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COVER NOTE

From:	Ms Christine LAGARDE, President of the European Central Bank
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Central Bank of 19 February 2021 on a proposal for a regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Delegations will find attached the opinion mentioned above, and its technical working document.

Encl.

EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 19 February 2021

on a proposal for a regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

(CON/2021/4)

Introduction and legal basis

On 18 and 30 November 2020 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937[1] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulation contains provisions falling within the ECB's fields of competence. These include, in particular, the conduct of monetary policy, the promotion of the smooth operation of payment systems, the prudential supervision of credit institutions and the contribution to the smooth conduct of policies pursued by competent authorities relating to the stability of the financial market system pursuant to Article 127(2), first and fourth indents, and Articles 127(5), 127(6) and 282(1) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

1.1 The ECB welcomes the initiative of the European Commission to establish a harmonised framework at European Union level for crypto-assets and related activities and services, which forms part of the digital finance package[2] adopted by the Commission on 24 September 2020. The ECB also welcomes the aim of the proposed regulation of addressing the different levels of risk posed by each type of crypto-asset, balanced with the need to support innovation. Furthermore, the ECB believes that a Union harmonised framework is critical to prevent fragmentation within the single market. Having said that, there are some aspects of the proposed regulation relating to the responsibilities of the ECB, the Eurosystem and the European System of Central Banks (ESCB) concerning the conduct of monetary policy, the smooth operation of payment systems, the prudential supervision of credit institutions and financial stability where further adjustments are warranted.

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1 COM(2020) 593 final.

2 The digital finance package includes a digital finance strategy and legislative proposals, to ensure a competitive Union financial sector that gives consumers access to innovative financial products, while ensuring consumer protection and financial stability.

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1.2 Under the proposed regulation, crypto-assets, in particular the two sub-categories of asset-referenced tokens and e-money tokens, have a clear monetary substitution dimension, having regard to the three functions of money as a medium of exchange, store of value and unit of account. The definition of 'asset-referenced token' refers to the store of value function ('...purports to maintain a stable value...')[3], while the definition of 'e-money token' refers to both the medium of exchange and store of value functions ('...the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value...')[4]. The proposed regulation emphasises the medium of exchange function of e-money tokens, noting that these are 'intended primarily as a means of payment aim[ed] at stabilising their value by referencing only one fiat currency', and that 'like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments'[5] This understanding is reinforced by the fact that financial instruments, as defined in Directive 2014/65/EU of the European Parliament and of the Council (hereinafter the 'MiFID II')[6], are excluded from the scope of application of the proposed regulation. In the light of the above, the ECB understands that the terms asset-referenced tokens and e-money tokens are defined in the proposed regulation, in whole or in part, as money substitutes.

1.3 The ECB welcomes the general exclusion from the proposed regulation's scope of application of the ECB and national central banks of the Member States when acting in their capacity as monetary authority[7], together with an exclusion from the scope of any crypto-assets that may eventually be issued by central banks acting in their monetary authority capacity and any services related to crypto-assets that central banks may eventually provide[8]. The ECB notes that the proposed regulation also contains references to the terms 'Union currency' and 'central bank of issue'[9] and, if read in conjunction with another component of the digital finance package which also contains those two terms, i.e. the draft Regulation on a pilot regime for market infrastructures based on ledger technology[10], a clear distinction in the Union legislative proposals between crypto-assets and central bank money emerges[11]. In order to avoid any potential confusion with regard to the legal nature and characteristics of crypto-assets (if and where) issued by central banks *vis-à-vis* central bank money, the proposed regulation could also usefully confirm that the proposed regulation would not apply to the issuance by central banks of central bank money based on distributed ledger technology (DLT) or in digital form as a complement to existing forms of central bank money, which the ECB can authorise in line with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

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3 See point (3) of Article 3(1) of the proposed regulation.

4 See point (4) of Article 3(1) of the proposed regulation.

5 See recital 9 of the proposed regulation.

6 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive (EU) 2011/61 (OJ L 173, 12.6.2014, p. 349).

7 See Article 2(3)(a) of the proposed regulation.

8 See recital 7 of the proposed regulation.

9 See Article 43(1) and Article 112(5) of the proposed regulation, respectively.

10 Proposal of the European Parliament and of the Council for a regulation on a pilot regime for market infrastructures based on distributed ledger technology (COM/2020/594 final). See recitals 16 and 24, together with Articles 4(3) and 5(5).

11 Specifically, in Article 4(3) of the proposal of the European Parliament and of the Council for a regulation on a pilot regime for market infrastructures based on distributed ledger technology, reference is made to 'central bank money', 'commercial bank money', 'commercial bank money in a token-based form' and 'e-money tokens'.

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1.4 Finally, with regard to the definition of 'crypto-asset' introduced by the proposed regulation, the ECB notes that the proposed regulation contains a wide, catch-all definition[12]. However, in order to avoid diverging interpretations at national level on what may or may not constitute a crypto-asset under the proposed regulation, to help support the provision of crypto-asset services on a cross-border basis and to establish a truly harmonised set of rules for crypto assets, the scope of application of the proposed regulation should be further clarified. In particular, more clarity is needed with respect to the distinction between crypto-assets that may be characterised as financial instruments (falling under the scope of the MiFID II) and those which would fall under the scope of the proposed regulation.

2. Monetary policy and payment system aspects

2.1 *Monetary policy and related monetary aspects*

2.1.1 Unlike the case of crypto-assets exclusively used either as a means of payment or as a store of value, the monetary policy transmission implications of crypto-assets that fulfil both of these functions could be significant. In this respect, the ECB notes the prohibition on payment of interest on crypto-assets stipulated in the proposed regulation[13] in line with the regulation of other instruments mainly used as a means of payment, such as e-money. In this context, this prohibition might make the relative attractiveness of e-money tokens and asset reference tokens from the perspective of the holder dependent on the interest rate environment. The possibility cannot be entirely excluded that this could potentially create inflows and outflows when the interest rate environment changes significantly, which could have implications for financial stability and monetary policy transmission.

2.1.2 Crypto-assets with a stable nominal value, which serve as a means of payment and a store of value, could affect the stability and cost of credit institutions' deposit funding, which could pose challenges for the ability of credit institutions to fulfil their economic intermediation role. As the financial system in the euro area is predominantly based on credit institutions, abrupt shifts in the strength of the balance sheet of credit institutions can adversely affect the stability of credit institutions and their lending capacity and, with it, the transmission of monetary policy, although changes to the financial system resulting from innovation and competition are per se not undesirable. In a scenario of significant substitution of deposits with crypto-assets, credit institutions may need to explore alternative sources of funding, such as money market and central bank funding, with effects on bank funding costs, money market benchmark rates, and the size of the balance sheet of central banks.

2.1.3 Finally, in a scenario involving the widespread use of asset-referenced and e-money tokens, there could be an increase in demand for safe assets, with a possible impact on asset price formation,

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12 The definition of 'crypto-asset' in the proposed regulation is both technology-specific and broad. This approach diverges from a characterisation of crypto-assets which is technology neutral and precise. See ECB's staff Occasional Paper No 223/2019 'Crypto-Assets: Implications for financial stability, monetary policy, and payments and market infrastructures' available on the ECB's website at www.ecb.europa.eu

13 See Articles 36 and 45 of the proposed regulation.

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collateral valuation, money market functioning and the conduct of monetary policy. This may ultimately lead to collateral scarcity for open market operations. Moreover, a widespread use of asset-referenced tokens for payment purposes may challenge the role of euro payments, and even undermine the public provision of the unit-of-account function of money.

2.1.4 Besides the monetary policy considerations referred to above, under the proposed regulation asset-referenced and e-money tokens would have different features, including, with regard to their main function, the composition of the reserve assets and holders' rights. In this respect, there is a risk that because of their concrete use, coupled with the systemic importance they may acquire, asset-referenced and e-money tokens would *de facto* equate to payment instruments, regardless of their main purported function or use under the proposed regulation. If this were to be the case, asset-referenced and e-money tokens should be subject to similar requirements in order to prevent the risk of regulatory arbitrage between the respective regimes. In particular, because asset-referenced tokens' design features and use make them suitable for use as a means of payment, it would be appropriate, at a minimum, to require issuers to grant redemption rights to the holders of asset-referenced tokens either on the issuer or the reserve assets. In addition, it could be considered to create an *ad hoc* category of 'payment tokens' which would subject asset-referenced tokens to an identical set of requirements as those applicable to issuers of e-money tokens. In addition, it would be appropriate for the case of significant asset-referenced tokens that become widely used for payments in the Union to subject issuers of significant asset-referenced tokens to the same authorisation requirements as those applicable to issuers of e-money tokens, where the European Banking Authority (EBA) deems it appropriate according to the classification criteria to be further set out in the regulatory technical standards.

Moreover, the proposed regulation provides that a competent authority may refuse authorisation to an issuer of asset-referenced tokens, inter alia, where the issuer's business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty[14]. In this respect, where an asset-reference arrangement is tantamount to a payment system or scheme, the assessment of the potential threat to the conduct of monetary policy, and to the smooth operation of payment systems, should fall within the exclusive competence of the ECB (or the national central bank of issue of the relevant Union currency). In the case of the euro, this is because a potential threat may negatively affect the performance of the basic tasks to be carried out through the Eurosystem under the Treaty, in particular the conduct of the monetary policy of the Union and the promotion of the smooth operation of payment systems. These risks could ultimately impact upon the pursuit of the Eurosystem's primary objective of maintaining price stability pursuant to the Treaty. Given the critical aspects on which the ECB's assessment is sought in the course of the authorisation process for issuers of asset-referenced tokens, the ECB's intervention should not be limited to the issuance of a non-binding opinion in these areas of exclusive competence of the ECB. By the same logic, where asset-referenced tokens can have an impact on the conduct of monetary policy or the smooth operation of payment systems in Member States whose currency is not the euro, the central banks of these Member States, which under the Treaty retain their powers in the field of monetary policy according to national law, should also be able to issue a binding

14 See Article 19(2)(c) of the proposed regulation.

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opinion. In view of the foregoing, the ECB suggests that the proposed regulation is amended accordingly. In addition, the ECB believes that further consideration should be given to the appropriateness of the current legislative framework under Directive 2009/110/EC of the European Parliament and of the Council (hereinafter the 'E-money Directive')[15]. In particular, the advent of significant e-money tokens warrants an involvement of the ECB (or the relevant central bank of a Member State whose currency is not the euro) in a similar fashion to that advocated with regard to the authorisation of asset-referenced token issuers. The issuance of e-money tokens, especially where classified as significant, requires a careful assessment as regards the monetary policy implications and the smooth operation of payment systems.

Moreover, the power of the competent authority to refuse authorisation where the business model of an issuer of asset-referenced tokens poses a serious threat to financial stability, monetary policy transmission or monetary sovereignty assumes that the competent authority is able to accurately foresee such risks at the stage of authorisation, which may not be possible as the scale of the risks depends on the scale of the use of the token. In this respect, the proposed regulation does not seem to provide an equivalent tool allowing the competent authority to react if an asset-referenced token becomes a threat to financial stability, monetary policy transmission or monetary sovereignty during its life. Therefore, the ECB suggests that the competent authorities should also be empowered to take any appropriate measures to ensure the proper conduct of monetary policy and the promotion of the smooth operation of payment systems, and should be required to act in accordance with the ECB's and the relevant central banks' opinions on these particular aspects. Additional mechanisms to incentivise issuers to limit the scale of issuance, including stress-testing requirements with possible capital add-ons, should be included in the proposed regulation (see paragraph 3.2.3 below).

2.1.5 In addition, the proposed regulation contains several references to the term 'fiat currencies that are legal tenders'. In accordance with the Treaties and Union monetary law, the euro is the single currency of the euro area, i.e., of those Member States which have adopted the euro as their currency. So far as concerns the Member States which have not adopted the euro as their currency, the Treaties consistently refer to the currencies of those Member States. Nowhere do the Treaties refer to the euro or the Member States' currencies as 'fiat' currencies. Furthermore, the euro banknotes and coins issued by the ECB and the NCBs enjoy legal tender status. These banknotes and coins are denominated in euro, and as such are denominations of the single currency. Against this backdrop, it is not appropriate to make reference in a Union legal text to 'fiat currencies which are legal tender'. Rather, the proposed regulation should refer instead to 'official currencies', of which legal tenders are expressions[16].

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15 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

16 See the preamble and Article 3(4) of the Treaty on European Union; Article 119(2), 140(3) and 282(4) of the Treaty; and Articles 2, 10 and 11 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1). See also the definition of 'currency' in Article 2, point (a) of Directive (EU) 2014/62 of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

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2.1.6 Furthermore, the proposed regulation contains provisions with regard to the safekeeping arrangements to be put in place by crypto-asset service providers[17]. In particular, it is provided that clients' funds shall be promptly placed with a central bank or a credit institution. While the provisions on safekeeping are welcome, access to central bank accounts for credit institutions in the context of Eurosystem monetary policy operations, or for the settlement of transactions by ancillary systems in the context of TARGET2 operations, is based on the eligibility criteria and conditions under the applicable ECB Guidelines[18]. As a result, crypto-asset service providers must either be eligible Eurosystem counterparties, or operate through a correspondent bank with an account at the relevant Eurosystem central bank. Similar arrangements may apply in other ESCB central banks. In view of the foregoing, the proposed regulation should refer to the safekeeping arrangements with a central bank by specifying that these arrangements would be established only where the relevant eligibility criteria and conditions for opening an account are met.

2.2 *Payment system aspects*

2.2.1 Closely linked to its basic monetary policy tasks, the Treaty and the Statute of the ESCB provide for the Eurosystem to conduct oversight of clearing and payment systems as part of its mandate. Pursuant to the fourth indent of Article 127(2) of the Treaty, as mirrored in Article 3(1) of the Statute, one of the basic tasks to be carried out through the ESCB is 'to promote the smooth operation of payment systems'. In the performance of this basic task, 'the ECB and the national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payments systems within the Union and with other countries'[19]. Pursuant to its oversight role, the ECB adopted Regulation (EU) No 795/2014 of the European Central Bank (ECB/2014/28) (hereinafter the 'SIPS Regulation')[20]. The SIPS Regulation implements the principles for financial market infrastructures issued by the Committee on Payment and Settlement Systems (CPSS) and the International Organisation of Securities Commissions (IOSCO)[21] (hereinafter the 'CPSS-IOSCO principles'), which are legally binding and cover both large-value and retail payment systems of systemic importance, operated either by a Eurosystem central bank or a private entity. The Eurosystem oversight policy framework[22] identifies payment instruments as an 'integral part of payment systems' and thus includes these within the scope of its oversight. The oversight framework for payment instruments is currently under review[23]. Under that framework, a payment instrument (e.g. a card, credit transfer, direct debit, e-money transfer and digital payment

17 See Article 63(3) of the proposed regulation.

18 Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3); Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (ECB/2012/27) (OJ L 30, 30.1.2013, p. 1).

19 See Article 22 of the Statute of the ESCB.

20 Regulation (EU) No 795/2014 of the European Central Bank of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28) (OJ L 217, 23.7.2014, p. 16).

21 Available on the Bank for International Settlements' website at www.bis.org.

22 Eurosystem oversight policy framework, Revised version (July 2016) available on the ECB's website at www.ecb.europa.eu.

23 See the revised and consolidated Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (PISA framework) available on the ECB's website at www.ecb.europa.eu.

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token[24]) is defined as a personalised device (or a set of devices) and/or set of procedures agreed between the payment service user and the payment service provider used in order to initiate a transfer of value[25]. To date, the role of primary overseer for the Eurosystem is assigned by reference to the national anchor of the payment scheme and the legal incorporation of its governance authority. For pan-European credit transfer schemes and direct debit schemes within the Single Euro Payments Area, as well as some of the international card payment schemes, the ECB has the primary oversight role. Payment service providers, including credit institutions, payment institutions and electronic money institutions, are also subject to the PSD2. The Eurosystem oversight frameworks complement the microprudential supervision of payment service providers, including credit institutions, payment institutions and electronic money institutions, with aspects that are relevant from a payment system, payment scheme or payment arrangement perspective.

2.2.2 In the light of the above, the function of asset-referenced and e-money token arrangements that cater for the execution of transfer orders may qualify as tantamount to that of a 'payment system' for the purposes of Eurosystem oversight. Asset-referenced and e-money token arrangements may qualify as tantamount to that of a 'payment system' where they have all the typical elements of a payment system: (a) a formal arrangement; (b) at least three direct participants (not counting possible settlement banks, central counterparties, clearing houses or indirect participants); (c) processes and procedures, under the system rules, common for all categories of participants; (d) the execution of transfer orders takes place within the system and includes initiating settlement and/or discharging an obligation (e.g. netting) and the execution of transfer orders, therefore, has a legal effect on the participants' obligations; and (e) transfer orders are executed between the participants. Specifically, the SIPS Regulation defines a payment system as 'a formal arrangement between three or more participants, [...] with common rules and standardised arrangements for the execution of transfer orders between the participants'[26]. Within this definition, transfer orders and participants are defined in broad terms that allow accommodation of 'any instruction which results in the assumption or discharge of a payment obligation' under Directive 98/26/EC of the European Parliament and of the Council[27] and any 'entity that is identified or recognised by a payment system

24 A digital payment token is a digital representation of value backed by claims or assets recorded elsewhere and enabling the transfer of value between end users. Depending on the underlying design, digital payment tokens can foresee a transfer of value without necessarily involving a central third party and/or using payment accounts.

25 The act, initiated by the payer or on the payer's behalf or by the payee, of transferring funds or digital payment tokens, or placing or withdrawing cash on/from a user account, irrespective of any underlying obligations between the payer and the payee. The transfer can involve a single or multiple payment service providers. The definition of 'transfer of value' under the PISA framework departs from what is defined as a transfer of 'funds' under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35) (hereinafter the 'PSD2'). A 'transfer of value' in the context of a 'payment instrument' as defined in the PSD2 can only refer to a transfer of 'funds'. Under PSD2, 'funds' do not include digital payment tokens unless the tokens can be classified as electronic money (or more hypothetically as scriptural money).

26 See Article 2, point (1) of the SIPS Regulation.

27 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, (OJ L 166, 11.6.1998, p. 45). See first indent, point (i) of Article 2 where transfer order is defines as: 'any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system [...]'.

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and, either directly or indirectly, is allowed to send transfer orders to that system and is capable of receiving transfer orders from it', respectively[28]. To the extent that asset-referenced and e-money token arrangements qualify as 'payment systems', the Eurosystem payment system oversight framework based on the CPSS-IOSCO principles would apply to them.

2.2.3 Similarly, the function of asset-referenced and e-money token arrangements that set standardised and common rules for the execution of payment transactions between end users could qualify as a 'payment scheme'. From an oversight standpoint, where asset-referenced tokens and e-money tokens include euro in their reserve assets, or are denominated in euro, the crypto-asset service provider that is responsible for the overall functioning of the payment scheme might be subject to the revised and consolidated Eurosystem oversight framework for payment instruments and schemes. This framework would be applicable to any electronic payment instruments that enable end users to send and receive value, and hence would apply irrespective of the qualification of the asset as funds under the PSD2[29].

2.2.4 The ESCB's oversight role would also be critical with respect to significant asset-referenced and e-money token arrangements because of their potential impairing effects on the central bank of issue's ability to implement its monetary policy objectives, as previously mentioned. For the reasons referred to above, the ESCB's competences under the Treaty and the Eurosystem's competences under the SIPS Regulation should be clearly spelled out in the recitals and in the main body of the proposed regulation. Moreover, the ECB and, where applicable, the relevant NCBs whose currency is not the euro should participate in the process for the classification of significant asset-referenced tokens and e-money tokens, and the ECB should be consulted on the delegated act that would further detail the criteria to be used for classification purposes. Also, the proposed regulation should refer more prominently to the potential interplay with the PSD2 that under the current text appears to be rather limited[30]. An example of the potential interplay between the proposed regulation and the PSD2 would be where a service provider is contracting with a payee to accept crypto-assets other than e-money tokens. In such a case it would need to be clarified whether such providers would need to meet the same requirements on consumer protection, security and operational resilience as regulated payment service providers. Ultimately, it would need to be clarified whether such activities can be tantamount to the 'acquiring of payment transactions', as defined under PSD2[31].

3. Specific observations on financial stability and prudential supervisory aspects

3.1 *Financial stability aspects*

3.1.1 *Supervisory arrangements for issuers of significant e-money tokens*

3.1.2 The proposed regulation establishes a dual supervisory arrangement for issuers of significant e-money tokens, jointly supervised by the responsible national competent authority (NCA) and the

28 See Article 2, point (16) of the SIPS Regulation.

29 See Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (October 2020), available on the ECB's website at www.ecb.europa.eu

30 See Article 63(4) of the proposed regulation.

31 See Article 4, point (44) of the PSD2.

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EBA. Under this arrangement, the EBA would be exclusively responsible for ensuring compliance with specific requirements[32] by significant e-money token issuers, while the relevant NCA would supervise compliance with all other requirements laid down in the proposed regulation.

3.1.3 Dual supervision is subject to significant shortcomings, and both significant e-money, as well as asset-referenced, tokens would be better supervised at the European level. There does not seem to be any economic reason to justify different supervisory arrangements between significant asset-referenced tokens (subject to a harmonised EBA supervision) and significant e-money tokens (subject to dual supervision by the EBA together with the NCA). Dual supervision may blur responsibilities and add complexity to the arrangements. It may also lead to duplicative or even conflicting supervisory tasks, for example where NCAs supervise issuers of significant asset-referenced or e-money tokens providing other crypto-assets services. The ECB believes that significant asset-referenced and e-money tokens would be better supervised at the European level, as this would ensure a comprehensive overview of risks and coordination of supervisory actions and, at the same time, avoid regulatory arbitrage.

3.1.4 The proposed dual supervisory arrangement would be implemented in addition to the existing supervisory frameworks. Specifically, when the issuer of the significant e-money tokens is a credit institution, dual supervision would give rise to further complications, given that the issuer may be a significant credit institution supervised by the ECB on the basis of Council Regulation (EU) No 1024/2013[33] (hereinafter the 'SSM Regulation'). The proposed regulation would subject the issuer to three different supervisory authorities: (i) the relevant NCA, (ii) the EBA and (iii) the ECB. In this respect, the NCA's experience and expertise in the supervision of e-money token issuers and service providers could be usefully leveraged as part of their membership of the decision making body of the EBA, and via the joint supervisory teams in the case of significant credit institutions as well as in the supervisory college to be established for each significant e-money token[34].

3.1.5 Finally, where the issuer of significant stablecoins is a significant credit institution, the supervisory responsibilities and tasks of the EBA and ECB should also be clarified to avoid potential duplications and conflicts. Specifically, the EBA's obligation to enforce the issuer's compliance with the requirements laid down in the proposed regulation should not encroach upon the supervision of prudential requirements enforced by the ECB in its banking supervisory role.

3.2 *Requirements for own funds and the investment of reserve assets*

3.2.1 The establishment of prudential requirements for issuers of asset-referenced and e-money tokens is welcome, given that, for the reasons touched on earlier in this opinion, those tokens could pose risks to the conduct of monetary policy and to the smooth operation of payment systems. The proposed safeguards to protect the safety of the tokens' reserve assets, should the issuer decide to invest part of the reserve, are also welcome.

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32 See article 52 of the proposed regulation.

33 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

34 See Article 101(1) of the proposed regulation.

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3.2.2 The prudential and liquidity requirements imposed on issuers of stablecoins should be proportionate to the risks that those tokens could pose to financial stability. The additional requirements laid down in the proposed regulation for significant stablecoin issuers are therefore welcome. Having said that, these additional requirements may not be sufficient to address growing risks where stablecoins become widely used as a means of payment or a store of value in multiple jurisdictions across the Union. In addition, stablecoin issuers that are not credit institutions would not have access to the central banks' lender of last resort function. In the light of the above, the ECB has the following remarks to make.

3.2.3 First, the proposed regulation allows the NCA to adjust, upwards or downwards, the own funds requirement of 2% of the average amount of the reserve assets up to 20% for (less significant) stablecoin issuers. In the case of significant issuers, no adjustment is allowed for the supervisor from the 3% requirement. Additional pillar-2 type powers should be accorded to the supervisor, especially for significant issuers, given their higher risks to financial stability. Specifically, significant stablecoin issuers should be required to conduct, on a regular basis, stress testing that takes into account severe but plausible financial (e.g. interest rate shocks) and non-financial (e.g. operational risk) stress scenarios. Where an issuer of these tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, the stress tests should cover all of these services and activities in a comprehensive and holistic manner to take account of the compounded risk constellation arising from their complex structure. Based on the outcome of such stress tests, the supervisor should have the power to impose additional own funds requirements on top of the 3% requirement which should be proportionate to the risks identified. Similar stress testing requirements and powers for the supervisor could be introduced for less significant issuers, enabling supervisors to in principle go beyond the 20% top-up of the 2% requirement in certain circumstances, given the risk outlook and stress test results.

3.2.4 Second, issuers of both asset-referenced and e-money tokens may be equally exposed to the risk of 'runs', with possible contagion risks to the rest of the financial system and attendant risks to financial stability. It is therefore important that such issuers are subjected to harmonised requirements concerning the investment of the reserve assets, in order to ensure a level playing field and follow the 'same business, same risk, same rule' principle between asset-referenced and e-money tokens. Rigorous liquidity requirements for stablecoin issuers, significant issuers in particular, are also critical to enable them to withstand liquidity strains and minimise the risks to financial stability. Specifically, stablecoin arrangements and their reserve assets have similarities to money market funds. In this respect, Regulation (EU) 2017/1131 of the European Parliament and of the Council[35] requires money market funds to hold significant liquidity reserves for the case of abrupt outflow shocks. Stablecoin issuers should comply with liquidity requirements which are at least as conservative as those imposed on constant net asset value money market funds, to be developed in regulatory technical standards. Such conservative investment requirements, to be developed in the regulatory technical standards, could increase the capacity of the reserve assets of stablecoins to withstand severe outflow scenarios. Moreover, significant stablecoin issuers

35 Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

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should be required to conduct liquidity stress testing on a regular basis, and depending on the outcome of such tests, the supervisor should have the power to strengthen liquidity risk requirements.

3.2.5 Finally, the proposed regulation does not impose any restrictions to prevent a possible concentration of custodians or investment of the reserve assets. The lack of limits to possible concentration could undermine the safety of the reserve assets and subject them to idiosyncratic risks of particular custodians and debt issuers. The proposed regulation should provide for the introduction of safeguards to prevent such concentration, to be developed in regulatory technical standards.

3.3 *Prudential supervisory aspects*

3.3.1 The ECB and the relevant NCA are the competent authorities exercising prudential supervisory powers under Regulation (EU) No 575/2013 of the European Parliament and of the Council[36] (also referred to as the 'CRR') and Directive 2013/36/EU of the European Parliament and of the Council[37] (also referred to as the 'CRD'), jointly establishing the CRR/CRD framework. In addition, the SSM Regulation confers specific tasks on the ECB concerning the prudential supervision of credit institutions within the euro area and makes the ECB responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM) within which specific prudential supervisory responsibilities are distributed between the ECB and the participating NCAs. In particular, the ECB carries out the task of authorising and withdrawing the authorisations of all credit institutions[38]. For significant credit institutions the ECB also has the task, among others, to ensure compliance with the relevant Union law that imposes prudential requirements on credit institutions, including the requirement to have in place robust governance arrangements, such as sound risk management processes and internal control mechanisms[39]. To this end, the ECB is given all supervisory powers to intervene in the activity of credit institutions that are necessary for the exercise of its functions.

3.3.2 Under the proposed regulation, Member States are required to designate the NCAs responsible for carrying out the functions and duties provided for in the proposed regulation[40]. Furthermore, the proposed regulation contains a generic reference to the need for the NCAs to coordinate with the authorities responsible for the supervision or oversight of activities other than those carried out by crypto-asset issuers and providers under the proposed regulation[41]. As a matter of fact, the supervisory powers attributed to the NCAs under the proposed regulation[42] may also have prudential implications for credit institutions, such as in the case of requiring additional disclosure

36 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

37 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

38 See Article 4(1)(a), Article 6(4) and Article 14 of the SSM Regulation.

39 See Article 4(**1**)(e) and Article 6(4) of the SSM Regulation.

40 See Article 81 of the proposed regulation.

41 See Articles 85 and 110 of the proposed regulation.

42 See Article 82 of the proposed regulation.

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or requiring the freezing or sequestration of assets. In such cases, the call for collaboration with other authorities may not be sufficient[43].

3.3.3 In view of the foregoing, it is of the utmost importance to establish a clear coordination mechanism, including clearly defined processes and timelines regarding notification aspects, between the relevant NCAs and the ECB in its role as prudential supervisor for significant credit institutions when they intend to issue crypto-assets and/ or provide crypto-asset related services. A clear coordination mechanism would ensure that the respective competences of the NCAs and the ECB can be performed in a timely, effective and consistent manner. It would also ensure compliance with the proposed regulation by crypto-asset issuers and providers. The proposed regulation should refer to an obligation of the NCAs to notify the ECB in cases where a significant credit institution issues a white paper, intends to provide one of the crypto-assets services or is in breach of the proposed regulation.

3.3.4 In addition, where significant credit institutions issue significant asset referenced tokens and e-money tokens, the dual supervisory arrangement between the relevant NCA and the EBA would apply. In this context, it is necessary to further explain what the EBA's supervision would entail in practice. Furthermore, this dual supervisory arrangement would also need to take into account the ECB's supervisory role as far as significant credit institutions are concerned, with clearer coordination mechanisms, including a clear notification framework, and inclusion of the ECB in its role as prudential supervisor in the college. Finally, the proposed regulation should refer explicitly and consistently to the prudential supervisory authorities for both significant asset-referenced tokens and e-money tokens[44].

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 19 February 2021.

The President of the ECB

Christine LAGARDE

43 See Article 82(4)(b) of the proposed regulation.

44 See Articles 99(2)(i) and 101(2)(b) of the proposed regulation.

EUROPEAN CENTRAL BANK

EUROSYSTEM

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Technical working document

produced in connection with ECB Opinion CON/2021/4[1]

Drafting proposals in relation to a proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Text proposed by the European Commission	**Amendments proposed by the ECB[2]**
Amendment 1 Recitals (recital 7)	
'(7) Crypto-assets issued by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets that are provided by such central banks or other public authorities.'	'(7) Crypto-assets **and central bank money** issued **based on DLT or in digital form** by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets **and central bank money issued based on DLT or in digital form** that are provided by such central banks or other public authorities.'
Explanation *In order to avoid any potential confusion with regard to the legal nature and characteristics of crypto-assets issued by central banks, the ECB suggests that the proposed regulation refers to the issuance of central bank money based on DLT or in digital form by central banks, in the case of the ECB in accordance with the Treaty and the Statute of the European System of Central Banks and the European Central Bank (the 'Statute of the ESCB').*	
Amendment 2	

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Recitals (new recital 7a)	
	'(7a) Pursuant to the fourth indent of Article 127(2), of the Treaty on the Functioning of the European Union (TFEU), one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. The ECB may, pursuant to Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), make regulations to ensure efficient and sound clearing and payment systems within the Union and with other countries. In this respect, the European Central Bank (ECB) has adopted regulations on requirements for systemically important payment systems. This Regulation is without prejudice to the responsibilities of the ECB and the national central banks (NCBs) in the ESCB to ensure efficient and sound clearing and payment systems within the Union and with other countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the ESCB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of clearing and payment systems.'
Explanation *In view of the close links between the provisions of the proposed regulation and the competences of the ECB and the ESCB under the Treaty, reference to these competences should be explicitly*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
mentioned in the proposed regulation.	
Amendment 3 Recitals (recital 12)	
’12. […] A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against fiat currencies that are legal tender or other crypto-assets by dealing on own account, and the service, on behalf of third parties, of ensuring the custody and administration of crypto-assets or ensuring the control of means to access such crypto-assets. […]’	’12. […] A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against ~~fiat~~ **official** currencies ~~that are legal tender~~ or other crypto-assets by dealing on own account, and the service, on behalf of third parties, of ensuring the custody and administration of crypto-assets or ensuring the control of means to access **to** such crypto-assets. […]’
Explanation *It is not appropriate to make reference in a Union legal text to ‘fiat currencies which are legal tender’. Rather, reference should be made to ‘currencies’ or ‘official currencies’. See paragraph [2.1.5] of the ECB Opinion.*	
Amendment 4 Recitals (recital 29)	
‘(29) A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens’ business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent	‘(29) A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens’ business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the ~~European Central Bank~~ ~~(~~ECB~~)~~ and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent

Text proposed by the European Commission	Amendments proposed by the ECB[2]
authority with a non-binding opinion on the prospective issuer's application. […].'	authority with a**n** ~~non-binding~~ opinion on the prospective issuer's application**. Such opinions shall be non-binding, except that such opinions issued by the ECB and the national central banks shall be binding as regards the conduct of monetary policy, and the promotion of the smooth operation of payment systems**. […]'
Explanation *In view of the exclusive competence of the ECB and the Eurosystem for the conduct of the monetary policy of the Union, and the promotion of the smooth functioning of payment systems, under Article 127(2), first and fourth indents, and Article 282(1) of the Treaty, and considering that the national central banks of the Member States which have not adopted the euro retain their powers in the field of monetary policy according to national law under Article 42.2 of the Statute of the ESCB, the competent authority should only refuse authorisation to a prospective issuer of asset-referenced tokens on monetary policy and payment system grounds where acting in accordance with the opinion of the ECB or the national central banks issuing the relevant Union currencies.*	
Amendment 5 Article 3, points (1)(3), (4) and (21)	
'(3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets; (4) 'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender; […] (21) 'reserve assets' means the basket of fiat	'(3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several ~~fiat~~ **official** currencies **of** ~~that are legal tender~~, one or several commodities or one or several crypto-assets, or a combination of such assets; (4) 'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a**n** ~~fiat~~ **official** currency ~~that is legal tender~~; […] (21) 'reserve assets' means the basket of ~~fiat~~ **official** currencies **of countries** ~~that are legal tender~~, commodities or crypto-assets, backing the

Text proposed by the European Commission	Amendments proposed by the ECB[2]
currencies that are legal tender, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets;'	value of ~~an~~ asset-referenced tokens, or the investment of such assets;'
Explanation *It is not appropriate to make reference in a Union legal text to 'fiat currencies which are legal tender'. Rather, reference should be made to 'currencies' or 'official currencies'. See paragraph [2.1.5] of the ECB Opinion.*	
Amendment 6 Article 18(4)	
'4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue a non-binding opinion on the application and transmit their non-binding opinions to the competent authority concerned. That competent authority shall duly consider those non-binding opinions and the observations and comments of the applicant issuer.'	'4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue a non-binding opinion on the application and transmit their non-binding opinions to the competent authority concerned**, except that such opinions issued by the ECB and the national central banks shall be binding as regards the conduct of monetary policy, and the promotion of the smooth operation of payment systems**. That competent authority shall duly consider those ~~non-binding~~ opinions and the observations and comments of the applicant issuer.'
Explanation *In view of the exclusive competence of the ECB and the Eurosystem for the conduct of the monetary policy of the Union, and the promotion of the smooth functioning of payment systems, under the Treaty, and the powers of the national central banks of the Member States which have not adopted the euro in the field of monetary policy according to national law, the competent authority should only refuse an authorisation on monetary policy and payment system grounds where acting in accordance with the opinion of the ECB or the national central banks issuing the relevant Union currencies. See the explanation to Amendment [3] above.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 7 Article 19	
‘Article 19 1. Competent authorities shall, within one month after having received the non-binding opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved. 2. Competent authorities shall refuse authorisation where there are objective and demonstrable grounds for believing that: (a) the management body of the applicant issuer may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market; (b) the applicant issuer fails to meet or is likely to fail to meet any of the requirements of this Title; (c) the applicant issuer’s business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty. […]’	‘Article 19 1. Competent authorities shall, within one month after having received the ~~non-binding~~ opinion**s** referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and~~, and~~, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved. 2. Competent authorities shall refuse authorisation where there are objective and demonstrable grounds for believing that: (a) the management body of the applicant issuer may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market; (b) the applicant issuer fails to meet or is likely to fail to meet any of the requirements of this Title; (c) the applicant issuer’s business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty; **provided, however, that the competent authority shall act in accordance with the opinion of the ECB or the national central bank of issue of the relevant Union currency as regards the conduct of monetary policy and the promotion of the smooth operation of payment systems**. […]’
Explanation	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
In view of the exclusive competence of the ECB and the Eurosystem for the conduct of the monetary policy of the Union and the promotion of the smooth functioning of payment systems, under the Treaty, and the powers of the national central banks of the Member States which have not adopted the euro in the field of monetary policy according to national law, the competent authority should only refuse authorisation on monetary policy grounds or the smooth operation of payment systems where acting in accordance with the opinion of the ECB or the national central banks issuing the relevant Union currencies. See the explanation to Amendment [4] above.	
Amendment 8 Article 21(3)(b)	
'3. […] (b). take any appropriate corrective measures to ensure financial stability.'	'3. […] (b). take any appropriate corrective measures to ensure financial stability **and the proper conduct of monetary policy and the promotion of the smooth operation of payment systems, after having requested and obtained a non-binding opinion from the ECB and/or the relevant central banks of Member States the currency of which is not the euro, provided, however, that the competent authorities shall act in accordance with such opinions as regards the conduct of monetary policy and the promotion of the smooth operation of payment systems**.'
Explanation *The ECB should be consulted and deliver a non-binding opinion on any corrective measures to ensure financial stability, in view of the ESCB's task under Article 127(5) of the Treaty to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system. The relevant non-euro central banks should also be consulted on such measures insofar as relevant to their financial stability mandates under applicable national laws.* *In view of the exclusive competence of the ECB for the conduct of the monetary policy of the Union, and the promotion of the smooth functioning of payment systems, the competent authorities should also take any appropriate measures to ensure the proper conduct of monetary policy and the promotion of the smooth operation of payment systems, and should act in accordance with the ECB's and the relevant central banks' opinions on these particular aspects.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 9 Article 30(12)	
'12. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying the minimum content of the governance arrangements on: […].'	'12. The EBA, in close cooperation with ESMA **and the ESCB**, shall develop draft regulatory technical standards specifying the minimum content of the governance arrangements on: […].'
Explanation *In view of the ECB's strong interest in the governance arrangements relating to the issuers of tokens having particular regard to the close link between the provisions of the proposed regulation and the competences of the ECB and the ESCB under the Treaty, the ECB believes that a direct involvement in the preparation of the technical standards would be necessary. See paragraphs [2.2.3 and 2.2.4] of the ECB Opinion.*	
Amendment 10 Article 31, new (3a), and (4)	
	'**3a. Without prejudice to the provisions under paragraph 3, issuers of asset-referenced tokens shall conduct, on a regular basis, stress testing that shall take into account severe but plausible financial (such as interest rate shocks stress scenarios, and non-financial such as operational risk) stress scenarios. Based on the outcome of such stress tests, the competent authorities of the home Member States may require issuers of asset-referenced tokens to hold an amount of own funds which is above 20 % higher than the amount resulting from the application of paragraph 1, point (b) in certain circumstances given the risk outlook and stress test results.**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
'4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards further specifying: (a) the methodology for the calculation of the own funds set out in paragraph 1; (b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 3; (c) the criteria for requiring higher own funds or for allowing lower own funds, as set out in paragraph 3. '	4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards further specifying: (a) the methodology for the calculation of the own funds set out in paragraph 1; (b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 3; (c) the criteria for requiring higher own funds or for allowing lower own funds, as set out in paragraph 3;~~.~~ **(d) the common reference parameters of the stress test scenarios to be included in the stress tests in accordance with paragraph 3a. The draft regulatory technical standards should be updated periodically taking into account the latest market developments**.'
Explanation *From a financial stability perspective, revised stress testing requirements would be helpful. See paragraphs [3.2.3 and 3.2.4] of the ECB Opinion.*	
Amendment 11 Article 33(1), new point (e)	
'1. Issuers of asset-referenced tokens shall establish, maintain and implement custody policies, procedures and contractual arrangements that ensure at all times that: (a) the reserve assets are segregated from the issuers' own assets; […]'	'1. Issuers of asset-referenced tokens shall establish, maintain and implement custody policies, procedures and contractual arrangements that ensure at all times that: (a) the reserve assets are segregated from the issuers' own assets; […]

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	(e) concentration risks in the custody of reserve assets are avoided.'
Explanation *From a financial stability perspective, custody policies of issuers of asset-referenced tokens should also ensure the prevention of concentration risks. See paragraph [3.2.5] of the ECB Opinion.*	
Amendment 12 New Article 34(1) and (4)	
'1. Issuers of asset-referenced tokens that invest a part of the reserve assets shall invest those reserve assets only in highly liquid financial instruments with minimal market and credit risk. The investments shall be capable of being liquidated rapidly with minimal adverse price effect. […]	'1. Issuers of asset-referenced tokens that invest a part of the reserve assets shall invest those reserve assets only in highly liquid financial instruments with minimal market, credit **and concentration** risk. The investments shall be capable of being liquidated rapidly with minimal adverse price effect. […]
4.The EBA shall, after consulting ESMA and the European System of Central Banks, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal credit and market risk as referred to in paragraph 1. When specifying the financial instruments referred to in paragraph 1, the EBA shall take into account: (a) the various types of reserve assets that can back an asset-referenced token; […].'	4.The EBA shall, after consulting ESMA and the European System of Central Banks, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal credit and market risk as referred to in paragraph 1. When specifying the financial instruments referred to in paragraph 1, the EBA shall take into account: (a) the various types of reserve assets that can back an asset-referenced token; […] (**d) liquidity requirements establishing which percentage of the reserve assets should be comprised of daily maturing assets, reverse repurchase agreements which are able to be terminated by giving one working day's prior**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	notice or cash which is able to be withdrawn by giving one working day's prior notice; **(e) liquidity requirements establishing which percentage of the reserve assets should be comprised of weekly maturing assets, reverse repurchase agreements which are able to be terminated by giving five working days' prior notice, or cash which is able to be withdrawn by giving five working days' prior notice;** **(f) concentration requirements preventing the issuer from investing more than a certain percentage of assets issued by a single body: (g) concentration requirements preventing the issuer from keeping in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers or credit institutions which belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council(*).** **(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).'**
Explanation *From a financial stability standpoint, rigorous liquidity requirements for issuers of asset-referenced and e-money tokens issuers are critical to enable them to withstand liquidity strains and minimise the risks to financial stability. Specifically, stablecoin arrangements and their reserve assets have similarities to money market funds. In this respect, Regulation (EU) 2017/1131 requires money market funds to hold*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
significant liquidity reserves for the case of abrupt outflow shocks when they promise stable returns to investors. Such buffers, where combined with sufficiently conservative investment requirements to be developed in the regulatory technical standards drafted by the EBA, as well as stringent concentration requirements, could allow the reserve assets of stablecoins to withstand severe outflow scenarios. See paragraph [3.2.4] of the ECB Opinion.	
Amendments 13 New Article 35	
‘1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens, including any direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets.	~~‘1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens, including any direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets.~~
2. Where holders of asset-referenced tokens are granted rights as referred to in paragraph 1, issuers of asset-referenced tokens shall establish a policy setting out:	~~2. Where holders of asset-referenced tokens are granted rights as referred to in paragraph 1, issuers of asset-referenced tokens shall establish a policy setting out:~~
(a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise those rights;	~~(a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise those rights;~~
(b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, in case of an orderly wind-down of the issuer of asset-referenced tokens as referred to in Article 42, or in case of a cessation of activities by such issuer;	~~(b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, in case of an orderly wind-down of the issuer of asset-referenced tokens as referred to in Article 42, or in case of a cessation of activities by such issuer;~~
(c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when those rights are exercised by the holder of asset-referenced tokens;	~~(c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when those rights are exercised by the holder of asset-referenced tokens;~~
(d) the settlement conditions when those rights	~~(d) the settlement conditions when those rights~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
are exercised;	~~are exercised;~~
(e) the fees applied by the issuers of asset-referenced tokens when the holders exercise those rights.	~~(e) the fees applied by the issuers of asset-referenced tokens when the holders exercise those rights.~~
The fees referred to in point (e) shall be proportionate and commensurate with the actual costs incurred by the issuers of asset-referenced tokens.	~~The fees referred to in point (e) shall be proportionate and commensurate with the actual costs incurred by the issuers of asset-referenced tokens.~~
3. Where issuers of asset-referenced tokens do not grant rights as referred to in paragraph 1 to all the holders of asset-referenced tokens, the detailed policies and procedures shall specify the natural or legal persons that are provided with such rights. The detailed policies and procedures shall also specify the conditions for exercising such rights and the obligations imposed on those persons.	~~3. Where issuers of asset-referenced tokens do not grant rights as referred to in paragraph 1 to all the holders of asset-referenced tokens, the detailed policies and procedures shall specify the natural or legal persons that are provided with such rights. The detailed policies and procedures shall also specify the conditions for exercising such rights and the obligations imposed on those persons.~~
Issuers of asset-referenced tokens shall establish and maintain appropriate contractual arrangements with those natural or legal persons who are granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and each of those natural or legal persons. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.	~~Issuers of asset-referenced tokens shall establish and maintain appropriate contractual arrangements with those natural or legal persons who are granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and each of those natural or legal persons. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.~~
4. Issuers of asset-referenced tokens that do not grant rights as referred to in paragraph 1 to all the holders of such asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service referred to in Article 3(1) point (12). The issuer of asset-referenced tokens	~~4. Issuers of asset-referenced tokens that do not grant rights as referred to in paragraph 1 to all the holders of such asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service referred to in Article 3(1) point (12). The issuer of asset-referenced tokens~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
shall ensure that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis. Where the market value of asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets, the holders of asset-referenced tokens shall have the right to redeem the crypto-assets from the issuer of crypto-assets directly. In that case, any fee applied for such redemption shall be proportionate and commensurate with the actual costs incurred by the issuer of asset-referenced tokens. The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn. 5. The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards specifying: (a) the obligations imposed on the crypto-asset service providers ensuring the liquidity of asset-referenced tokens as set out in the first subparagraph of paragraph 4; (b) the variations of value triggering a direct right of redemption from the issuer of asset-referenced tokens as set out in the second subparagraph of paragraph 4, and the conditions for exercising such a right. EBA shall submit those draft regulatory technical standards to the Commission by ... [please insert 12 months after the date of entry into force of this	~~shall ensure that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis.~~ ~~Where the market value of asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets, the holders of asset-referenced tokens shall have the right to redeem the crypto-assets from the issuer of crypto-assets directly. In that case, any fee applied for such redemption shall be proportionate and commensurate with the actual costs incurred by the issuer of asset-referenced tokens.~~ ~~The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn.~~ [*See paragraph 8 below for the paragraph corresponding to paragraph 5 of the proposed text*]

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	**1. Holders of asset-referenced tokens shall be provided with a claim on the issuer of such asset-referenced tokens or on the reserve assets. Any asset-referenced token that does not provide all holders with a claim shall be prohibited.** **2. Issuers of such asset-referenced tokens shall issue asset-referenced tokens at market value and on the receipt of funds within the meaning of Article 4(25) of Directive (EU) 2015/2366.** **3. Upon request by the holder of asset-referenced tokens, the respective issuer must redeem, at any moment and at market value, the monetary value of the asset-referenced tokens held, either in cash or by credit transfer to such holder of asset-referenced tokens.** **4. The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn.** **5. Issuers of asset-referenced tokens shall**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	clearly state the conditions of redemption, including any fees relating thereto, in the crypto-asset white paper as referred to in Article 46. **6. Redemption may be subject to a fee only if stated in the crypto-asset white paper. Any such fee shall be proportionate to and commensurate with the actual costs incurred by issuers of asset-referenced tokens.** **7. Where issuers of asset-referenced tokens do not fulfil legitimate redemption requests from holders of asset-referenced tokens within the time period specified in the crypto-asset white paper, which period shall not exceed 30 days, the obligation set out in paragraph 3 applies to any of the following third party entities that have entered into contractual arrangements with issuers of asset-referenced tokens:** **(a) entities ensuring the safeguarding of funds received by issuers of asset-referenced tokens in exchange for asset-referenced tokens in accordance with Article 7 of Directive 2009/110/EC;** **(b) crypto-asset service providers authorised to provide the crypto-asset services referred to in Article 3(1) point (12) of providing liquidity or custodial services in relation to the asset-referenced tokens; and** **(c) any natural or legal person that owns or is the controlling shareholder of the issuer of asset reference tokens.** **8.** The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards specifying~~:~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	~~(a) the obligations imposed on crypto-asset service providers the liquidity of asset-referenced tokens as set out in the first subparagraph of paragraph 4;~~ ~~(b) the variations of value triggering a direct right of redemption from the issuer of asset-referenced tokens as set out in the second subparagraph of paragraph 4, and the conditions for exercising such a right.~~ **any potential exemptions from the obligations set out in this article where asset-referenced tokens may only be used in a limited way.** EBA shall submit those draft regulatory technical standards to the Commission by ... [*please insert 12 months after the date of entry into force of this Regulation*]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'
Explanation *To the extent that asset-referenced and e-money tokens can be used to fulfil a payment function, they should to the extent possible be subject to equivalent requirements in order to avoid the risk of regulatory arbitrage between the respective regimes. Thus, all issuers of asset-referenced tokens should at a minimum grant end-users a direct claim on the issuer or on the reserve assets and redemption rights at market value, as well as make end-users aware of any involved risks through appropriate disclosures. EBA should be required to issue a delegated act to guide the calculation of the market value and to provide potential exemptions for asset-referenced tokens that can be used only in a limited way as a means of payment. See paragraph [2.1.4] of the ECB Opinion.*	

Amendment 14	
Article 39	
‘1. The EBA shall classify asset-referenced tokens as significant asset-referenced tokens on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least three of the following criteria are met:	‘1. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall classify asset-referenced tokens as significant asset-referenced tokens on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least three of the following criteria are met:
[…].	[…]
	(g) the same legal entity or related group entities issue several e-money tokens, asset-referenced tokens and provide crypto-asset provider services.
2. Competent authorities that authorised an issuer of asset-referenced tokens in accordance with Article 19 shall provide the EBA with information on the criteria referred to in paragraph 1 and specified in accordance with paragraph 6 on at least a yearly basis.	2. Competent authorities that authorised an issuer of asset-referenced tokens in accordance with Article 19 shall provide the EBA **and the ECB and the relevant central banks of Member States whose currency is not the euro** with information on the criteria referred to in paragraph 1 and specified in accordance with paragraph 6 on at least a yearly basis.
3. Where the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer’s home Member State. The EBA shall give issuers of such asset-referenced tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.	3. Where the EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer’s home Member State. The EBA shall give issuers of such asset-referenced tokens and their competent authorities the opportunity to provide observations and comments in writing
4. The EBA shall take its final decision on whether	

an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.	prior the adoption of its final decision. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall duly consider those observations and comments.
	4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof. **The EBA may also subject the issuer of a significant asset-referenced token to the authorisation requirements set out in Article 43(1).**
[…]	[…]
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 121 to further specify the criteria set out in paragraph 1 for an asset-referenced token to be deemed significant and determine:	6. The Commission shall be empowered to adopt**, after consultation of the ECB,** delegated acts in accordance with Article 121 to further specify the criteria set out in paragraph 1 for an asset-referenced token to be deemed significant and determine:
[…]	[…]
(c) the content and format of information provided by competent authorities to EBA under paragraph 2.	(c) the content and format of information provided by competent authorities to EBA**, the ECB and the relevant central banks of Member States whose currency is not the euro** under paragraph 2.
[…]’	[…]’’

Explanation

In view of the potential implications of significant asset-referenced tokens for the conduct of monetary policy, and the smooth operation of payment systems, a direct involvement by the ECB, and, when the token can have an impact on the same fields in Member States whose currency is not the euro, the relevant central bank in the assessment of whether an asset-referenced token is significant would be necessary. Moreover, an entity may also be significant when considering its combined activities relating to the issuance of e-money or asset reference tokens as well as the provision of crypto-asset

services. In addition, in the case of significant asset-referenced tokens that become widely used for payments in the Union, the EBA should be able to subject the issuer of such significant asset-referenced tokens to the authorisation requirements provided for issuers of e-money tokens. See paragraph [2.2.4 and section 3.1] of the ECB Opinion.	
Amendment 15	
Article 40	
‘1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Article 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA. […] 2. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer’s home Member State. The EBA shall give competent authority of the applicant issuer’s home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments. 3. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer’s	‘1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Article 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA**, the ECB and the relevant central banks of Member States whose currency is not the euro**. […] 2. Where, on the basis of the programme of operation, the EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that asset-referenced tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer’s home Member State. The EBA shall **the** give competent authority of the applicant issuer’s home Member State the opportunity to provide observations and comments in writing prior **to** the adoption of its final decision. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall duly consider those observations and comments. 3. Where, on the basis of the programme of

home Member State. […] 4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof. […] ’	operation, the EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that asset-referenced tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer’s home Member State. […] 4. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within three months after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof. […]. ’
Explanation *In view of the potential implications of significant asset-referenced tokens for the conduct of monetary policy, and the smooth operation of payment systems, a direct involvement by the ECB and, when the token can have an impact on the same fields in Member States whose currency is not the euro, the relevant central bank in the assessment of whether an asset-referenced token is significant would be necessary. See the explanation to Amendment 14 above.*	
Amendment 16 Article 41(3), (4), and new (7)	
‘3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 34, by holders of asset-referenced tokens. […]	‘3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 34, by holders of asset-referenced tokens. **[…]** **Issuers of significant asset-referenced tokens**

	shall also conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements. Where an issuer of significant asset-referenced tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner.'
'4. The percentage referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens. […]	'4. The percentage referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens. **In addition, issuers of significant asset-referenced tokens shall conduct, on a regular basis, stress testing that shall take into account severe but plausible financial (such as interest rate shocks) stress scenarios and non-financial (such as operational risk) stress scenarios. Where an issuer of significant asset-referenced tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner. Based on the outcome of such stress tests, the EBA where relevant, may impose additional own funds requirements on top of the 3% requirement. Moreover, issuers of significant asset-referenced tokens shall also conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements.** […] **'7. The EBA, in close cooperation with ESMA, shall issue guidelines with a view to establishing the common reference**

	parameters of the stress test scenarios to be included in the stress tests in accordance with paragraphs 3 and 4. The guidelines should be updated periodically taking into account the latest market developments.'
Explanation *From the perspectives of the smooth operation of payment systems and the stability of the financial system, it is suggested to introduce enhanced stress testing requirements, mandatory liquidity stress testing, binding liquidity and concentration requirements. In addition, the EBA should issue guidelines establishing common reference parameters for stress testing for issuers of significant asset-referenced tokens and e-money tokens. See paragraphs [3.2.3 and 3.2.4] of the ECB Opinion.*	
Amendment 17 Article 49	
'Funds received by issuers of e-money tokens in exchange of e-money tokens and that are invested in secure, low-risk assets in accordance with Article 7(2) of Directive 2009/110/EC shall be invested in assets denominated in the same currency as the one referenced by the e-money token.'	'Funds received by issuers of e-money tokens in exchange of e-money tokens and that are invested in secure, low-risk assets in accordance with Article 7(2) of Directive 2009/110/EC shall be invested in **highly liquid financial instruments with minimal market and credit risks in accordance with Article 34(4) of this Regulation, instead of Article 7(2) of Directive 2009/110/EC,** denominated in the same currency as the one referenced by the e-money token.'
Explanation *From a financial stability standpoint, issuers of asset-referenced and e-money tokens should invest the funds received in exchange for their tokens in the same categories of highly liquid financial instruments with minimal market and credit risks to be specified in the draft regulatory technical standards to be adopted. Harmonisation in the investment requirements between asset-referenced and e-money tokens is necessary because both tokens pose a similar degree of risk, and it is therefore important that the same rules apply in the area of investment of reserve assets. See [paragraph 3.2.3] of the ECB Opinion.*	
Amendment 18 Article 50	
'1. The EBA shall classify e-money tokens as significant e-money tokens on the basis of the	'1. The EBA**, after consultation of the ECB and the relevant central banks of Member States**

criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least three of those criteria are met. 2. Competent authorities of the issuer's home Member State shall provide the EBA with information on the criteria referred to in Article 39(1) of this Article and specified in accordance with Article 39(6) on at least a yearly basis. 3. Where the EBA is of the opinion that e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those e-money tokens and the competent authority of the issuer's home Member State. The EBA shall give issuers of such e-money tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments. […]'	**whose currency is not the euro,** shall classify e-money tokens as significant e-money tokens on the basis of the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least three of those criteria are met. 2. Competent authorities of the issuer's home Member State shall provide the EBA**, the ECB and the relevant central banks of Member States whose currency is not the euro** with information on the criteria referred to in Article 39(1) ~~of this Article~~ and specified in accordance with Article 39(6) on at least a yearly basis. 3. Where the EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those e-money tokens and the competent authority of the issuer's home Member State. The EBA shall give issuers of such e-money tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall duly consider those observations and comments. […].'
Explanation *In view of the potential implications of significant e-money tokens for the conduct of monetary policy, and the smooth operation of payment systems, a direct involvement by the ECB and, when the token can have an impact on the same fields in Member States whose currency is not the euro, the relevant central bank in the assessment of whether e-money tokens are significant would be necessary. See the explanation to Amendment [14] above.*	
Amendment 19	

Article 51	
‘1. An issuer of e-money tokens, authorised as a credit institution or as an ‘electronic money institution’ as defined in Article 2(1) of Directive 2009/110/EC or applying for such authorisation, may indicate that they wish to classify their e-money tokens as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA.	‘1. An issuer of e-money tokens, authorised as a credit institution or as an ‘electronic money institution’ as defined in Article 2(1) of Directive 2009/110/EC or applying for such authorisation, may indicate that they wish to classify their e-money tokens as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA**, the ECB and the relevant central banks of Member States whose currency is not the euro**.
[…]	[…]
2. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer’s home Member State. The EBA shall give competent authority of the issuer or applicant issuer’s home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.	2. Where, on the basis of the programme of operation, the EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer’s home Member State. The EBA shall give **the** competent authority of the issuer or applicant issuer’s home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA, **after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall duly consider those observations and comments.
3. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuer or applicant issuer and the competent authority of the issuer or applicant issuer’s home Member State. The EBA shall give the issuer or applicant issuer and the competent authority of its home Member State the opportunity to provide observations and	3. Where, on the basis of the programme of operation, the EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuer or applicant issuer

comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments. 4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. […]. ’	and the competent authority of the issuer or applicant issuer’s home Member State. The EBA shall give the issuer or applicant issuer and the competent authority of its home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments. 4. The EBA**, after consultation of the ECB and the relevant central banks of Member States whose currency is not the euro,** shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. […]. ’
Explanation *In view of the potential implications of significant e-money tokens for the conduct of monetary policy, and the smooth operation of payment systems, a direct involvement by the ECB and, when the token can have an impact on the same fields in Member States whose currency is not the euro, the relevant central bank in the assessment of whether e-money tokens are significant would be necessary. See the explanation to Amendment [14] above.*	
Amendment 20 Article 52	
‘Issuers of at least one category of e-money tokens shall apply the following requirements applying to issuers of asset-referenced tokens or significant asset-referenced tokens: (a) Articles 33 and 34 of this Regulation, instead of Article 7 of Directive 2009/110/EC; (b) Article 41, paragraphs 1, 2, and 3 of this Regulation;	‘Issuers of at least one category of e-money tokens shall apply the following requirements applying to issuers of asset-referenced tokens or significant asset-referenced tokens: (a) Articles 33 and 34 of this Regulation, instead of Article 7 of Directive 2009/110/EC; (b) Article 41, paragraphs 1, 2, 3, **4 and 7** of this Regulation;

[…]'	[…]'
Explanation *The EBA, in close cooperation with the ESMA and the ECB, should issue guidelines concerning stress-testing of liquidity and capital requirements of issuers of asset-referenced and e-money tokens. See the explanation to Amendment [16] above.*	
Amendment 21 Article 63(3)	
'3. Crypto-asset service providers shall, promptly place any client's funds, with a central bank or a credit institution. Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds held with a central bank or a credit institution are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.'	'3. Crypto-asset service providers shall~~,~~ promptly place any client's funds~~,~~ with a ~~central bank~~ **credit institution** or**, where the relevant eligibility criteria and conditions for opening an account are met,** a ~~credit institution~~ **central bank**. Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds held with a **credit institution** ~~central bank~~ or**, where the relevant eligibility criteria and conditions for opening an account are met, with a central bank,** ~~credit institution~~ are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.'
Explanation *Access to central bank accounts for credit institutions in the context of Eurosystem monetary policy operations, or for credit and financial institutions in the context of the TARGET2 payment system operations, is based on eligibility criteria and conditions under the applicable ECB Guidelines. Similar requirements may apply for ESCB central banks of Member States which have not adopted the euro as their currency. See paragraph [2.1.6] of the ECB Opinion.*	
Amendment 22 Article 82(1) and (4)	
'1. […] Supervisory and investigative powers exercised in relation to e-money token issuers are without prejudice to powers granted to relevant competent authorities under national laws transposing Directive 2009/110/EC.	'1. […] Supervisory and investigative powers exercised in relation to e-money token issuers are without prejudice to powers granted to relevant competent authorities under national laws transposing Directive 2009/110/EC**, as well as to**

[…]	**the prudential supervisory powers granted to the ECB under Council Regulation (EU) 1024/2013(*)** **(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).** […]
4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways: (a) directly; (b) in collaboration with other authorities; (c) under their responsibility by delegation to such authorities; (d) by application to the competent judicial authorities.'	4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways: (a) directly; (b) in collaboration with other authorities; (c) under their responsibility by delegation to such authorities; (d) by application to the competent judicial authorities. **With respect to (a) and (b) above, supervisory powers exercised in relation to crypto-assets issuers and providers are without prejudice to the prudential supervisory tasks of the ECB with respect to significant credit institutions that are crypto-assets service providers and/or crypto-assets issuers.**'
Explanation *The supervisory powers and arrangements in question would also need to take into account the ECB's prudential supervisory role as far as significant credit institutions are concerned. Inter alia, the NCAs should notify the ECB in cases where a significant credit institution issues a white paper, applies for an authorisation in order to provide one of the crypto-assets services or is in breach of the proposed regulation. See paragraph [3.3] of the ECB Opinion.*	
Amendment 23 Article 98	
'1. Where an asset-referenced token has been classified as significant in accordance with Article	'1. Where an asset-referenced token has been classified as significant in accordance with Article

39 or Article 40, the issuer of such asset-referenced tokens shall carry out their activities under the supervision of the EBA. The EBA shall exercise the powers of competent authorities conferred by Articles 21, 37 and 38 as regards issuers of significant asset-referenced tokens. 2. Where an issuer of significant asset-referenced tokens provide crypto-asset services or issue crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State.3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that issuers of significant asset-referenced tokens comply with the requirements under Title III. 3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that issuers of significant asset-referenced tokens comply with the requirements under Title III. 4. Where an e-money token has been classified as significant in accordance with Articles 50 or 51, the EBA shall be responsible of the compliance of the issuer of such asset-significant e-money tokens with the requirements laid down in Article 52.'	39 or Article 40, the issuer of such asset-referenced tokens shall carry out their activities under the supervision of the EBA, **without prejudice to the prudential supervisory competences of the ECB where relevant**. The EBA, **where relevant after consultation of the ECB**, shall exercise the powers of competent authorities conferred by Articles 21, 37 and 38 as regards issuers of significant asset-referenced tokens. 2. Where an issuer of significant asset-referenced tokens provide**s** crypto-asset services or issue crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State, **in accordance with Article 82(4)**. 3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA, **after consultation of the ECB**, shall conduct a supervisory reassessment to ensure that issuers of significant asset-referenced tokens comply with the requirements under Title III. 4. Where an e-money token has been classified as significant in accordance with Articles 50 or 51, the EBA**, after consultation of the ECB,** shall be responsible of the compliance of the issuer of such asset-significant e-money tokens with the requirements laid down in Article 52.'
Explanation *The referred supervisory powers and arrangements would also need to take into account the ECB's prudential supervisory role as far as significant credit institutions are concerned. See explanation to Amendment [22] above and paragraph [3.3] of the ECB Opinion.*	