

**EBA Draft Guidelines
on the minimum content of the
governance arrangements for
issuers of asset-referenced
tokens**

ABI response

ABI response to EBA Draft Guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens.

ABI welcomes the work done by EBA in drafting the Guidelines which are designed to bring much-needed legal certainty to the Markets in Crypto-assets Regulation (MiCAR), and the possibility of providing contributions throughout a public consultation. ABI believes that the diligent work conducted by the authority in formulating standard and guidelines is crucial for the development of a robust regulatory framework for the crypto-assets market in the European Union.

Since the emergence of crypto-assets, there have never been any rules, other than those on anti-money laundering, in relation to the provision of services related to such instruments. The absence of a common legislative framework on this issue has exposed crypto-asset holders to risks of various kinds, undermining the credibility of this sector, hampering its development, and contributing to the loss of opportunities in terms of innovative digital services. This absence also fuels regulatory fragmentation that would distort competition in the single market, leading to regulatory arbitrage.

The lack of the crypto asset providers and issuers of suitable governance arrangements to address specific market stress scenario and the limited experience in governing market, liquidity and operational risk endangered the confidence of investors on those assets. Also, looking at the crypto asset actors that have led the market in the last years, it is difficult to identify a clear organisational structure and lines of responsibility that have always been blurred. This is why ABI believes that benchmarking governance arrangements, internal policies and procedures that are at the foundation of the banking sector is deemed appropriate. The robustness of governance arrangements as well as the transparency on the lines of responsibilities, controls, and procedures to identify, manage, monitor, and report the risks to which they are or to which they might be exposed to should be as similar as possible to the banking ones, fully respecting the proportionality principle.

As far as the level playing field is concerned, we welcome that EBA has considered the provisions on governance requirements in other Union legislative acts on financial services, including Directive 2014/65/EU, avoiding any regulatory overlapping for credit institution which are already subject to internal governance requirements.

To further harmonise issuers of ARTs' internal governance arrangements, processes and mechanisms within the EU, ABI suggests taking also in consideration the following point of attention:

- Although the issuer of asset reference tokens must adopt a risk management policy, current guidelines do not specify the allocation of this

policy to a specific function. The reasons behind the decision not to establish a specific risk management function are unclear. Since we believe that risk management is a crucial element of the corporate structure, we suggest that it may also be required for issuers of asset reference tokens. However, even if the regulatory authority deems it appropriate not to establish a dedicated risk management function, we still consider it essential for the issuer to create at least one document publicly available clearly expressing the company's risk appetite.

- It is believed that the proportionality is a correct guiding principle that issuers and also competent authorities should have regard to when applying and implementing the drafting guidelines, in that way ensuring that governance arrangements are consistent with the individual risk profile of the issuer. However, at the same time we believe that the differentiation made in primary law (i.e., classification of the ART as significant or non-significant) might already be a factor suggesting and justifying a proportional treatment. Also, including all the criteria in the assessment can result in a downward biased evaluation. For this reason, we suggest relying primarily on the significance of ART (lett. d) instead of factoring all the criteria listed in Title I.
- Pursuant to article 34 of MICAR, issuers of asset-referenced tokens shall, among other things, have robust governance arrangements, and the members of the management body shall possess specific requirements of good repute and the appropriate knowledge, skills, and experience. The regulation, therefore, exclusively prefigures a collegial management body. EBA is therefore asked to clarify what is reported in point 16 of the Guidelines (page 17), according to which the management of the issuer appears to be able to be entrusted to a single natural person.