article 9 of the draft RTS specifies other operational aspects regarding the meetings of the college, including the frequency of college meetings. Article 9(5) of the draft RTS provides that the members of the college who are involved in a particular meeting or activity of the college should exchange documents and contributions to working documents with sufficient time in advance to enable all participants in the college meeting to actively contribute to the discussions. In the EBA's view, the minimum timeframes for the assessment of the relevant documentation by the members of the college should be specified in the written agreement referred to in Article 119(6) of MiCAR, taking into account the complexity and size of the college, the topic at hand and any relevant timelines set out in MiCAR.
59. To facilitate the cooperation and exchange of information among the members of the college, Article 10 of the draft RTS specifies the general framework for the exchange of information between the members of the college.
60. Furthermore, Article 11 of the draft RTS specifies further details regarding the entrustment of tasks amongst the members of the college in accordance with Article 119(5), point (c) of MiCAR, including the possible voluntary entrustment of the EBA's tasks specified in points (b) to (e) of Article 119(7) of MiCAR to another member of the college.

**Question 6:** Taking into account the scope of the mandate in Article 119(8) of MiCAR, do you have suggestions regarding other aspects, beyond those covered in Articles 6 to 11 of the draft RTS, that are relevant for the functioning of supervisory colleges under MiCAR and that, in your view, should be covered by the draft RTS? If yes, please provide your reasoning, and details of the aspects that in your view should be further specified in the draft RTS.



## 5. Draft regulatory technical standards



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

of XXX

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for the establishment and the functioning of supervisory colleges**

**(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 of the European Parliament and of the Council on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>8</sup>, and in particular Article 119(8) thereof,

Whereas:

- (1) In accordance with Article 119(1) of Regulation (EU) 2023/1114, EBA is required to establish a supervisory college for each issuer of a significant asset-referenced token or of a significant e-money token. In order to ensure a consistent and coherent functioning of colleges across the European Union, it is necessary to specify the conditions under which the entities referred to in Article 119(2), points (d), (e), (f), (h) and (l) of Regulation (EU) 2023/1114 are to be considered the most relevant, the conditions under which asset-referenced tokens or e-money tokens are considered to be used at large scale, as referred to in point (l) of Article 119(2), and the details of the practical arrangements for the functioning of supervisory colleges under Regulation (EU) 2023/1114.
- (2) EBA should determine which entities are deemed as the most relevant for the purpose of Article 119(2), points (d), (e), (f) and (h) of Regulation (EU) 2023/1114, based on the criteria set out in this Regulation. To this end, EBA should take into account the entities that rank highest based on the criteria set out in this Regulation. When alternative criteria for the identification of entities listed in that Article are provided, one entity can be designated as most relevant if it meets one or more of the criteria specified in this Regulation.
- (3) After having applied those criteria, EBA may decide to invite the competent authorities of only some of the entities identified as per the above to be a member of the college based on points Article 119(2), (d), (e), (f) and (h) of Regulation 2023/1114, where the EBA is of the view that those entities are the only ones relevant in their

---

<sup>8</sup>Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40–205)



- category for the work of the college. The number of entities deemed as the most relevant for the purpose of Article 119(2), points (d), (e), (f) and (h) of Regulation (EU) 2023/1114 should be determined by EBA, taking into account the particularities of each case and the need to strike a good balance between ensuring an appropriate representation in the college of the relevant competent authorities and ensuring an effective functioning of the college.
- (4) For the purpose of Article 119(2), point (l) of Regulation 2023/1114, a significant asset-referenced token or a significant e-money token should be deemed to be used at large scale in a Member State where the number of holders of the respective token located in that Member State, on at least one day during the applicable reference period, is of at least 20% of the population of that Member State. Alternatively, a significant asset-referenced token or a significant e-money token should also be deemed to be used at large scale in a Member State where the average number and average aggregate value of transactions with that token per day, where at least one party (the sender or the recipient) is located in that Member State during the applicable reference period is higher than 1 250 000 transactions and 250 000 000 EUR respectively. For the purpose of this Regulation, the location of a holder of a significant asset-referenced token or a significant e-money token, or of a party to a transaction with such tokens refers, for natural persons, to their habitual residence, and for legal persons, to the registered office.
  - (5) EBA should reassess, at least every 2 years, which authorities qualify to be members of the college based on Article 119(2), points (d), (e), (f), (h) and (l) of Regulation 2023/1114. The frequency of the reassessment should be determined by EBA, taking into account the need to ensure an appropriate representation of relevant competent authorities in the college, as these may change over time, notably as a result of market developments affecting the token, as well as the need to ensure stability of the college. This is without prejudice to the possibility of an authority to request to become a member of the college, or to request its withdrawal from a college when it no longer meets the conditions to be a member of the college before the expiry of the two years' period mentioned above.
  - (6) In accordance with Article 119(6) of Regulation 2023/1114, the establishment and functioning of colleges should be based on a written agreement between its members. Taking into account the timeline set out in Article 119(1) of that Regulation for the establishment of the college, it is appropriate to specify the procedure for the conclusion of the agreement referred to in Article 119(6) of that Regulation.
  - (7) The members of the college should exchange views on a possible entrustment of tasks among the college members pursuant to point (c) of Article 119(5) of Regulation (EU) 2023/1114. In the case of a college established for a credit institution issuing a significant e-money token, for which the supervisory responsibility under Regulation (EU) 2023/1114 remains with the prudential competent authority and is not transferred to EBA, the tasks of EBA as chair of the college specified in points (b) to (e) of Article 119(7) of Regulation (EU) 2023/1114 may be entrusted to the prudential competent authority in charge of supervising the respective credit institution. In any case, EBA should remain in charge of establishing written arrangements and procedures for the



- functioning of the college, after consulting the other members of the college, as specified in Article 119(7), point (a) of Regulation (EU) 2023/1114. The agreement referred to in Article 119(6) of that Regulation should specify a description of the arrangements on the entrustment of tasks pursuant to point (c) of Article 119(5) of that Regulation, where relevant.
- (8) The chair of the college may invite other authorities that are not members of the college to attend a college meeting, or a particular agenda item. This may include authorities related to the issuer of significant asset-referenced token or a significant e-money token, or to the group it belongs to, on the basis of other sectoral legislation, such as the consolidating supervisor of a credit institution or the lead supervisor of the relevant AML/CFT college. The chair of the college shall decide what information is relevant for those authorities and involve them in the relevant college meeting or activity accordingly.
  - (9) The members of the college who are involved in a particular meeting or activity of the college should exchange documents and contributions to working documents with sufficient time in advance to enable all participants in the college meeting to actively contribute to the discussions. The minimum timeframes for the assessment of the relevant documentation by the members of the college should be specified in the agreement referred to in Article 119(6) of Regulation (EU) 2023/1114, taking into account the complexity of the work and the size of the college, the topic at hand and any relevant timelines set out in Regulation (EU) 2023/1114.
  - (10) In order to facilitate the cooperation and information exchange among the members of the college, it is appropriate to further specify the general framework for the exchange of information between the members of the college.
  - (11) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (the European Banking Authority (EBA)) to the Commission.
  - (12) EBA 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 opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Definitions**

For the purposes of this Regulation, the following definitions shall apply:





- (1) ‘transaction’ means any change of the natural or legal person entitled to an asset-referenced token or an e-money token as a result of the transfer of that token from one distributed ledger address or account to another;
- (2) ‘payment transaction’ means a payment transaction as defined in Article 4, point (5) of Directive (EU) 2015/2366;
- (3) ‘consolidating supervisor’ means the consolidating supervisor as defined in point Article 4(1), point (41) of Regulation (EU) No 575/2013;
- (4) ‘AML/CFT college’ means a college established for the purpose of facilitating co-operation between AML/CFT authorities that are entrusted with the public duty to ensure compliance with Directive (EU) 2015/849.

## *Article 2*

### **Determination of the most relevant entities referred to in Article 119(2), points (d), (e), (f) and (h) of Regulation 2023/1114**

1. For the purpose of determining the most relevant entities referred to in Article 119(2), point (d) of Regulation 2023/1114, EBA shall take into account in particular:
    - (a) the three crypto-asset service providers, credit institutions or investment firms that held in custody the highest value of the reserve of assets in accordance with Article 37 of that Regulation, during the applicable reference period, in the case of a college for an issuer of a significant asset-referenced token, and in the case of a college for an electronic money institution issuing a significant e-money token; and
    - (b) the three crypto-asset service providers, credit institutions or investment firms that held in custody the highest percentage of the funds received in exchange of the e-money tokens, during the applicable reference period in the case of a college for a credit institution issuing a significant e-money token.
  2. For the purpose of determining the most relevant entities referred to in Article 119(2), point (e) of Regulation 2023/1114, EBA shall take into account in particular:
    - (a) the three crypto-asset providers ensuring the operation of a trading platform for crypto-assets that have executed the highest average number of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period; and
    - (b) the three crypto-asset providers ensuring the operation of a trading platform for crypto-assets that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period.
  3. For the purpose of determining the most relevant entities referred to in Article 119(2), point (f) of Regulation 2023/1114, EBA shall take into account in particular:
    - (a) the three payment service providers that have executed the highest average number of payment transactions in relation to the significant e-money token per day, during the applicable reference period; and
-





- (b) the three payment service providers that have executed the highest average aggregate value of payment transactions in relation to the significant e-money token per day, during the applicable reference period.
4. For the purpose of determining the most relevant entities referred to in Article 119(2), point (h) of Regulation 2023/1114, EBA shall take into account in particular:
    - (a) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average number of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period; and
    - (b) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period.
  5. EBA may decide to invite the competent authorities of only some of the entities referred to in paragraphs 1 to 4 to be a member of the college where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college.

### *Article 3*

#### **Determination of the most relevant entities referred to in Article 119(2), point (l) of Regulation 2023/1114**

1. For the purpose of Article 119(2), point (l) of Regulation 2023/1114, a significant asset-referenced token or a significant e-money token shall be deemed to be used at large scale in a Member State, where:
  - (a) the number of holders of the significant asset-referenced token or of the significant e-money token located in that Member State, on at least one day during the applicable reference date, is of at least 20% of the population of that Member State; or
  - (b) the average number and average aggregate value of transactions with the significant asset-referenced token or the significant e-money token per day where at least one party is located in that Member State, during the applicable reference period, is higher than 1 250 000 transactions and 250 000 000 EUR respectively.
2. For the purpose of paragraph 1, point (a), a holder of the significant asset-referenced token or of the significant e-money token refers to the holder of that token that benefits of redemption rights under Regulation 2023/1114.
3. For the purpose of paragraph 1, the location of a holder of the significant asset-referenced token or of the significant e-money token, or of a party to a transaction with such tokens, refers to:
  - (a) for natural persons, their habitual residence; and
  - (b) for legal persons, the registered office address.



4. A competent authority requesting to become a member of the college based on point (l) of Article 119(2) of Regulation 2023/1114 shall submit a reasoned request to EBA and provide data showing that the criteria mentioned in paragraph 1 are met.

#### *Article 4*

### **Reference period**

The reference period referred to in Articles 2 and 3 shall be the most recent six-month period covered by the reporting obligation referred to in Article 22(1) of Regulation 2023/1114.

#### *Article 5*

### **Reassessment of the college composition**

1. EBA shall reassess, at least every 2 years, which competent authorities qualify to be members of the college based on Article 119(2), points (d), (e), (f), (h) and (l) of Regulation 2023/1114.
2. For the purpose of the reassessment referred to in paragraph 1, each competent authority that is a member of the college based on Article 119(2), point (l) of Regulation 2023/1114 shall provide, upon request and without undue delay, to EBA the information necessary to assess whether those authorities continue to qualify to be a member of the college based on the criteria specified in Article 3.

#### *Article 6*

### **Conclusion of the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114**

1. EBA shall communicate its proposal on the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114 to the members of the college determined in accordance with Article 119(2) of that Regulation, inviting them to provide their views within 10 days.
2. For the purposes of finalising the written agreement, EBA shall take into account any views and reservations expressed by the members of the college and explain, if necessary, the reason for not incorporating them.
3. Upon finalisation, EBA shall communicate the written coordination and cooperation arrangements to the members of the supervisory college.

#### *Article 7*

### **Participation in colleges**



1. Each member of the college shall designate one participant, selected as the most appropriate taking into account the topics discussed and objectives pursued, to attend the meetings or activities of the college and to represent that member of the college in the college meetings. Each member of the college may designate one alternate, with the exception of EBA who shall designate one representative and may ask additional participants without voting rights to participate in college meeting of activity.
2. Where a competent authority has the right to participate in the college under more than one of points (of Article 119(2), points (c) to (n) of Regulation (EU) 2023/1114, or where several authorities from the same third country are members of the college based on Article 119(2), point (m) of that Regulation, those authorities may designate one additional participant without voting rights to attend the meetings or activities of the college and may designate one alternate for that participant.
3. Where there are several members of the college per Member State, those college members shall inform the chair of the college which one of them will be the voting member.
4. Based on the topics and objectives of the meeting or activity, the chair of the college may invite other authorities that are not members of the college to attend a college meeting, or a particular agenda item. The chair of the college shall decide what information is relevant for those authorities and involve them in the relevant college meeting or activity accordingly. These authorities shall have no voting rights. The chair of the college shall inform all members of the college accordingly, without undue delay.
5. For the adoption of an opinion of the college or of a recommendation included in an opinion of the college in accordance with Article 120(1) and (2) of Regulation (EU) 2023/1114, a quorum of half of the voting members of the college shall be required. If such quorum is not reached, the chair of the college may convene an extraordinary meeting at which decisions may be taken without quorum.
6. The majority referred to in Article 120(3) of Regulation (EU) 2023/1114 refers to a simple majority of the voting members of the college in a meeting of the college. A simple majority shall be achieved where more voting members vote in favour of a proposal than vote against it. Abstentions shall not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast.

### *Article 8*

#### **Establishment and update of contact lists**

1. The chair of the college shall maintain the contact list of the members of the college, including full contact details, and communicate it to the members of the college.
2. The members of the college shall provide their contact details to the chair of the college and shall inform the chair of any changes in those details without undue delay.
3. Any updated version of the contact list shall be communicated by the chair of the college to the members of the college without undue delay.



### *Article 9*

#### **Operational aspects of college meetings**

1. The chair of the college shall determine the frequency of the college meetings having regard to the tasks of the college as set out in Article 119 of Regulation (EU) 2023/1114, and potential requests by college members.
2. The chair of the college shall convene at least one meeting of the college per year. The chair of the college shall decide if a meeting is convened in physical or in virtual format, based on the objectives of the meeting, as established by the chair of the college.
3. The members of the college may request that the chair of the college holds a meeting of the college. The chair of the college shall provide reasons for any rejection of such request.
4. The chair of the college shall send the proposed agenda of the supervisory college meeting to all the members of the college, and shall invite them to propose any additional agenda items. The chair of the college shall take into account any proposals on agenda items made by the members and shall explain, if requested, the reason for not incorporating them.
5. The members of the college who are involved in a particular meeting or activity of the college shall exchange documents and contributions to working documents with sufficient time in advance to enable all participants in the college meeting to actively contribute to the discussions.

### *Article 10*

#### **Exchange of information between the college members**

1. Each member of a college shall provide, upon request and without undue delay, to EBA and, where applicable, to the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 11 of this Regulation, any information necessary in order to facilitate the performance of the EBA's supervisory tasks in accordance with Article 117 of Regulation 2023/1114 and exchange information when required by that Regulation.
2. EBA and, where applicable, the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 11 of this Regulation shall receive all information exchanges between the members of the college.
3. EBA and, where applicable, the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 11 of this Regulation may decide to share the information referred to in paragraphs 1 and 2 with other members of the college where it deems that the respective information is relevant for those members.
4. Where an issuer offers more than one significant asset-referenced token or significant e-money token, EBA may decide to organise several colleges, one for each significant asset-



referenced token or significant e-money token, or group of significant asset-referenced token or significant e-money tokens.

5. Where several colleges are organised pursuant to paragraph 4, the chair of the college shall keep all the members of the college fully informed, in a timely manner, on the actions taken or the measures carried out in the different relevant colleges.
6. The members of the college shall agree on the means for the exchange of information among the members of the college, and shall specify it in the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114.
7. The transmission of confidential information between the members of the college shall be done by secure channels of communication.

### *Article 11*

#### **Entrustment of tasks among the college members**

1. The members of the college shall exchange views on a possible voluntary entrustment of tasks among the members of the college pursuant to point (c) of Article 119(5) of Regulation (EU) 2023/1114.
2. The entrustment of tasks referred to in paragraph 1 may also include all or some of the tasks mentioned in points (b) to (e) of Article 119(7) of Regulation (EU) 2023/1114.
3. The agreement referred to in Article 119(6) of Regulation (EU) 2023/1114 shall specify a description of the arrangements on entrustment of tasks referred to in paragraph 1, where relevant.

### *Article 13*

#### **Final provisions**

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]*

## 6. Accompanying documents

---

### 6.1 Draft cost-benefit analysis / impact assessment

According to Articles 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of draft regulatory standards (RTS) developed by the EBA. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA), which analyses 'the potential related costs and benefits.'

This analysis presents the IA of the main policy options regarding the draft RTS on supervisory colleges under Article 119(8) of Regulation (EU) No 2023/1114 (MiCAR).

MiCAR sets out a new legal framework for the offering to the public and admission to trading of asset-referenced tokens (ARTs), -money tokens (EMTs) and other types of crypto-assets, as well as crypto-assets services provided by crypto-asset service providers (CASPs). This includes the obligation of the EBA under Article 119(8) of MiCAR to establish, manage and chair a consultative supervisory college for each issuer of a significant ART/EMT, within 30 calendar days of a decision issued by the EBA to classify an ART or EMT as significant. The role of supervisory colleges under MiCAR is to facilitate the exercise of the EBA's supervisory tasks under MiCAR and to facilitate the cooperation and exchange of information among its members.

#### A. Problem identification

Article 119(2) MiCAR provides that a college shall comprise, among others, the competent authorities of the most relevant entities referred to in Article 119 (2), points (d), (e), (f) and (h). These entities refer to the custodians of reserves of assets, trading platforms, PSPs providing payment services in relation to significant EMTs and CASPs providing custody and administration of crypto-assets on behalf of clients. However, Article 119(2) does not provide further indication of what "most relevant" means. In a similar manner, point (l) of Article 119 (2) refers to competent authorities of Member States where the ARTs or the EMTs are "used at large scale". Without further clarification, these terms can be interpreted differently and inconsistently across time and supervisory colleges.

Furthermore, MiCAR provides that the establishment and functioning of the college, shall be based on a written agreement between all of its members that will determine the practical arrangements for the functioning of the college. MiCAR provides a non-exhaustive list of rules to be included in that agreement. Further information would be required to ensure minimum level of consistency in the way supervisory colleges operate.



## B. Policy objectives

The general objective of this RTS is to ensure a harmonized application of the requirements of MiCAR across supervisory colleges, and to ensure transparency and legal certainty regarding the conditions for determining the “most relevant” entities referred to in Article 119 (2), points (d), (e), (f), and (h) of MiCAR and the use “at large scale” of a significant ART/EMT as referred to in Article 119(2), point (l) of MiCAR, for the purpose of determining the college composition. In particular, the RTS aims to strike a good balance between ensuring an appropriate representation in colleges of relevant competent authorities, and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning.

## C. Baseline scenario

In a baseline scenario, the EBA would need to identify the “most relevant” entities listed in Article 119(2), points (d), (e), (f), and (h) of MiCAR, as well as the ARTs and EMTs that are “used at a large scale” without further guidance on the criteria used to make this assessment. Without further clarification, the approach to identifying most relevant entities may diverge across different supervisory colleges and would not offer visibility to competent authorities and to the market regarding the criteria used for determining the college composition.

Furthermore, without an RTS, the conditions for the functioning of supervisory colleges may diverge substantially across colleges, that could lead to an uneven level playing field regarding the supervisory process.

The costs and benefits of the underlying Regulation, i.e. MiCAR, are not assessed within this impact assessment.

## D. Policy issues, options considered

### **Policy issue 1: Determining the “most relevant” custodians of the reserve of assets, trading platforms, PSPs providing payment services in relation to significant EMTs and CASPs providing custody and administration of crypto-assets on behalf of clients**

Option 1a: Taking into account the top three entities that meet the criteria set out in the RTS and decide the number of entities deemed as the “most relevant”.

Option 1b: Setting minimum thresholds for an entity to be considered as the “most relevant” in its category.

Option 1a ensures that the top three entities identified based on the criteria set out in the RTS are considered when assessing which are the most relevant entities referred to in Article 119(2) of MiCAR. At the same time, this option gives the EBA the flexibility to determine the number of the





entities deemed as the most relevant for each category (which can be less than three) depending on the particularities of each case.

A fixed threshold as envisaged by Option 1b would provide clear rules and may be easier to implement. However, such a threshold may not be appropriate in all cases, given the potentially very different features of the network of entities ensuring the custody of the reserve of assets and crypto-assets services in respect of the significant ART/EMT. Furthermore, a too high threshold can lead to cases where all entities would be below the threshold and that would prevent their respective competent authorities to be a member of the college based on Article 119(2), points (d), (e), (f), and (h) of MiCAR.

Therefore Option 1a was preferred.

### **Policy issue 2: The indicators used to measure the relevance of CASPs providing custody and administration of crypto-assets on behalf of clients**

Two indicators were considered to measure the relevance of the CASPs providing custody and administration of crypto-assets on behalf of clients.

Option 2a: Number and aggregate value of transactions with the significant ART/EMT executed by CASPs providing custody and administration of crypto-assets on behalf of clients.

Option 2b: Number of holders of the significant ART/ EMT who use the services of a CASP providing custody and administration of crypto-assets on behalf of clients.

Option 2a is an indicator of the volume and value of transactions with the significant ART/EMT carried out using a custodial wallet offered by a CASP providing custody and administration of crypto-assets on behalf of clients.

An alternative indicator was considered - the number of holders of the significant ART/ EMT who use the services of a CASP providing custody and administration of crypto-assets on behalf of clients, similarly to the criterion set out in Article 85 of MiCAR to identify significant CASPs (Option 2a). Taking into account the prudential focus of the role of colleges under MiCAR, Option 1a would be more appropriate for determining which are the most relevant CASPs referred to in Article 119(2), point (h) of MiCAR.

### **Policy issue 3: Conditions for ARTs and EMTs to be considered as used at large scale in a Member State**

Option 3a: Relative threshold in relation to the size of the financial market of the Member State.

Option 3b: Minimum thresholds applied to (i) the number of holders per Member State, and (ii) average number and average aggregate value of transactions (cumulative criteria).



Option 3c: Minimum thresholds applied to (i) the number of holders per Member State, and (ii) average number and average aggregate value of transactions (non-cumulative criteria).

Option 3a envisages a relative threshold defined in relation to the size of financial market of the Member State. Such a metric would ensure proportionality as it would take into account the different sizes of the financial market of each Member State. However, it is challenging to define and measure the financial market of each Member State. Also, identifying a suitable comparable metric would be challenging taking into account the type of transactions that should be considered for the purpose of Article 119(2), point (l) of MiCAR, i.e. all transactions with a significant ART or a significant EMT, irrespective of whether that token is used to make payments, for investment purposes or for other purposes. For these reasons this option was discarded.

Options 3b and 3c imply setting a minimum absolute threshold in terms of (i) the number of holders of a significant ART/EMT per Member State, and (ii) the average number and average aggregate value of transactions with that significant ART/EMT, where at least one party is located in that Member State. Both metrics capture different aspects of the use of the token, and therefore both are proposed as indicators to assess the “use at large scale”. To ensure that the criteria are not too restrictive, Option 3c was considered as more appropriate.

Therefore, Option 3c was preferred.

#### **Policy issue 4: Granularity of the RTS with regard to the conditions for the functioning of supervisory colleges**

Option 4a: Specify in the RTS only the elements explicitly mentioned in Article 119(6) and describe the remaining operational arrangements for the functioning of MiCAR supervisory colleges in the EBA’s internal policies/procedures for establishing, managing and chairing MiCAR supervisory colleges.

Option 4b: Specify in the RTS a few additional elements beyond those explicitly listed in Article 119(6) that are the most important for the functioning of MiCAR supervisory colleges and specify the remaining operational arrangements for the functioning of MiCAR supervisory colleges in the EBA’s internal policies/procedures for establishing, managing and chairing MiCAR supervisory colleges.

Option 4c: Specify in the RTS a comprehensive set of elements relevant for the functioning of MiCAR supervisory colleges, similarly with the approach followed for example for supervisory colleges under Directive 2013/36/EU.

In assessing these options, EBA took into account that the requirement in Article 119(1) of MiCAR to establish, manage and chair supervisory colleges for issuers of significant ARTs/EMTs applies only to the EBA. Therefore, other competent authorities will not need to establish a supervisory college under MiCAR.



Option 4a provides the minimum elements required by MiCAR and allows flexibility to the EBA in setting the remaining operational arrangements for the functioning of MiCAR supervisory colleges in the EBA's internal policies/procedures for establishing, managing, and chairing MiCAR supervisory colleges. While this flexibility may be useful in certain cases, it may also lead to legal uncertainty, and would not offer transparency as regards the conditions for the functioning of supervisory colleges.

Option 4c offers more legal certainty, but it may also cause procedural challenges for the EBA in case certain provisions of the RTS will need to be updated. Moreover, supervisory colleges under MiCAR may vary in size and complexity, so setting in advance all the rules may be detrimental to the efficiency of the supervisory college work.

In this regard, Option 4b, which specifies in the RTS a few additional elements beyond those explicitly listed in Article 119(6) that are the most important for the functioning of MiCAR supervisory colleges and does not set too many details as regards the conditions for the functioning of supervisory colleges, strikes a good balance between legal certainty and flexibility, and is the preferred option.

#### E. Cost-benefit analysis

When comparing with the baseline scenario (where there would be no additional guidance on the definitions of "most relevant", "used at large scale", as well as no additional details on the practical arrangements related to the establishment and functioning of the supervisory college), the costs are mainly born by the EBA, as it is the authority charged with the task to establish, manage and chair the supervisory colleges. These costs however are expected to be minimal, as the additional clarifications aim to facilitate the process of establishing and chairing a college. Competent authorities may bear some indirect costs through their involvement in the establishment and functioning of supervisory colleges. The RTS does not create any additional costs to the stakeholders (issuers, CASPs, trading platforms, PSPs).

The benefits of the RTS relate to the clarity of the definitions and criteria applied to assess which competent authorities should be included in the supervisory colleges. The RTS hence strike a good balance between ensuring an appropriate representation in colleges of relevant competent authorities, and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning. In addition, the RTS also will ensure an effective establishment and functioning of the colleges by striking a good balance between legal certainty and flexibility. In the long-term, this ensures an effective supervision of issuers of significant ARTs/ EMTs by the relevant competent authorities, thus contributing to the overall stability of the financial markets.



## 6.2 Overview of questions for consultation

**Question 1:** Do you agree with the criteria proposed in Article 2(1), and (5) of the draft RTS for assessing which are the most relevant CASPs, credit institutions or investment firms, as referred to in Article 119(2), point (d) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

**Question 2:** Do you agree with the criteria proposed in Article 2(3), and (5) of the draft RTS for determining which are the most relevant trading platforms, as referred to in Article 119(2), point (e) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

**Question 3:** Do you agree with the criteria proposed in Article 2(3) and (5) of the draft RTS for assessing which are the most relevant PSPs providing payment services in relation to the significant e-money tokens, as referred to in Article 119(2), point (f) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

**Question 4:** Do you agree with the criteria proposed in Article 2(4) and (5) of the draft RTS for assessing which are the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2), point (h) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

**Question 5:** Do you agree with the criteria proposed in Article 3 of the draft RTS for assessing when a significant ART or a significant EMT is “used at large scale” in a Member State, as referred to in Article 119(2), point (l) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

**Question 6:** Taking into account the scope of the mandate in Article 119(8) of MiCAR, do you have suggestions regarding other aspects, beyond those covered in Articles 6 to 11 of the draft RTS, that are relevant for the functioning of supervisory colleges under MiCAR and that, in your view, should be covered by the draft RTS? If yes, please provide your reasoning, and details of the aspects that in your view should be further specified in the draft RTS.