

EBA/ RTS /2024/14

19 June 2024

Final Report

Draft Regulatory Technical Standards

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

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1. Abbreviations

ART	Asset-referenced token
CASP	Crypto-asset service provider
CP	Consultation paper
EBA	European Banking Authority
EU	European Union
EMI	Electronic money institution
EMT	E-money token
ITS	Implementing technical standards
MiCAR	Regulation on markets in crypto-assets (Regulation (EU) 2023/1114)
PSD2	Payment Services Directive (Directive (EU) 2015/2366)
PSP	Payment service provider
RTS	Regulatory Technical Standards

2. Executive Summary

Article 119(1) of Regulation (EU) 2023/1114 (MiCAR) requires the EBA to establish, manage and chair a consultative supervisory college for each issuer of a significant asset referenced token (ART) or of a significant e-money token (EMT). In support of these provisions, Article 119(8) of MiCAR mandates the EBA to develop draft regulatory technical standards (RTS) specifying:

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

These draft RTS specify the criteria for determining which are “the most relevant” entities referred to above (i.e., “the most relevant” custodians of the reserve of assets, trading platforms, payment service providers providing payment services in relation to a significant EMT and crypto-assets service providers providing custody and administration of crypto-assets on behalf of clients), for the purpose of determining the composition of a college under MiCAR. They also specify the conditions under which it is considered that a significant ART/EMT is “used at large scale” in a Member State, for the purposes of determining which competent authorities qualify to be members of a college based on Article 119(2)(l) of MiCAR.

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

These draft RTS were subject to a public consultation between 8 November 2023 and 8 February 2024. Overall, respondents were supportive of the provisions in the draft RTS. Having assessed the consultation responses, the EBA decided to maintain the draft RTS substantially unchanged compared to the version published for consultation.

Next steps

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

3. Background and rationale

3.1 Background

1. The Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets (MiCAR)¹ regulates the offering to the public and admission to trading of asset-referenced tokens (ARTs), e-money tokens (EMTs) and other types of crypto-assets, as well as crypto-assets services provided by crypto-asset service providers (CASPs) in the European Union (EU). MiCAR entered into force on 29 June 2023, and will apply from 30 December 2024, except for Titles III and IV regarding the offering to the public and the admission to trading of ARTs and EMTs, that will apply from 30 June 2024.
2. MiCAR requires the EBA to classify an ART or EMT as “significant” when certain criteria specified in MiCAR² are met. Furthermore, MiCAR assigns to the EBA the task of supervising: (i) all issuers of a significant ART, and (ii) electronic money institutions (EMIs) issuing a significant EMT. According to MiCAR, the supervisory responsibility for a credit institution issuing a significant EMT remains with the relevant competent authority and is not transferred to the EBA.
3. Moreover, Article 119(1) of MiCAR requires the EBA to establish, manage and chair a consultative supervisory college for each issuer of a significant ART/EMT, and to do so within 30 calendar days of a decision issued by the EBA to classify an ART or EMT as significant.
4. The role of supervisory colleges under MiCAR is to facilitate the exercise of the EBA’s supervisory tasks under MiCAR and to facilitate the cooperation and exchange of information among its members. A college may issue non-binding opinions, addressed to the EBA and/ or the relevant competent authority, on amongst others, changes to the authorisation of, or supervisory measures concerning, issuers of a significant ART or of a significant EMT³.
5. According to MiCAR, a supervisory college shall comprise, among others:
 - “the competent authorities of the most relevant crypto-asset service providers, credit institutions or investment firms ensuring the custody of the reserve assets in accordance with Article 37 or of the funds received in exchange of the significant e-money tokens” (Article 119(2)(d));

¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

² See Articles 43(1), 44, 56(1) and 57 of MiCAR, as applicable

³ See Article 120 of MiCAR.

- “where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens or the significant e-money tokens are admitted to trading” (Article 119(2)(e));
 - “the competent authorities of the most relevant payment service providers providing payment services in relation to the significant e-money tokens” (Article 119(2)(f));
 - “where applicable, the competent authorities of the most relevant crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients in relation to the significant asset-referenced tokens or the significant e-money tokens” (Article 119(2)(h)); and
 - “competent authorities of Member States where the asset-referenced token or the e-money token is used at large scale, at their request” (Article 119(2)(l)).
6. In addition, Article 119(3) of MiCAR provides that the EBA may invite other authorities to be members of the college where the entities they supervise are relevant to the work of the college.
7. In support of the above-mentioned provisions, Article 119(8) of MiCAR mandates the EBA, in cooperation with the European Securities and Markets Authority and the European Central Bank, to develop draft regulatory technical standards (RTS) specifying:
- the conditions under which the entities referred to in Article 119(2) (d), (e), (f) and (h) of MiCAR are to be considered ‘the most relevant’;
 - the conditions under which it is considered that ARTs or EMTs are ‘used at large scale’, as referred to in Article 119(2)(l) of MiCAR; and
 - the details of the practical arrangements regarding the functioning of supervisory colleges under MiCAR referred to in Article 119(6) of MiCAR.
8. The EBA is required to submit these draft RTS to the European Commission by 30 June 2024.
9. On 8 November 2023, the EBA published a consultation paper (CP) with its proposals for the draft RTS mentioned above (EBA/CP/2023/33). During the consultation period which ended on 8 February 2024, the EBA received 3 responses to this consultation.
10. The feedback table in Chapter 5 presents all the comments raised by the respondents and their respective analysis by the EBA. The Rationale section below, in turn, summarises the feedback received from respondents, and the changes made to the final RTS following the public consultation, and Chapter 4 presents the final draft RTS.

3.2 Rationale

11. Overall, respondents supported the proposals in the CP. However, some concerns were raised by respondents regarding the availability of the data needed to apply the criteria specified in the RTS for determining the college composition.
12. In this regard, the EBA notes that the collection of such data is not part of the scope of the EBA's mandate in Article 119(8), and is therefore out of scope of these RTS. The assessment of the criteria set out in the draft RTS can leverage on the data to be collected based on, among others, the final draft ITS under Article 22(7) of MiCAR (EBA/ITS/2024/04).
13. Having assessed the consultation responses, the EBA decided to maintain the draft RTS substantially unchanged compared to the version published for consultation. However, the EBA introduced some editorial changes, in particular (i) deleting Article 1 (*Definitions*) and moving the respective definitions in other parts of the draft RTS; (ii) streamlining the recitals; and (iii) introducing some clarifications in recital 5 regarding the possible entrustment of the EBA's tasks as chair of the college to the prudential competent authority in charge of supervising a credit institution issuing a significant EMT.

4. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../...**of XXX****supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for the establishment and the functioning of supervisory colleges****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937⁴, and in particular third subparagraph of Article 119(8) thereof,

Whereas:

- (1) In order to ensure a consistent and coherent functioning of supervisory colleges established in accordance with Article 119(1) of Regulation (EU) 2023/1114 across the European Union, the EBA should determine which entities are deemed as the most relevant for the purpose of Article 119(2), points (d), (e), (f) and (h) of that Regulation. To this end, EBA should take into account the entities that rank highest based on suitable criteria.
- (2) After having applied those criteria, EBA may decide to invite the competent authorities of only some of the entities identified as per the above to be a member of the college based on points Article 119(2), (d), (e), (f) and (h) of Regulation 2023/1114, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college. The number of entities deemed as the most relevant for the purpose of Article 119(2), points (d), (e), (f) and (h) of Regulation (EU) 2023/1114 should be determined by EBA, taking into account the particularities of each case and the need to strike a good balance between ensuring an appropriate representation in the college of the relevant competent authorities and ensuring an effective functioning of the college.
- (3) EBA should reassess, at least every 2 years, which authorities qualify to be members of the college based on Article 119(2), points (d), (e), (f), (h) and (l) of Regulation 2023/1114. The frequency of the reassessment should be determined taking into account the need to ensure an appropriate representation of relevant competent authorities in the college, as these may change over time, notably as a result of market developments affecting the token, as well as the need to ensure stability of the college.

⁴Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40.)

This is without prejudice to the possibility of an authority to request to become a member of the college, or to request its withdrawal from a college when it no longer meets the conditions to be a member of the college before the expiry of the two years' period mentioned above.

- (4) In accordance with Article 119(6) of Regulation 2023/1114, the establishment and functioning of colleges should be based on a written agreement between its members. Taking into account the timeline set out in Article 119(1) of that Regulation for the establishment of the college, it is appropriate to specify the procedure for the conclusion of the agreement referred to in Article 119(6) of that Regulation.
- (5) The members of the college should exchange views on a possible entrustment of tasks among the college members pursuant to point (c) of Article 119(5) of Regulation (EU) 2023/1114. In the case of a college established for a credit institution issuing a significant e-money token, for which the supervisory responsibility under Regulation (EU) 2023/1114 remains with the prudential competent authority and is not transferred to EBA, the tasks of EBA as chair of the college specified in points (b) to (e) of Article 119(7) of Regulation (EU) 2023/1114 may be entrusted to or shared with the prudential competent authority in charge of supervising the respective credit institution. Such an assignment might be necessary considering possible supervisory synergies due to the better position of the relevant competent authority in this case to coordinate and communicate with other authorities relevant for the credit institution and its better acquaintance of the situation of the credit institution in question. Nevertheless, EBA should remain in charge of establishing written arrangements and procedures for the functioning of the college, after consulting the other members of the college, as specified in Article 119(7), point (a) of Regulation (EU) 2023/1114, in order to ensure that appropriate arrangements are in place to ensure that EBA retains oversight of the chairing of the college. The agreement referred to in Article 119(6) of that Regulation should specify a description of the arrangements on the entrustment of tasks pursuant to point (c) of Article 119(5) of that Regulation, where relevant.
- (6) The chair of the college may invite other authorities, that are not members of the college, to attend a college meeting, or a particular agenda item. This may include authorities related to the issuer of significant asset-referenced token or a significant e-money token, or to the group it belongs to, on the basis of other sectoral legislation, such as the consolidating supervisor of a credit institution, as defined in point Article 4(1), point (41) of Regulation (EU) No 575/2013⁵, or the lead supervisor of the relevant anti-money laundering (AML) and countering the financing of terrorism (CFT) supervisory college, where applicable. The chair of the college should decide what information is relevant for those authorities and involve them in the relevant college meeting or activity accordingly.
- (7) The members of the college who are involved in a particular meeting or activity of the college should exchange documents and contributions to working documents with sufficient time in advance to enable all participants in the college meeting to actively

⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1).

contribute to the discussions. The minimum timeframes for the assessment of the relevant documentation by the members of the college should be specified in the agreement referred to in Article 119(6) of Regulation (EU) 2023/1114, taking into account the complexity of the work and the size of the college, the topic at hand and any relevant timelines set out in that Regulation.

- (8) In order to facilitate the cooperation and information exchange among the members of the college, it is appropriate to further specify the general framework for the exchange of information between the members of the college.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (10) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

- (b) the three crypto-asset providers ensuring the operation of a trading platform for crypto-assets that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period.
- 3. For the purpose of determining the most relevant entities referred to in Article 119(2), point (f) of Regulation 2023/1114, EBA shall take into account in particular:
 - (a) the three payment service providers that have executed the highest average number of payment transactions, as defined in Article 4, point (5) of Directive (EU) 2015/2366, in relation to the significant e-money token per day, during the applicable reference period; and
 - (b) the three payment service providers that have executed the highest average aggregate value of payment transactions, as defined in Article 4, point (5) of Directive (EU) 2015/2366, in relation to the significant e-money token per day, during the applicable reference period.
- 4. For the purpose of determining the most relevant entities referred to in Article 119(2), point (h) of Regulation 2023/1114, EBA shall take into account in particular:
 - (a) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average number of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period; and
 - (b) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the applicable reference period.
- 5. EBA may decide to invite the competent authorities of only some of the entities referred to in paragraphs 1 to 4 to be a member of the college where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college.

Article 2

The conditions under which it is considered that an asset-referenced tokens or e-money token is used at large scale as referred to in Article 119(2), point (l) of Regulation 2023/1114

- 1. For the purpose of Article 119(2), point (l) of Regulation 2023/1114, a significant asset-referenced token or a significant e-money token shall be deemed to be used at large scale in a Member State, where:
 - (a) the number of holders of the significant asset-referenced token or of the significant e-money token located in that Member State, on at least one day during the applicable reference period, is of at least 20% of the population of that Member State; or
 - (b) the average number and average aggregate value of transactions with the significant asset-referenced token or the significant e-money token per day where at least one

party is located in that Member State, during the applicable reference period, is higher than 1 250 000 transactions and 250 000 000 EUR respectively.

2. For the purpose of paragraph 1, point (a), a holder of the significant asset-referenced token or of the significant e-money token refers to the holder of that token that benefits of redemption rights under Regulation 2023/1114.
3. For the purpose of paragraph 1, the location of a holder of the significant asset-referenced token or of the significant e-money token, or of a party to a transaction with such tokens, refers to:
 - (a) for natural persons, their habitual residence; and
 - (b) for legal persons, the registered office address.
4. A competent authority requesting to become a member of the college based on point (1) of Article 119(2) of Regulation 2023/1114 shall submit a reasoned request to EBA and provide data showing that the criteria mentioned in paragraph 1 are met.

Article 3

Reporting reference period and transactions

1. The reference period referred to in Articles 1 and 2 shall be the most recent six-month period covered by the reporting obligation referred to in Article 22(1) of Regulation 2023/1114.
2. For the purpose of paragraphs (2) and (4) of Article 1, and Article 2, a transaction shall mean any change of the natural or legal person entitled to an asset-referenced token or an e-money token as a result of the transfer of that token from one distributed ledger address or account to another.

Article 4

Reassessment of the college composition

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

Article 5

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

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

Article 6

Participation in colleges

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

*Article 7***Establishment and update of contact lists**

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

*Article 8***Operational aspects of college meetings**

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

*Article 9***Exchange of information between the college members**

1. Each member of a college shall provide, upon request and without undue delay, to EBA and, where applicable, to the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 11 of this Regulation, any information necessary in order to facilitate the performance of the EBA's
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supervisory tasks in accordance with Article 117 of Regulation 2023/1114 and exchange information when required by that Regulation.

2. EBA and, where applicable, the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 10 of this Regulation shall receive all information exchanges between the members of the college.
3. EBA and, where applicable, the competent authority entrusted with the tasks in Article 119(7), points (b) to (e) of Regulation 2023/1114 in accordance with Article 10 of this Regulation may decide to share the information referred to in paragraphs 1 and 2 with other members of the college where it deems that the respective information is relevant for those members.
4. Where an issuer offers more than one significant asset-referenced token or significant e-money token, EBA may decide to organise several colleges, one for each significant asset-referenced token or significant e-money token, or group of significant asset-referenced token or significant e-money tokens.
5. Where several colleges are organised pursuant to paragraph 4, the chair of the college shall keep all the members of the college fully informed, in a timely manner, on the actions taken or the measures carried out in the different relevant colleges.
6. The members of the college shall agree on the means for the exchange of information among the members of the college, and shall specify it in the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114.
7. The transmission of confidential information between the members of the college shall be done by secure channels of communication.

Article 10

Entrustment of tasks among the college members

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

Article 11

Final provisions

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

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

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

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

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

A. Problem identification

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

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

B. Policy objectives

The general objective of these draft RTS is to ensure a harmonized application of the requirements of MiCAR across supervisory colleges, and to ensure transparency regarding the criteria that will be used for identifying the "most relevant" entities referred to in Article 119 (2) (d), (e), (f), and (h) of MiCAR and the use "at large scale" of a token as referred to in Article 119(2)(l) of MiCAR, for the purpose of determining the college composition. In particular, these draft RTS aim to strike a good

balance between ensuring an appropriate representation in colleges of relevant competent authorities, and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning.

C. Baseline scenario

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

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

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

D. Policy issues, options considered

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

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

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

Option 1a ensures that the top three entities identified based on the criteria set out in the RTS are considered when assessing which are the most relevant entities referred to in Article 119(2) of MiCAR. At the same time, this option gives the EBA the flexibility to determine the number of the entities deemed as the most relevant for each category (which can be less than three) depending on the particularities of each case.

A fixed threshold as envisaged by Option 1b would provide clear rules and may be easier to implement. However, such a threshold may not be appropriate in all cases, given the potentially very different features of the network of entities ensuring the custody of the reserve of assets and crypto-assets services in respect of the significant ART/EMT. Furthermore, a too high threshold can lead to cases where all entities would be below the threshold and that would prevent their

respective competent authorities to be a member of the college based on Article 119(2)(d), (e), (f), and (h) of MiCAR.

Therefore, Option 1a was preferred.

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

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

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

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

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

In Option 2b, an alternative indicator was considered - the number of holders of the significant ART/ EMT who use the services of a CASP providing custody and administration of crypto-assets on behalf of clients, similarly to the criterion set out in Article 85 of MiCAR to identify significant CASPs.

Taking into account the prudential focus of the role of colleges under MiCAR, Option 2a would be more appropriate for determining which are the most relevant CASPs referred to in Article 119(2)(h) of MiCAR.

Policy issue 3: Conditions for ARTs and EMTs to be deemed “used at large scale” in a Member State

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

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

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

Option 3a envisages a relative threshold defined in relation to the size of financial market of the Member State. Such a metric would ensure proportionality as it would take into account the different sizes of the financial market of each Member State. However, it is challenging to define

and measure the financial market of each Member State. Also, identifying a suitable comparable metric would be challenging taking into account the type of transactions that should be considered for the purpose of Article 119(2)(l) of MiCAR, i.e. all transactions with a significant ART or a significant EMT, irrespective of whether that token is used to make payments, for investment purposes or for other purposes. For these reasons this option was discarded.

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

Therefore, Option 3c was preferred.

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

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

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

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

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

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

Option 4b envisages providing in the RTS a few additional elements beyond those explicitly listed in Article 119(6) that are the most important for the functioning of MiCAR supervisory colleges,

while Option 4c implies specifying in the RTS a comprehensive set of elements relevant for the functioning of colleges.

Option 4 c offers more legal certainty, but it may also cause procedural challenges for the EBA in case certain provisions of the RTS will need to be updated. Moreover, supervisory colleges under MiCAR may vary in size and complexity, so setting in advance all the rules may be detrimental to the efficiency of the supervisory college work. Taking into account the above, Option 4b, which strikes a good balance between legal certainty and flexibility, was preferred.

E. Cost-benefit analysis

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

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

5.2 Feedback on the public consultation

The EBA publicly consulted on the draft RTS contained in this paper.

The consultation period lasted for 3 months and ended on 8 February 2024. 3 responses were received, of which 2 were published on the EBA's website.

This section presents a summary of comments raised by respondents, and the EBA's assessment of those comments.

In some cases, respondents made similar comments. In such cases, the comments, and the EBA's analysis thereof, are grouped in a way that the EBA considers most appropriate.

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

No	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2023/33			
Q1. Do you agree with the criteria proposed in Art. 2(1) and (5) of the draft RTS for assessing which are the most relevant CASPs, credit institutions or investment firms, as referred to in Art. 119(2)(d) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.			
1.	Respondents agreed with the proposed criteria.		No amendment
Q2. Do you agree with the criteria proposed in Art. 2(2) and (5) of the draft RTS for determining which are the most relevant trading platforms, as referred to in Art. 119(2)(e) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.			
2.	Overall, respondents agreed with the proposed criteria. However, one respondent raised a concern that the issuer might not be able to determine which are the most relevant trading platforms where the significant ART/EMT is admitted to trading.	Regarding the concern raised by one respondent, the EBA notes that the collection of the data necessary to determine the composition of a college is not part of the mandate in Article 119(8) and therefore is out of scope of these RTS. This being said, the EBA expects that the issuer of a significant ART/EMT has, or can obtain, the information necessary to determine which are the most relevant trading platforms where the significant ART/EMT is admitted to trading, as referred to in Article 119(2)(e) of MiCAR.	No amendment
Q3. Do you agree with the criteria proposed in Art. 2(3) and (5) of the draft RTS for assessing which are the most relevant PSPs providing payment services in relation to the significant e-money tokens, as referred to in Art. 119(2)(f) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.			
3.	Overall, respondents agreed with the proposed criteria. However, one respondent raised a concern that the issuer might not be able to determine which are the most relevant PSPs providing payment services in relation to a significant EMT.	Regarding the concern raised by one respondent, as explained above, the collection of the data necessary to determine the composition of a college is not part of the scope of these RTS. This being said, the EBA acknowledges that there may not always be a contractual relationship between the issuer and the PSPs providing payment services in relation to a significant EMT, which may mean that the issuer may not always have full visibility on who those PSPs are.	No amendment

No	Summary of responses received	EBA analysis	Amendments to the proposals
Q4. Do you agree with the criteria proposed in Art. 2(4) and (5) of the draft RTS for assessing which are the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients, as referred to in Art. 119(2)(h) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.			
4.	Overall, respondents agreed with the proposed criteria. However, one respondent raised a concern that the issuer might not be able to determine the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients in relation to the significant ART/EMT.	As explained above, the collection of the data necessary to determine the composition of a college is not part of the scope of these RTS. This being said, the EBA expects that the issuer can obtain the information relevant for identifying the most relevant CASPs referred to in Article 119(2)(h).	No amendment
Q5. Do you agree with the criteria proposed in Art. 3 of the draft RTS for assessing when a significant ART or a significant EMT is “used at large scale” in a Member State, as referred to in Art. 119(2)(l) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.			
5.	One respondent agreed with the criterion in Article 3(1)(a) of the draft RTS, but disagreed with the criteria in Article 3(1)(b). The respondent was of the view that the criteria in Art. 3(1)(b) RTS are inconsistent with those in Art. 43(1)(c) MiCAR and suggested that these criteria should be aligned with the thresholds in Article 43(1)(c) MiCAR.	The EBA disagrees with this view. Article 43(1)(c) of MiCAR specifies one of criteria set out in MiCAR for assessing the significance of an ART, and refers to all transactions with an ART ⁶ , not only to transactions where one of the parties is located in a given Member State. By contrast, the criteria in Article 3(1)(b) of the draft RTS (renumbered as Article 2(1)(b)) aim to determine when a significant ART/EMT is deemed to be used “at large scale” in a given Member State, for the purpose of determining which competent authorities qualify to be members of the college based on Article 119(2)(l) MiCAR. Accordingly, those criteria refer to transactions where at least one party is located in a given Member State.	No amendment
6.	One respondent was of the view it may not be feasible to determine whether the criteria proposed in Article 3(1) (a) and (b) of the draft RTS are met, due to lack of data on the location of holders.	As explained above, the collection of the data necessary to determine the composition of a college is not part of the scope of these RTS. This being said, with regard to significant ARTs, and significant EMTs denominated in a non-EU currency, the assessment of the criteria in Art. 3(1) (renumbered Art. 2(1) in the final draft RTS) can leverage on the information to be reported by issuers under Article 22(1)(a) and (c) of MiCAR, and the final draft ITS under Article 22(7) of MiCAR (EBA/ITS/2024/04)	No amendment

⁶ The criteria in Article 43(1)(c) of MiCAR refer to: “the average number and average aggregate value of transactions in that asset-referenced token per day during the relevant period, is higher than 2,5 million transactions and EUR 500 000 000 respectively”.

No	Summary of responses received	EBA analysis	Amendments to the proposals
		(see in particular the reporting requirements in the draft ITS regarding (i) the number of holders, with a breakdown by the holders` location; and (ii) the transactions in Article 22(1)(c) of MiCAR, with a breakdown by country).	
7.	One respondent was of the view that the criteria in Art. 3(1)(a) and (b) of the draft RTS may not capture the uneven pace of digital adoption across the EU. Said respondent suggested that, in determining the “use at large scale” of a token, “the depth of digital finance adoption and integration in each Member State” should be taken into account.	<p>The EBA is of the view that such metrics may not bring added value in determining the composition of a college based on Article 119(2)(l) of MiCAR, and could make the process of establishing a college overly complex.</p> <p>This being said, the EBA recalls that Article 119(3) of MiCAR provides that the EBA may invite also other authorities to be members of a college, beyond the authorities mentioned in Article 119(2) MiCAR, where the entities they supervise are relevant to the work of the college.</p>	No amendment
Q6. Taking into account the scope of the mandate in Art. 119(8) of MiCAR, do you have suggestions regarding other aspects, beyond those covered in Articles 6 to 11 of the draft RTS, that are relevant for the functioning of supervisory colleges under MiCAR and that, in your view, should be covered by the draft RTS? If yes, please provide your reasoning, and details of the aspects that in your view should be further specified in the draft RTS.			
8.	Respondents agreed with the provisions in the draft RTS regarding the functioning of supervisory colleges, and did not raise any comments in this regard.		No amendment
Other comments			
9.	<p>One respondent suggested an alternative approach for the identification of the most relevant entities referred to in Article 119(2) of MiCAR, whereby the importance of a third-party service provider would be assessed based on its services in relation to not only one significant ART/EMT, but in relation to several tokens.</p> <p>In said respondent’s view, such an approach would have the following advantages: (i) it would lead to less colleges as there is no need to create a college for every single token; (ii) third-party service providers will not be determined to be significant in several different colleges; (iii)</p>	<p>The EBA disagrees and is of the view that such an approach would not adequately reflect the relevance of an entity for the purpose of Article 119(2)(d), (e), (f) and (h) of MiCAR. Also, the approach suggested may not ensure an adequate representation of the relevant competent authorities in colleges.</p> <p>With regard to the claim that such an approach would lead to the creation of less colleges, the EBA notes that, according to Article 119(1) MiCAR, the obligation for the EBA to establish a college applies when an ART or an EMT is classified as significant according to MiCAR, irrespective of the overall activities of the entities referred to in Article 119(2)(d), (e), (f) and (h) in relation to other tokens.</p>	No amendment

No	Summary of responses received	EBA analysis	Amendments to the proposals
	third-party service providers that are slightly below the threshold for several tokens will also be recognized; (iv) reduced operational effort and costs.	Finally, the EBA notes that the qualification of an entity as being the ‘most relevant’ in its category for the purpose of Article 119(2)(d), (e), (f) and (h) in relation to a significant ART/ EMT does not exclude the possibility of that entity also being considered as the most relevant in its category for a college established in relation to a different significant ART/EMT.	