

EBA/CP/2023/28

08 NOVEMBER 2023

Consultation Paper

Draft Regulatory Technical Standards

to specify the adjustment of own funds requirements and stress testing of issuers of asset-referenced tokens and of e-money tokens subject to the requirements in Article 35 of Regulation (EU) 2023/1114 on markets in crypto-assets

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

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 the EBA should consider.

Submission of responses

To submit your comments, click on the “send your comments” button on the consultation page by 08 February 2023. 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 the 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 of the EBA website.

2. Executive Summary

Pursuant to paragraph 1 of Article 35 of Regulation (EU) 2023/1114 issuers of asset-reference tokens are subject to own funds requirements, and in accordance with paragraph 3 of the same article competent authorities, following an assessment based on specific criteria, will be able to increase the amount of own funds requirements of an issuer of asset-referenced tokens that is deemed to have a higher degree of risk.

Moreover, issuers of asset-referenced tokens are required to conduct stress testing based on plausible financial stress scenarios, and competent authorities will be able to increase the amount of own funds requirements of an issuer of asset-referenced tokens having regard to the risk outlook and stress testing results.

The mentioned requirements apply as well to electronic money institutions issuing e-money tokens that are significant by virtue of Article 58(1), point b, of Regulation (EU) 2023/1114 and can be expanded to e-money institutions issuing e-money tokens that are not significant if the competent authority of the home Member State requires it so following Article 58(2) of that Regulation.

According to the mandate in Article 35(6) of Regulation (EU) 2023/1114, the EBA has developed these Regulatory Technical Standards (RTS)¹ specifying the procedure and timeframe for an issuer of an asset-referenced token to adjust to higher own funds requirements when this is deemed to have a higher degree of risk, the criteria for competent authorities to follow during the assessment of such higher degree of risk and the minimum requirements for the design of the stress testing programmes.

Given the novelty of asset-referenced tokens and their issuers, the fact no universal risks assessment framework exists and the rapid developments in this sector, these RTS have been developed with a certain degree of flexibility for competent authorities while keeping the main overall objective of harmonisation of rules and convergence of supervisory practices.

The EBA followed a more prescriptive approach when specifying the procedure for issuers of asset-referenced tokens to submit a compliance plan, while provided more flexibility to competent authorities on the timeframe to grant an issuer of an asset-referenced token to adjust to higher own funds requirements (up to 1 year) and on the assessment of higher degree of risk criteria (based on 3 criteria).

These draft RTS also provide general rules to be followed by issuers of asset-referenced tokens for the design, implementation and use of stress testing programmes and methodology. These rules will ensure a minimum level of consistency between issuers of asset-referenced tokens, while ensuring they are proportional to their size, complexity, and business model.

For issuers of asset-referenced tokens to understand and model all risks they are exposed to, including any possible interlinkages between the crypto-ecosystem and the traditional financial sector stemming from reserve assets both a solvency and liquidity risk of issuers of asset-referenced tokens stress test is necessary as a minimum, and to ensure that the results of the stress test remain relevant, a minimum frequency of testing required. Furthermore, to assure that issuers of asset-referenced tokens have sound risk management culture and practices rules on internal governance and IT data infrastructure have been developed as well.

¹ This Regulation is also relevant for issuers of e-money tokens that are subject to or required to comply with the requirements referred to in Article 35(2), (3) and (5) of Regulation (EU) 2023/1114

Next steps

The final draft RTS will be submitted to the Commission for adoption. Following the submission, the RTS will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

3. Background and rationale

1. Issuers of asset-referenced tokens issue those tokens that are a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies. To address the risks to financial stability of the wider financial system, issuers of asset-referenced tokens are subject to own funds requirements². Those requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore are to be calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens.
2. Furthermore, to ensure consumer protection, issuers of asset-referenced tokens should also comply with certain prudential requirements. As specified in recital 80 of Regulation (EU) 2023/1114, those prudential requirements are set as a fixed amount or in proportion to the fixed overheads of crypto-asset service providers of the preceding year, depending on the types of services they provide.
3. Article 35(1) of Regulation (EU) 2023/1114 introduces the own funds requirement for issuers of asset-referenced tokens. Issuers of asset-referenced tokens, shall at all times have own funds equal to an amount of at least the highest of:
 - a. EUR 350.000;
 - b. 2% of the average amount of the reserve assets (referred to in Article 36);
 - c. A quarter of the fixed overhead of the preceding year.
4. The 2% percentage shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens according to Article 45(5) of Regulation (EU) 2023/1114.
5. Article 35(3) of Regulation (EU) 2023/1114 specifies that competent authorities will be able to increase the amount of own fund requirements of an issuer of asset-referenced tokens by up to 20%, above the requirements set in Article 35(1)(b) of Regulation (EU) 2023/1114, in case an assessment of an issuer of asset-referenced tokens indicates a higher degree of risk in any of the following points:
 - a. the evaluation of the risk-management processes and internal control mechanisms of the issuer of the asset-referenced token as referred to in Article 34 (1), (8) and (10);
 - b. the quality and volatility of the reserve of assets referred to in Article 36;

² Credit institutions authorised under Directive 2013/36/EU issuing asset-reference tokens, including significant asset-referenced tokens, are not subject to these own funds requirements.

- c. the types of rights granted by the issuer of the asset-referenced token to holders of the asset-referenced token in accordance with Article 39;
 - d. where the reserve of assets includes investments, the risks posed by the investment policy on the reserve of assets;
 - e. the aggregate value and number of transactions settled in the asset-referenced token;
 - f. the importance of the markets on which the asset-referenced token is offered and marketed;
 - g. where applicable, the market capitalisation of the asset-referenced token.
6. Issuers of asset-referenced tokens are required to conduct on a regular basis stress-testing, under Article 35(5) of Regulation (EU) 2023/1114 considering certain scenarios and parameters and based on the outcome competent authorities shall in certain circumstances require issuers of asset-referenced tokens to hold an amount of own funds which is between 20% and 40% higher than the amount resulting from the application of Article 35(1)(b) of Regulation (EU) 2023/1114.
7. The EBA is mandated under Article 35(6) of Regulation (EU) 2023/1114, in close cooperation with ESMA and the ECB, to develop draft regulatory technical standards further specifying:
 - a. the procedure and timeframe for an issuer of an asset-referenced token to adjust to higher own funds requirements as set out in paragraph 3 of Article 35;
 - b. the criteria for requiring a higher amount of own funds as set out in paragraph 3 of Article 35;
 - c. the minimum requirements for the design of stress testing programmes, taking into account the size, complexity and nature of the asset-referenced token, including but not limited to: (i) the types of stress testing and their main objectives and applications; (ii) the frequency of the different stress testing exercises; (iii) the internal governance arrangements; (iv) the relevant data infrastructure; (v) the methodology and the plausibility of assumptions; (vi) the application of the proportionality principle to all of the minimum requirements, whether quantitative or qualitative; and (vii) the minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios.
8. Articles 35(2), (3) and (5) and Article 45(5) of Regulation (EU) 2023/1114 also apply to issuers of e-money tokens (either significant or, where decided, non-significant), as per Articles 58(1), point (b), and (2) of Regulation (EU) 2023/1114, of that Regulation. Therefore, these RTS should also be relevant and applicable for those.

9. The main purpose of these draft RTS is to specify how and when competent authorities shall assess whether to require an issuer of asset-referenced tokens to increase the own funds amount by providing criteria on how to assess the possible 'higher risk' of an issuer of asset-referenced tokens.
10. These draft RTS also provide the procedure for competent authorities to determine the specific period of time considered appropriate for an issuer of asset-referenced tokens to increase the own funds amount to the new requirements and the measures to be taken to ensure the timely compliance thereof.
11. Issuers of asset-referenced tokens, need to ensure robust and prudent reserve asset management and operational requirements to instill confidence, to ensure the stability of the peg and avoid a run on the token with possible contagion to the financial sector. Failures of issuers of asset-referenced tokens could result in large-scale redemption and trigger a fire-sale of their reserve assets as well as deposit withdrawal, potentially causing significant market disruptions and systemic risks in the broader financial system.
12. As specified in recital 44 and recital 71 of Regulation (EU) 2023/1114, credit institutions that act as issuers of asset-referenced tokens or e-money tokens are not subject to own funds requirements. Therefore, these RTS for additional own funds requirements are not applicable to credit institutions.
13. In case competent authorities requires additional own funds due to the assessment of a higher degree of risk in accordance with Articles 35(3) of Regulation (EU) 2023/1114 and at the same time requires additional own funds due to the stress test results and the risk outlook in accordance with 35(5) of Regulation (EU) 2023/1114, the requirements are without prejudice of each other as such both requirements should be applied cumulatively.
14. For the avoidance of doubt, these RTS are already applicable during the authorisation phase of an issuer as specified in the RTS on information for application for authorisation to offer to the public or to seek admission to trading of asset-referenced tokens under Article 18(6) of Regulation (EU) 2023/1114 and therefore it is possible for competent authorities to require additional own funds from the moment of the first issuance of tokens.
15. Separately for this mandate, EBA is also mandated to develop a draft RTS under Article 45(7)(c) of Regulation (EU) 2023/1114 on the procedure and timeframe for issuers of significant asset-referenced tokens to adjust their own funds amount of Regulation (EU) 2023/1114 from 2% to 3% of the reserve assets after an issuer becomes issuer of significant asset-referenced tokens. Due to the similarities with the mandate under Article 35(6) of Regulation (EU) 2023/1114 and to ensure consistency and to reduce the operational burden to issuers and competent authorities, it is the intention to align the procedures as much as possible, where possible.

3.1 Own funds requirements of issuers of asset-referenced tokens

3.1.1 Own funds and quality of capital

16. Article 35(1) of Regulation (EU) 2023/1114 combines 3 different aspects of capital, initial capital to start up a business, a going concern capital by a % based on the size of the business (reserve assets) and a minimum requirement based on fixed overhead costs to cover for any potential consumer protection issues. The minimum capital can be adjusted upwards by a competent authority under certain conditions.
17. Furthermore, the composition/quality of own funds shall consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 in accordance with Art 35(2) of Regulation (EU) 2023/1114.
18. The mandate is about adjusting capital upwards mainly due to risk-management processes and internal control mechanisms issues, risks in the investment portfolio, or due to possible financial stability issues related to the size of the issuer of asset-referenced tokens. This is similar to a Pillar 2 requirement under the banking regulation.
19. The additional own funds requirements coming from the application of Article 35(3) or Article 35(5) of Regulation (EU) 2023/1114 should stay in place until the competent authority finds that the higher degree of risk does not require anymore a higher level of own funds.

3.1.2 'Higher' own funds requirements

20. Article 35(3) of Regulation (EU) 2023/1114 specifies that competent authorities can increase the amount of own funds requirements of an issuer of asset-referenced tokens by up to 20%, in accordance with Article 35(1)(b) of Regulation (EU) 2023/1114, in case an assessment of an asset-referenced token issuer indicates a higher degree of risk. Furthermore, Article 35(5) of Regulation (EU) 2023/1114 specifies that competent authorities considering severe but plausible financial stress scenarios and parameters and based on the outcome of the stress testing conducted by the issuer of asset-referenced tokens shall in certain circumstances, also considering the overall risk outlook, require issuers of asset-referenced tokens to hold an amount of own funds which is between 20% and 40% higher than the amount resulting from the application of Article 35(1)(b).
21. Article 35(6)(a) of Regulation (EU) 2023/1114 mandates the EBA to further specify; (a) the procedure and timeframe for an issuer of an asset-referenced token with higher degree of risk to adjust to higher own funds requirements and to specify (b) the criteria used during the assessment of a higher degree of risk that leads to require a higher amount of own funds.

3.1.3 Procedure and timeframe

22. As required by Article 34(1) of Regulation (EU) 2023/1114 issuers of asset-referenced tokens shall have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which they are or might be exposed, and adequate

internal control mechanisms, including sound administrative and accounting procedures. Issuers of asset-referenced tokens should at all times take measures to reduce the risks to which they are exposed. In case these measures have insufficient effect, it should be considered to require additional own funds.

23. Notwithstanding the above, the competent authority may determine the timeframe for an issuer of asset-referenced tokens to adjust to higher own funds requirements when an issuer of asset-referenced tokens is considered to have a higher degree of risk as referred to in Article 35(3).

24. Based on the assessment performed applying the criteria mentioned in this section, the competent authority should be in the position to determine a timeframe considered appropriate for an issuer of asset-referenced tokens to adjust to higher own funds requirements. In particular, the competent authority should decide whether the adjustment should be completed within 3 months, when the higher degree of risk indicates that this can have a material impact on the financial situation of the issuer of asset-referenced tokens or on the financial stability of the wider financial system, or is associated with the issuer of asset-referenced tokens' governance or business model or whether it should grant the issuer of asset-referenced tokens a longer period. In the latter case, by acknowledging that there could be extraordinary cases that may warrant allowing a longer timeframe, competent authorities should not grant more than 1 year to issuers of asset-referenced tokens to implement the measures needed to increase the amount of own funds.

25. Competent authorities should take into account the issuer of asset-referenced tokens' financial situation and consider on a case-by-case basis whether the timeframe to implement certain measures to adjust to higher own funds requirements should be corrected upwards or downwards due to the potential impact on the financial situation of the issuer of asset-referenced tokens or due to potential financial stability implications of not adjusting own fund requirements fast enough. As a principle, increase in own funds amounts should be completed with a short timeframe, but in any case, the maximum amount of time competent authorities can grant to issuers of asset-referenced tokens to implement specific measures is 1 year. For example, an issuer of asset-referenced tokens with a less favourable financial situation might need more time to implement certain measures to comply with the requirements or otherwise risks a worsening of the financial situation itself.

26. The same considerations apply when the assessment of an issuer of asset-referenced tokens' reserve of assets reveals that these are not highly exposed to concentration risk, as defined in Article 36 of Regulation (EU) 2023/1114. Indeed, in this case the competent authority might allow a longer period to adjust the level of own funds since this could entail that the issuer of asset-referenced tokens has incorporated a diversified risk management strategy as an established practice.

27. It is incumbent upon issuers of asset-referenced tokens to present to the competent authority a set of measures to ensure the timely adjustment to the higher own funds requirements. Such

measures should be to the discretion of the competent authority with due regard to the assessment performed in accordance with Article 35(3) of Regulation (EU) 2023/1114. In assessing the appropriateness of the measures, the competent authority should consider whether these would address for the higher degree of risk identified.

28. The issuer of asset-referenced tokens shall provide the competent authority with a plan to compliance with Article 35(3) of Regulation (EU) 2023/1114. The set of measures included in the plan shall include time-bound steps and procedures to carry out the increase within the set timeframe and ensure that the funds consist of the Common Equity Tier 1 items and instruments as referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full pursuant to Article 36 of that Regulation, without the application of the threshold exemptions referred to in Article 46(4) and Article 48 of that Regulation. In any case, the issuer of asset-referenced tokens should always strive to identify and address any foreseeable risks or obstacle to the effective and timely execution of the measures. If a period longer than 3 months is given to implement the plan, the issuer of asset-reference tokens shall update competent authorities, at least, on a monthly basis on the plan's implementation progress.
29. The competent authority should consider whether the issuer of asset-referenced tokens should employ further strategies to increase the own funds, considerations should also be given to whether this could be achieved by means of issuing new capital items or retaining profits.
30. In order to ensure the effective and timely increase of own funds, the competent authority should closely monitor the implementation of the plan by the issuer of asset-referenced tokens. Whenever necessary, the competent authority should be able to request additional information, and in case the measures do not progress as initially planned, an alternative course of action might be required.
31. When the requirement to increase the own funds comes from lack of internal control and inadequate risk management processes, the competent authority should assess those processes and require specific measures to improve them, as well as to require the issuer of asset-referenced tokens to perform an internal or external audit regarding its internal control and risk management processes. Moreover, competent authorities could perform targeted on-site examinations.
32. In defining and implementing the plan to increase the own funds, issuers of asset-referenced tokens should consider that Article 34(3) of Regulation (EU) 2023/1114 requires the management body of the issuer of asset-referenced tokens to assess and periodically review the effectiveness of the policy arrangements and procedures and take appropriate measures to address any deficiencies in that respect. Furthermore, it is the role of the issuer of asset-referenced tokens' management body, or internal audit committee or department, where established, to monitor the effectiveness of the issuer of asset-referenced tokens' internal quality control and risk management systems and, where applicable, its internal audit function.

33. Furthermore, the management body of an issuer of asset-referenced tokens should oversee the implementation of the compliance plan, which should be communicated to all staff members. Issuers of asset-referenced tokens should set up a process to regularly assess changes in the law and regulations applicable to its activities. The compliance function, where established, should advise the management body on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should assess the possible impact of any changes in the legal or regulatory environment on the issuer of asset-referenced tokens' activities and compliance framework.

3.1.4 Criteria

34. Given the novelty of issuers of asset-referenced tokens and the tokens themselves, no universal assessment framework exists. This makes it difficult for competent authorities to evaluate the risks of an issuer of asset-referenced tokens, it is therefore crucial that competent authorities have the flexibility to increase the own funds requirements of issuers of asset-referenced tokens, if they observe a higher degree of risk. The higher degree of risk criteria specified in Article 3 of these RTS should guide competent authorities in their decision and ensure a harmonised approach across competent authorities in the EU.

35. Competent authorities should perform the evaluation on a case-by-case basis following a broad assessment of all the criteria as specified in this Regulation when deciding if an increase in own funds requirement is justified.

3.2 Stress-testing programmes

36. The significant increase in the size of asset-backed tokens has raised concerns about their potential impacts on the financial system. Concerns with these tokens could result in large-scale redemption and trigger a fire-sale of their reserve assets as well as deposit withdrawal, potentially causing significant market disruptions and systemic risks across the financial system.

37. Issuers of assets referenced tokens need to ensure robust reserve asset management and compliance with operational requirements to instill confidence, ensure the stability of the peg and avoid a run on the token with possible contagion to the financial sector. Like money market funds (MMFs), reserve assets of issuers of asset-referenced tokens need to be liquid to allow users to redeem their tokens in fiat currency. Robust management of reserve assets underpins users' confidence in those tokens. A loss of confidence could trigger large-scale redemption requests – especially if there are limited redemption possibilities– leading to the liquidation of reserve assets with negative contagion effects on the financial system.

38. Article 35(5) of Regulation (EU) 2023/1114 envisages that issuers of assets referenced tokens need to have in place and conduct a stress testing, on a regular basis. The stress testing should take into account severe but plausible financial stress scenarios, such as credit, liquidity, interest- and exchange rate shocks, market risk, and non-financial stress scenarios, such as operational risk related shocks.

39. Article 35(6)(c) of Regulation (EU) 2023/1114 further specifies that the EBA should set the minimum requirements for the design of stress testing programmes, taking into account the size, complexity and nature of the asset-referenced token issuer, including but not limited to (i) the types of stress testing and their main objectives and applications; (ii) the periodicity and the frequency of the different stress testing exercises; (iii) the internal governance arrangements; (iv) the relevant data infrastructure; (v) the methodology and the plausibility of assumptions; (vi) the application of the proportionality principle to all of the minimum requirements, whether quantitative or qualitative; and (vii) the minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios.
40. Furthermore, these rules aim to achieve convergence of the practices followed by issuers of asset-referenced tokens for stress testing across the EU. They provide detailed standards to be complied with by issuers of asset-referenced tokens when designing and conducting a stress testing programme/framework.

4. 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 adjustment of own funds requirement and minimum features of stress testing programmes of issuers of asset-referenced tokens or of e-money tokens subject to such requirements

(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 Directive (EU) 2019/1937³, and in particular Article 35(6), third subparagraph, thereof,

Whereas:

- (1) When determining own funds requirements for issuers of asset-referenced tokens, competent authorities have been granted with the flexibility to adjust upwards the amount resulting from the application of paragraph 1, first subparagraph, point (b) of that Article, which consists of 2% (or 3 % for significant tokens) of the average amount of the reserve of assets, when certain circumstances indicate higher risks. When assessing those circumstances, the impact a failure of the tokens could have on financial stability should be considered, including large-scale redemptions, trigger of fire-sales of reserve assets or deposit withdrawals, potentially causing significant market disruptions, possible negative consequences for funding, and systemic risks across the financial system. The former has been considered in this Regulation when determining the criteria for requiring higher own funds.
- (2) Considering that requirements set out in Articles 35, points (2), (3) and (5) and Article 45(5) of Regulation (EU) 2023/1114 also apply to issuers of e-money tokens (either significant or, where decided, non-significant), as per Articles 58(1), point (b), and (2) of that Regulation, this Regulation should also apply to issuers of e-money tokens that are subject to or required to comply with those requirements.
- (3) Given the novelty of asset-referenced and e-money tokens and their issuers, no universal risks assessment framework exists. This makes it difficult for competent authorities to evaluate the risks of and posed by those issuers. Therefore, when deciding if an increase in own funds requirement is justified, competent authorities

³ 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).

should perform the evaluation on a case-by-case basis following a broad assessment of all the criteria as specified in this Regulation. Requiring a possible increase to the own funds requirements depends on issuer-specific circumstances, issuers of asset-referenced tokens and issuers of e-money tokens -issued by electronic money institutions- subject to such own funds requirements should always be adequately capitalised for the risks they face. All relevant historical and current information available should be used for the said broad assessment. Generally, increases in own funds requirements should only be requested when there is a higher degree of risk, which is not already covered, and the measures of the relevant issuer are insufficiently effective to reduce the risks.

- (4) In case a competent authority requires an increase in own funds requirements, the timeframe provided to comply with such increase should be as short as possible since a relevant issuer, applying a proper and effective risk management, should have foreseen and thus prevented this measure. Exceptionally, if such issuers had not been able to foresee or prevent the increase as the reasons for the increase lay outside such issuers' control, a longer timeframe may be considered.
- (5) Where a competent authority concludes that the risks including volatility of a particular asset-referenced token or, where applicable, e-money token might lead to a significant deterioration of the financial situation of the relevant issuer or impact the financial stability, the competent authority should require a shorter timeframe for the relevant issuer to increase the own funds, requiring that the latter provides a set of measures to execute the increase. While, in other cases, the timeframe should be longer requiring the relevant issuer to submit a plan to increase the own funds. However, such issuer should always discuss and agree with the competent authority a set of measures to restore compliance. Such measures should be to the discretion of the competent authority with due regard to the assessment performed for determining the higher own funds requirements. In assessing the appropriateness of the measures, the competent authority should also consider whether they would mitigate the higher degree of risk observed in the near future.
- (6) To ensure that issuers of asset-referenced tokens and, where applicable, issuers of e-money tokens make risk management decisions that are in line with the expectations of competent authorities, such issuers and competent authorities should understand the financial and operational risks that come with increased use of asset-referenced and e-money tokens. In addition, they should understand and consider interlinkages with crypto-ecosystem more broadly and inherent interconnectedness with the traditional financial sector stemming from reserves assets held. Therefore, stress testing the solvency and liquidity risk of issuers of asset-referenced tokens and, where applicable, issuers of e-money tokens is necessary.
- (7) The impact of the so called 'run-risk' whereby a sudden spike in redemption requests of the tokens, resulting in a fire sale of the reserve assets backing the tokens, needs to be analysed via liquidity stress-testing. It is, therefore, essential to specify minimum features of the liquidity stress-testing too, such as those related to governance, data infrastructure, risk categorisation and frequency.

- (8) To ensure that the results of the stress test remain relevant, the minimum frequency for solvency stress test should be at least, quarterly for issuers of significant asset-referenced and e-money tokens issued by electronic money institutions. Such frequency should be semi-annual for issuers of non-significant asset-referenced tokens and, where applicable, e-money tokens issued by electronic money institutions. Frequency for the liquidity stress test should be in any case at least monthly.
- (9) The stress testing should consider severe but plausible financial stress scenarios and non-financial stress scenarios, such as liquidity shocks, credit shocks, interest rate- and exchange shocks, redemption risk and operational and third party shocks and ensure that the internal governance arrangements and the relevant data infrastructure are in place to allow issuers of asset-referenced tokens and, where applicable, of e-money tokens and competent authorities to understand the characteristics, quantify risks and gather evidence that such issuers are effectively allocating and mitigating risk on an ongoing basis.
- (10) As a guiding principle, the stress-testing programmes should follow the same business, same risks and controls, and therefore similar rules and approach as to credit institutions stress testing under Directive 2013/36/EU⁴. However, considering that the crypto-asset activities -provided by issuers of asset-referenced and e-money tokens- and their risks are different to those of credit institutions it is necessary to group the crypto-activities into different risk categories for the purpose of the stress-testing. Furthermore, grouping the crypto-activities and risks ensures that issuers of asset-referenced tokens, and where applicable e-money tokens, and competent authorities can identify all the functions, processes, and actors, along with their associated risks including any environmental, social, and governance factors, and identify red flags. These identifications should facilitate the design and assignment of specific risk scenarios presented in the different activities of the relevant issuer. The scenarios need to be well-defined to quantify their potential impact, the range of potential losses and the range of plausibility associated with the specific risk scenarios identified. Therefore, when identifying specific risks, the relevant issuer must specify the time horizon of the stress scenario, which should be three years for the solvency stress test and up to one year for the liquidity stress test, the type of asset under stress and the narrative of the stress scenario.
- (11) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (12) 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

⁴ Institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (OJ L 176, 27.6.2013, p. 338–436).

established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council,⁵

HAS ADOPTED THIS REGULATION:

Article 1

Procedure

1. Prior to finalising the determination referred to in Article 35 (3) of Regulation (EU) 2023/1114, competent authorities shall make available to the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions, a relevant draft thereof and take due account of any views expressed by such issuer.
2. The draft shall set out:
 - (a) the amount by which the own funds must be increased and the percentage higher than the amount resulting from the application of paragraph 1, first subparagraph, point (b) of reserve asset in Article 35 of Regulation (EU) 2023/1114 ;
 - (b) relevant reasoning as to the higher degree of risk;
 - (c) whether that higher degree of risk can have a material impact on the financial situation of the issuer of asset-referenced tokens or on the financial stability of the wider financial system;
 - (d) whether that higher degree of risk can be seen as not directly associated with the relevant issuer's governance or business model;
 - (e) the timeline within which the relevant issuer shall increase its own funds in accordance with Article 2.
3. The issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall be provided with 25 working days within which it may express its views on any of the elements referred to in paragraph 2, points (a) to (e).

⁵ 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, 15.12.2020, p. 12).

4. The competent authority shall notify the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions with the final determination of the elements set out in paragraph 2 (a) to (e).
5. Within 20 working days from receipt of the notification referred to in paragraph 4, the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall submit to the competent authority detailed plan on how its own funds will be increased within the timeline set by the competent authority.
6. The plan referred to in paragraph 5 shall:
 - (a) include time-bound steps and procedures to carry out the increase within the set timeframe; and
 - (b) ensure that the funds consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions referred to in Article 36 of Regulation (EU) No 575/2013 have been applied in full and the threshold exemptions referred to in Article 46(4) and Article 48 of that Regulation have been disapplied, including the composition.
7. Where the timeframe set for the completion of the increase of own funds is longer than three months, the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall update competent authorities on a monthly basis on the plan's implementation progress.
8. The issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall inform the competent authority immediately in case any step or procedure cannot be achieved in a timely manner.
9. Competent authorities shall closely monitor the implementation of the plan.
10. Where a college referred to in Article 119(1) of Regulation (EU) 2023/1114 has been set up, the competent authority shall keep EBA informed of all the information referred to in paragraphs 2 to 9, including the draft and the final determination, the plan and its relevant updates.

Article 2

Timeframe

1. Where, on the basis of the assessment referred to in Article 35 (3) of Regulation (EU) 2023/1114, the higher degree of risk can have a material impact on the financial stability of the wider financial system or of the issuer of asset-referenced tokens or, where applicable, of e-money tokens issued by e-money institutions, or it results

from deficiencies in relevant issuer's governance or business model, such issuer shall complete the increase of its own funds within three months. The competent authority may set a shorter timeframe when this is justified by the materiality of the anticipated impact.

2. Where the higher degree of risk does not have a material impact on the financial situation of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions, the increased risk does not result from deficiencies on the relevant issuer's governance or business model and the increased risk does not pose financial stability concerns, the competent authority may set a timeframe that cannot exceed one year.

Explanatory box:

Issuers should follow a specific procedure when adjusting the own funds to meet the higher requirements set by the competent authority. The procedure starts with the competent authority make available a draft of the assessment to the issuer, after which the issuer has 25 working days to provide comments. After this period, the competent authority notifies the issuer of the tokens with the final assessment, which has up to 20 working days to prepare a plan to increase the own funds.

Questions for consultation:

- Question 1.** Is the procedure clear and the timelines for the issuer to provide views on the assessment and submit the plan reasonable?
- Question 2.** Are the timeframes for issuers to adjust to higher own funds requirements feasible?
- Question 3.** During the period when own funds need to be increased by the issuer, should there be more restrictions on the issuer to ensure timely implementation of the additional own funds requirements, for example banning the issuance of further tokens?

Article 3

Criteria

When making the determination referred to in Article 35 (3) of Regulation EU 2023/1114, the competent authority shall apply all of the following criteria:

- (a) whether the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions is likely to breach the requirements referred to in Articles 34 or 36 to 39 of Regulation (EU) 2023/1114 within the following 12 months;
- (b) whether at-all-times redemption at par value and market value is not ensured either in normal or in stressed conditions;
- (c) whether there is an increased risk of a significant deterioration of the value of the reserve assets or the financial situation of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions or an increased risk arising from systems including the underlying distributed ledger and any trading platform, market infrastructure or payment system used for the issuance or the transfer of the asset-referenced token and from other third party crypto assets service providers such as custodians to which the tokens and/or reserve assets might rely on;

To apply the criteria referred to in paragraph, point (a) competent authorities shall assess whether there are potential deficiencies or weaknesses of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions with regard to the application of the requirements set out in Article 34 and in Articles 36 to 39 of Regulation (EU) 2023/1114.

Explanatory box:

To assess whether an issuer has a higher degree of risk competent authorities should consider a set of criteria that identify potential deficiencies or weaknesses. As per Recital 2, competent authorities should perform the evaluation on a case-by-case basis following a broad assessment of all the criteria as specified in this Regulation.

Questions for consultation:

- Question 4.** Do you agree with the criteria to identify if an issuer has a higher degree of risk?
- Question 5.** Do you agree with the procedure to assess whether an issuer has a higher degree of risk?
- Question 6.** Do you consider the criteria and their evaluation benchmarks sufficiently clear?

*Article 4**Design of stress testing programme*

1. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall have in place a stress testing programme which covers at least the minimum requirements set out in Article 35(6)(c) of Regulation (EU) 2023/1114, as specified in this Regulation.
2. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that their stress testing programme is workable and feasible, and that stress testing results inform decision-making at all appropriate management levels on all existing and potential risks having material impact on the financial situation of the issuer.
3. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall regularly assess their stress testing programme to determine its effectiveness, robustness and suitability to the features of the issuer itself and token issued and shall keep it updated. This assessment shall be made on at least an annual basis and shall fully reflect the external and internal conditions.
4. When assessing the design of the stress testing programme, issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall consider all the following elements:
 - a) the effectiveness of the programme in meeting its intended purposes;
 - b) the need for improvements;
 - c) the identified risk factors, reasoning for and design of relevant scenarios, model assumptions and the sensitivity of results to these assumptions, as well as the role of expert judgement to ensure that it is accompanied by sound analysis;
 - d) the model performance, including its performance on out-of-sample data, such as data that were not used for model development;
 - e) how to incorporate possible solvency-liquidity adverse loops;
 - f) the adequacy of possible interlinkages between solvency stress tests and liquidity stress tests;
 - g) feedback received from competent authorities in the context of their supervisory or other stress tests;
 - h) the adequacy of the data infrastructure (systems implementation and data quality);
 - i) the appropriate level of involvement of senior management and the management body;
 - j) all assumptions including business and/or managerial assumptions, and management actions envisaged, based on the purpose, type and result of the stress

testing, including an assessment of the feasibility of management actions in stress situations and a changing business environment; and

k) the adequacy and transparency of the relevant documentation.

5. The stress testing programme shall be appropriately documented for all types of stress tests carried out.
6. The stress testing programme shall be challenged across the organisation, for instance by the risk committee and internal auditors. Business units not responsible for the design and application of the programme or non-involved external experts shall play a key role in the assessment of this process, taking into account the relevant expertise for specific subjects.
7. Issuers of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall ensure, both for the initial design and for the assessment of the stress testing programme, that an effective dialogue has taken place with the involvement of experts from all business areas of the issuer of asset-referenced tokens and that the programme and its updates have been properly reviewed by the senior management and management body of the issuer of asset-referenced tokens, who are also responsible for monitoring its execution and oversight.

Article 5

Type of stress testing

1. Issuers of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall, at least, implement a solvency stress test and a liquidity stress test.
2. The solvency stress test shall capture the impact of certain developments including macro or microeconomic scenarios, on the overall capital position of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions, including on its minimum or additional own funds requirements, by means of projecting the issuers of asset-referenced tokens' capital resources and requirements, highlighting the issuer of asset-referenced tokens' or, where applicable, the issuer of e-money tokens issued by electronic money institutions vulnerabilities and assessing its capacity to absorb losses and the impact on its solvency positions.
3. The liquidity stress test shall capture the impact of certain developments including macro- or microeconomic scenarios, from a funding and market risk perspective and shocks to the liquidity of the reserve of assets and to the overall liquidity position of the issuer of asset-referenced tokens or the issuer of e-money tokens issued by electronic money institutions, including to its minimum or additional requirements.
4. The specific design, complexity and level of detail of the stress test methodologies shall be appropriate to the issuer of asset-referenced tokens' or the issuer of e-money

tokens issued by electronic money institutions nature, including redemption rights' nature, scale and size, as well as the complexity, concentration and composition of its reserve assets.

Article 6

Minimum periodicity and frequency of the different stress testing exercises

Minimum frequency for solvency stress test shall be, at least, quarterly for issuers of significant asset-referenced tokens or, where applicable, the issuers of significant e-money tokens issued by electronic money institutions. Frequency shall be, at least, semi-annual for such issuers.

Minimum frequency of liquidity stress test shall be, at least, on a monthly basis for all issuers of asset-referenced tokens or, where applicable, for issuers of e-money tokens issued by electronic money institutions.

Article 7

Internal governance arrangements under the stress testing exercises

1. The stress testing programme of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions shall be adopted by its management body, which shall be responsible for its implementation in accordance with Regulation (EU) 2023/1114 and this Regulation.
2. The stress testing programme shall include an assessment as to whether the members of the management body have sufficient knowledge, skills and experience to perform all of the following:
 - (a) fully understand the impact of stress events on the overall risk profile of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions.
 - (b) ensure that clear responsibilities and sufficient resources (such as skilled human resources and information technology systems) have been assigned and allocated for the execution of the stress tests;
 - (c) actively engage in discussions with staff involved in stress testing and with persons to whom tasks related to stress testing are outsourced;
 - (d) challenge key modelling assumptions, the scenario selection and the assumptions underlying the stress tests in general;
 - (e) decide on the necessary management actions and discuss them with the competent authorities.

3. The stress testing programme shall be designed in a way which allows stress tests to be executed in accordance with the relevant internal policies and procedures of the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions.
4. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that all elements of the stress testing programme, including its assessment, are appropriately documented and regularly updated, where relevant, in the internal policies and procedures.
5. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that the stress testing programme design foresees an effective communication across business lines and management levels, with a view to raising awareness, improving risk culture and instigating discussions on existing and potential risks as well as on possible management actions.
6. The stress testing programme shall be designed as an integral part of an issuer of asset-referenced tokens or, where applicable, an issuer of e-money tokens issued by electronic money institutions risk management framework. Stress tests shall be designed to support different business decisions and processes as well as strategic planning. The strategic decisions shall take into account the shortcomings, limitations and vulnerabilities identified during stress testing.
7. The outputs of stress tests shall be used as inputs to the process of establishing an issuer of asset-referenced tokens or, where applicable, issuer of e-money tokens issued by electronic money institutions risk appetite and limits and shall act as a planning tool to determine the effectiveness of new and existing business strategies and assess the possible impact on own funds and liquidity.

Article 8

Relevant data infrastructure for stress testing programmes

1. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that the stress testing programme is supported by an adequate and transparent data infrastructure.
2. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that their data infrastructure has the capacity to capture the extensive data needs of their stress testing programme and that they have in place mechanisms to ensure a continuous and consistent ability to conduct stress testing as planned in accordance with the programme.
3. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that the data infrastructure allows for both flexibility and appropriate levels of quality and control.

4. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall ensure that their data infrastructure is proportionate to their size, complexity, and risk and business profile, and allows for the performance of stress tests covering all material risks that the institution is exposed to.
5. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall devote sufficient human, financial and material resources to guarantee the effective development and maintenance of their data infrastructure, including information technology systems.

Article 9

Methodology, common reference parameters and the plausibility of assumptions

1. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall identify the following risks categories:
 - a. risks to the value, transferability, liquidity, accessibility or exchangeability of the asset-referenced and reserve assets;
 - b. risks arising from systems, to which the asset-referenced relies, including the underlying distributed ledger or any other technology of the token and any trading platform, market infrastructure or payment system used for the issuance or the transfer of the asset-referenced;
 - c. risks arising from the performance of contractual arrangements, which the relevant issuer has entered into with other issuers, CASPs, financial institutions or any other natural or legal person, for the issuance or transfer of the asset-referenced tokens or for the establishment, management, custody or investment of the reserve assets, including any arrangement whereby the issuer outsources tasks.
2. To assess the risks referred to in paragraph 1, issuers of asset-referenced tokens or or, where applicable, issuers of e-money tokens issued by electronic money institutions shall identify specific risk scenarios using historical scenarios and/or hypothetical scenarios in relation to the different risk categories referred to in paragraph 1.
3. The specific risk scenarios referred to in paragraph 2 shall be well-defined and their potential impact shall be quantifiable.
4. When identifying specific risks, issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall specify a time horizon for 3 years for the risk events relating to the solvency stress test and up to 1 year for the liquidity stress test, the asset at risk and a precise description of the risk scenario.

5. Issuers of asset-referenced tokens or, where applicable, issuers of e-money tokens issued by electronic money institutions shall quantify the severity and plausibility of the stress scenarios identified as well as the potential losses coming from those scenarios.

Explanatory box:

Issuers should have in place and run periodically stress tests on solvency and liquidity. The stress testing should consider severe but plausible financial stress scenarios and non-financial stress scenarios and operational and third party shocks and ensure that the internal governance arrangements and the relevant data infrastructure are in place to allow issuers and competent authorities to understand the characteristics, quantify risks and gather evidence that issuers are effectively allocating and mitigating risk on an ongoing basis.

Questions for consultation:

- Question 7.** Do you agree with the need for a solvency and liquidity stress-test and the requirements of the stress-test?
- Question 8.** Do you agree with the frequency and time horizon of the solvency and liquidity stress-test? Should there be more differentiation between significant and not-significant issuers? Should the stress testing be more frequent for issuers of asset-referenced tokens referenced to official currencies?
- Question 9.** Should a reverse stress testing requirement/methodology be introduced? Please provide your reasoning.
- Question 10.** Do you have any other comments in relation to the stress-testing part in these RTS?

Article 10

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]*

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

1. Following Article 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of draft Regulatory Technical Standards. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA) that analyses ‘the potential related costs and benefits’.
2. This analysis presents the IA of the main policy options discussed and assessed in the elaboration of the draft RTS on additional own funds requirements and stress testing, which the EBA is mandated to develop under Article 35(6) of Regulation (EU) 2023/1114⁶. Given the novelty of asset-referenced tokens and their issuers no universal risks assessment framework exists, it is difficult to evaluate the risks of and posed by issuers of asset-referenced tokens under the different policy options, therefore a more principle based approach has been used.

A. Problem identification and baseline scenario

3. Issuers of asset-referenced tokens are required to hold a minimum amount of own funds, which can be increase based on the assessment of higher degree of risk conducted by the competent authority or on the results of the stress testing. During the assessment of the higher degree of risk the criteria that competent authorities need to consider and the higher amount of own funds that could require might change based on a series of features, such as the comprehensiveness of the assessment, the scope and frequency of the assessment, as well as the specific financial situation of the issuer of asset-referenced tokens.
4. On the other hand, the minimum requirements that the stress testing programmes should have as well as their minimum frequency should take into account the operational burden upon issuers of asset-referenced tokens when many types of stress tests are required, while at the same time ensuring the relevance of the results, the proportionality aspects when a minimum frequency is imposed and the feasibility of the stress test.
5. In the baseline scenario, issuers of asset-referenced tokens would be subject to own-funds requirements and stress-testing obligations as specified in Regulation (EU) 2023/1114, excluding any additional specifications in the form of an RTS. This could lead to divergent approaches across competent authorities on the procedures and timeframes for an issuer of asset-referenced tokens to adjust to higher own-funds requirements, as well as divergent criteria when assessing a ‘higher degree of risk’. Finally, it would also lead to differences in the

⁶ This Regulation is also relevant for issuers of e-money tokens that are subject to or required to comply with the requirements referred to in Article 35(2), (3) and (5) of Regulation (EU) 2023/1114

stress testing programmes and methodologies due to lack of minimum harmonised requirements specified by these RTS.

6. Such a limited legal framework could negatively impact the level playing field among issuers of asset-referenced tokens and Member States. Above all, it could lead to financial instability if a negative shock materialised and issuers of asset-referenced tokens had not adequately assessed their own-funds requirements or solvency and liquidity status. The negative effects of this scenario would be magnified as the relevant market develops.

B. Policy objectives

7. The purpose of these draft RTS is i) to specify how competent authorities should decide when requiring an issuer of asset-referenced tokens to increase the own funds amount by providing criteria on how to assess the possible higher risk of an issuer of asset-referenced tokens, ii) to provide issuers of asset-referenced tokens and competent authorities an harmonised procedure and timeframe to follow when a higher amount of own funds has been required and iii) to specify the minimum requirements of the stress testing programmes that all issuers of asset-referenced tokens would need to put in place.

C. Policy options

General approach

8. Given the novelty of asset-referenced tokens and their issuers, the fact no universal risks assessment framework exists and the rapid developments in this sector, these RTS have been developed with a certain degree of flexibility for competent authorities while keeping the main overall objective of harmonisation of rules and convergence of supervisory practices.
9. The EBA followed a more prescriptive approach when specifying the procedure and for issuers to submit a compliance plan, while providing more flexibility to competent authorities on timeframe for an issuer of an asset-referenced token to adjust to higher own funds requirements (up to 1 year) and on the assessment of higher risk criteria (based on 3 criteria).
10. These draft RTS also provides general rules to be followed by issuers of asset-referenced tokens for the design, implementation and use of stress testing programmes and methodology. These rules will ensure a minimum level of consistency between issuers, while ensuring they are proportional to the size, complexity, and business model of the issuers.
11. For issuers of asset-referenced tokens to understand and model all risks they are exposed to, including any possible interlinkages between the crypto-ecosystem and the traditional financial sector stemming from reserves assets both a solvency and liquidity risk of issuers of asset-referenced tokens stress test is necessary as a minimum, and to ensure that the results of the stress test remain relevant, a minimum frequency of testing required. Furthermore, to assure that issuers of asset-referenced tokens have sound risk management culture and practices rules on internal governance and IT data infrastructure have been developed as well.

Procedure and timeframe

12. Overall, the EBA had the choice to create very detailed rules following a prescriptive approach (Policy option A) or provide guidance and flexibility to issuers and competent authorities following a more principles-based approach (Policy option B).
13. When issuers of asset-referenced tokens are required to increase the amount of own funds under policy option A they should follow a precise procedure, fully harmonised across the EU. This would include the specification of precise steps and timeframes that competent authorities and issuers of asset-referenced tokens would follow, following a rule-based approach.
14. Under this policy option the implementation of the procedure and timeframe would be easy, the operational burden for both competent authorities and issuers of asset-referenced tokens would be reduced, and a supervisory convergence would be ensured.
15. Policy option B would include the specification of a general procedure that competent authorities and issuers of asset-referenced tokens would need to follow, allowing for flexibility in the specification of the timeframe to increase the own funds.
16. While this option would allow competent authorities to adapt the procedure and timeframe to the specificities of the issuers of asset-referenced tokens it would not guarantee a good amount of harmonisation across the EU, creating possible comparative advantages (disadvantages) when the competent authority is more (less) lenient.

Definition of criteria for higher degree of risk

Policy option A

17. During the assessment of higher degree of risk carried out by the competent authority the criteria to establish whether an issuer of asset-referenced tokens is subject to a higher degree of risk under this option would be specific, composed by a list of risks to be assessed.
18. Policy option A would produce one criterion to be assessed by the competent authority for each point in Article 35(3) of Regulation (EU) 2023/1114.
19. This comprehensive approach would reduce the operational burden of the competent authority, as the assessment of higher degree of risk of the issuer of asset-referenced tokens would be carried out via a sort of check list of items and would ensure a high level of harmonisation across the EU. At the same time, this method could be less effective than expected, as some issuers of asset-referenced tokens, given their specific business models, might be exposed to a higher degree of risk due to issues not included in the list of criteria.

Policy option B

20. Under policy option B the assessment of higher degree of risk would follow a case-by-case approach following a broad assessment of all the criteria as specified in this Regulation. This would include assessing whether the issuer of asset-referenced tokens is likely to breach other

requirements within a certain amount of time, whether the right of at-all-times redemption at par value and market value is not ensured either in normal or in stressed conditions and whether there is an increased risk of a significant deterioration of the value of the reserve assets or the financial situation of the issuer of asset-referenced tokens.

21. This approach would still set a minimum level of harmonisation across the EU, while at the same time ensuring some level of flexibility during the assessment of higher degree of risk, as the criteria to focus on would be adapted by the competent authority based on the specificities of the issuer of asset referenced tokens.

Minimum stress testing requirements

Policy option A

22. While setting the minimum requirements for stress testing programmes that issuers of asset-referenced tokens should have in place under policy option A the purpose of such stress testing has to be considered. A liquidity stress test is already included as mandatory in Regulation (EU) 2023/1114, Article 35(5) also specifies that competent authorities may require issuers of asset referenced tokens to increase their own funds based on the outcome of the stress testing, would therefore make sense to include a solvency stress test as a minimum, as this would ensure that the issuer of asset-referenced tokens is well capitalised.
23. Setting as minimum requirements a liquidity stress test and solvency stress test would ensure robust reserve asset management and operational requirements to instil confidence, ensure the stability of the peg and avoid a run on the token with possible contagion to the financial sector.
24. Under this policy option proportionality would be taken into account requiring issuers of significant asset-referenced tokens to conduct solvency stress test at least quarterly, while on semi-annual basis for issuers of non-significant asset-referenced tokens. In this way, the operational burden upon issuers of non-significant asset-referenced tokens is reduced, while the solvency of issuers of significant asset-referenced tokens is monitored closely, as their effect on the overall financial system during stress might be larger.

Policy option B

25. Policy option B would be identical to policy option A but it would introduce more types of stress-testing such as; a reverse stress testing and/or operational risk stress-testing as a minimum.
26. Under this option additional scenarios and circumstances that might produce future risk for the issuer of asset-referenced tokens would be stressed, but at the same time would create a material operational burden and considered in conjunction with other management practices.

Overall cost-benefit analysis

27. Relative to the baseline scenario, the measures introduced by these draft RTS entail moderate costs and large benefits. In terms of costs, issuers of asset-referenced tokens and competent authorities would have to bear any incremental costs associated with the implementation of all the minimum requirements for stress testing programmes. The issuer of asset-referenced tokens would also incur larger compliance costs, while the competent authority would incur

higher supervisory costs through time. Nevertheless, the RTS weigh very carefully these costs, and tries to minimise them when the size of the issuers of asset-referenced tokens does not justify more burdensome measures.

28. In terms of benefits, the harmonisation of the legal framework regulating issuers of asset-referenced tokens would ensure a level playing field, which until now had to rely on national regulations, if present. This should incentivise a more effective risk management through the application of the stress testing procedures introduced by the legislators, and ensure that the development of issuers of asset-referenced tokens is compliant with the conditions needed to preserve financial stability. In turn, this would also favour the holder of asset-referenced tokens by building confidence in the financial system.

Stakeholders	Costs	Benefits
Issuers of asset-reference tokens	Adaptation and compliance costs	Better risk management Level playing field
Competent authority	Supervisory costs	Financial stability Level playing field
Clients/ token holders	None	Financial stability Confidence in the quality of the risk standards of the issuer

Preferred option

29. Regarding the procedure and timeframe that issuers of asset-referenced tokens should follow to increase their level of own funds a combination of option A and B is preferred, as it is easy to implement, reduced the operational burden and ensures supervisory convergence across the EU.
30. Regarding the definition of criteria for higher degree of risk option B is the preferred one, as it allows competent authorities to follow a case-by-case approach with a broad assessment of all the criteria without any additional burden for issuers of asset-referenced tokens. This option would also ensure a minimum level of harmonisation and proportionality.
31. Regarding the minimum requirements for stress testing option A is preferred, as it would ensure robust reserve asset management and operational requirements to instil confidence, ensure the stability of the peg and avoid a run on the token with possible contagion to the financial sector. Requiring liquidity and solvency stress tests as a minimum is indeed a balance between the burden on issuers of asset-referenced tokens and the good identification of the risks which they are exposed to.

5.2 Overview of questions for consultation

- Question 1.** Is the procedure clear and the timelines for the issuer to provide views on the assessment and submit the plan reasonable?
- Question 2.** Are the timeframes for issuers to adjust to higher own funds requirements feasible?
- Question 3.** During the period when own funds need to be increased by the issuer, should there be more restrictions on the issuer to ensure timely implementation of the additional own funds requirements, for example banning the issuance of further tokens?
- Question 4.** Do you agree with the criteria to identify if an issuer has a higher degree of risk?
- Question 5.** Do you agree with the procedure to assess whether an issuer has a higher degree of risk?
- Question 6.** Do you consider the criteria and their evaluation benchmarks sufficiently clear?
- Question 7.** Do you agree with the need for a solvency and liquidity stress-test and the requirements of the stress-test?
- Question 8.** Do you agree with the frequency and time horizon of the solvency and liquidity stress-test? Should there be more differentiation between significant and not-significant issuers? Should the stress testing be more frequent for issuers of asset-referenced tokens referenced to official currencies?
- Question 9.** Should a reverse stress testing requirements/methodology be introduced? Please provide your reasoning.
- Question 10.** Do you have any other comments in relation to the stress-testing part in these RTS?