

EBA/CP/2023/37

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7 December 2023

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# Consultation Paper

Draft Regulatory Technical Standards

specifying the requirements for policies and procedures on  
conflicts of interest for issuers of asset-referenced tokens under  
Article 32(5) of Regulation (EU) 2023/1114

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# 1. Responding to this consultation

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

Comments are most helpful if they:

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

## Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 7 March 2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

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

## Data protection

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

## 2. Executive Summary

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Article 32(1) of Regulation (EU) 2023/1114 (MiCAR) requires issuers of asset-referenced tokens (ARTs) to implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest (Col).

Article 32(5) of MiCAR requires the EBA to develop Regulatory Technical Standards (RTS) specifying the requirements for those policies and procedures as well as the details and methodology for the content of the disclosure. The European Securities and Markets Authority (ESMA) is mandated to develop similar RTS for crypto-asset service providers (CASPs) under Article 72(5) of MiCAR.

The Col policies and procedures of the issuers of ARTs should ensure that issuers consider all the circumstances which may influence or affect, or which may be perceived to influence or affect, their ability or the ability of the parties connected to an issuer of ARTs to take impartial and objective decisions.

Ensuring the sound management of the reserve of assets and contributing to the protection of holders and prospective holders of ARTs is key. For that purpose, the draft RTS require the issuer to give particular attention to the Col that could arise when it manages and invests the reserve of assets, including when third parties are involved.

The draft RTS encompass specific provisions, including documentation requirements, related to personal transactions that have to be conducted objectively, in the interest of each party. The draft RTS also specify that the remuneration procedures, policies and arrangements of the issuer should not create Col.

The draft RTS underline the key role of the issuer's management body, which is responsible to define and adopt the Col policies and procedures. The draft RTS require a person responsible for the management of Col with adequate resources at hand. Finally, the draft RTS set out the content of the disclosure, which should be accessible to the public, both in term of sources (internet) and language.

The present draft RTS on conflicts of interest for issuers of ARTs is closely aligned with the RTS on Col for CASPs to provide for convergence of the requirements. Some differences nevertheless exist, which are justified by the different activities involved. The provisions of the draft RTS draw on the framework on Col under Directive 2014/65/EU (MIFID) and Directive 2013/36/EU (CRD), but are tailored to the specific business model of issuers of ARTs.

The provisions of the draft RTS will strengthen the management of Col by issuers of ARTs and ensure convergence of requirements across the European Union.

### Next steps

EBA is consulting on the draft RTS for a period of three months. It is expected that the final RTS will be available when MiCAR enters into force.

## 3. Background and rationale

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1. Crypto assets can bring opportunities in terms of innovative digital services, alternative payment instruments or new funding mechanisms for Union companies. At the same time, the crypto assets' ecosystem evolves fast and its interconnectedness with the traditional financial system increases. It could pose risks to crypto-asset activities, financial institutions, consumers, investors and to the financial stability.
2. Trust in the reliability of the financial system is crucial for its proper functioning and to contribute to the economy. Against this backdrop, there is a clear need to ensure that issuers of ARTs develop and implement appropriate Col policies and procedures.
3. Col policies and procedures should ensure that issuers of ARTs identify, prevent, manage and disclose Col. All the activities of the issuers of ARTs should be covered. This includes the issuance, processing, and redemption of ARTs as well as the investment or management of the reserve of assets. The Col issuers of ARTs should take into account are the ones that could potentially be detrimental to the holders of ARTs or to the issuer itself. Col affecting or potentially affecting the interests of issuers may affect its performance and reputation and thus indirectly affect the interest of holders of ARTs.
4. In order to provide for convergence of the requirements, the draft RTS on Col for issuers of ARTs that the EBA is proposing to issue is closely aligned with the RTS on Col for CASPs elaborated by ESMA. Some differences nevertheless exist, which are justified by the different activities involved. This is the case for instance regarding the management of Col towards the holder of ARTs as the final distribution of ARTs to the economy and investors is usually performed by CASPs.
5. The draft RTS also draw on a number of sources including the MiFID framework on Col, because of the similarities of business models with issuers of financial instruments and the requirements under CRD, to ensure a cross sectoral consistency. They also draw on the provisions of the EBA's [Guidelines on internal governance under the IFD \(Directive 2019/2034\)](#)<sup>1</sup>, the [Guidelines on outsourcing arrangements](#)<sup>2</sup> as well as the crowdfunding rules on Col<sup>3</sup>.
6. The draft RTS take into account the principle of proportionality. The policies and procedures of the issuer should be commensurate with its size, internal organisation, and to the group where applicable. They should also be relevant to its business model, suitable for the nature, scale and complexity of its activities and sufficient to effectively achieve the objectives of Article 32(1) of MiCAR.

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<sup>1</sup> EBA/GL/2021/14

<sup>2</sup> EBA/GL/2019/02

<sup>3</sup> COMMISSION DELEGATED REGULATION (EU) 2022/2111 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2111&from=EN>

7. Ensuring the sound governance and management of issuers of ARTs is fundamental for their functioning. All situations which may influence or affect, or which may be perceived to influence or affect, the issuers' ability or the ability of any person connected to the issuers to take impartial and objective decisions should be considered. Connected persons include notably its employees, members of the management body, shareholders or members including those whether direct or indirect, that have a qualifying holding in the issuers of ARTs.
8. The Col policies and procedures should specifically cover the conflicts that may impede the ability of members of the management body to take objective and impartial decisions. This is the case where a member has or may have a Col or where the member's objectivity or ability to properly fulfil his or her duties to the issuer of ARTs may be otherwise compromised. To tackle those situations, the Col policies and procedures should require members of the management body to identify Col also in their decision making, to inform other members of the management body about those Col and to abstain from voting in those situations.
9. In order to prevent the issuer from a reputational damage, the Col policies and procedures should ensure that in circumstances where it is not possible to manage the Col, measures are in place to ensure that those Col are prevented. This is the case for example, in situations where the risks of Col could lead to market abuse as set out in title VI of MiCAR.
10. The draft RTS request the issuer of ARTs to pay particular attention to the potential Col when it manages and invests the reserve of assets so as to protect holders and prospective holders of ARTs. For the same reason, issuers of ARTs should have in place arrangements for the reliance on third party entities that provides one of the functions as referred in Article 34(5), point (h) of MiCAR. Those arrangements should, in particular, oblige the third party to act in a manner consistent with the Col policies and procedures elaborated by the issuer of ARTs.
11. Issuer of ARTs' management body should define and adopt the Col policies and procedures. Where the issuer of ARTs is a member of a group, the policies and procedures shall also take into account any circumstances which may give rise to a Col due to the structure and business activities of other entities within the group.
12. For Col to be effectively managed, the policies and procedures should ensure that there are sufficient resources available for their management. The staff in charge of those responsibilities should be independent from the business they control and have the necessary skills, knowledge and expertise. For the same reason, the person responsible for the management of Col should be able to access and report directly to the management body.
13. The draft RTS contain specific provisions on personal transactions to ensure their sound management. In line with the principle of proportionality, the draft RTS focus on the exchange of ARTs issued by the issuer for funds or other crypto assets including redemption of ARTs. The transactions concerned include those performed by connected persons, by any person with whom a connected person has a close family relationship or other close links.
14. The arrangements regarding personal transactions should ensure they are identified or notified before a decision is taken and documented. Decision to enter into personal transactions need to be taken at arm's length, i.e. objectively, in the interest of each party, and should correspond

to the conditions that would have applied between independent parties for the same transaction in the absence of a Col.

15. Issuers of ARTs should ensure remuneration procedures, policies and arrangements do not create Col, including those that could be caused by the award of variable remuneration. Those measures are consistent with the provisions on remuneration policies applicable to issuers of significant ARTs as set out in the RTS on the minimum content of the governance arrangements on the remuneration policy for issuers of significant ARTs.
16. According to the mandate, the EBA has to set out RTS on *'the details and methodology for the content of the disclosure'*. The draft RTS make clear that issuers of ARTs should not rely on disclosures as a way to manage Col. The disclosure should be accessible to the public both in terms of sources (internet) and language, contain the detailed required and updated at all times. On the language of the disclosure, the draft RTS differ from the requirements requested to CASPs<sup>4</sup> for proportionality reasons. Indeed, issuers of ARTs do not perform the final distribution of the tokens and could be of a small size.

## Legal Basis

17. In September 2020, the European Commission published its legislative proposal for a regulation on markets in crypto-assets (MiCAR), with a view to create a holistic approach to the regulation and supervision of crypto-asset activities that are not already covered by EU law. On 29 June 2023, the MiCAR, entered into force in the European Union. The provisions relating to ARTs will apply from 30 June 2024.
18. Article 32(1) of MiCAR requires issuers of ARTs to implement and maintain effective policies and procedures to identify, prevent, manage and disclose Col. The Col concerned are the ones that could arise between the issuers of ARTs and a defined list of persons or parties. This list includes the holders of ARTs but also the shareholders or members of the issuers of ARTs, any shareholder or member whether direct or indirect that has a qualifying holding in the issuers, the members of their management body and their employees. It includes as well any third-party providing one of the functions as referred in Article 34 (5) first subparagraph, point (h) of that Regulation which are the ones linked with the operating, the investment, and the custody of the reserve assets and, where applicable, the distribution of ARTs to the public.
19. As per Article 32(5) of MiCAR, the EBA is mandated to develop draft RTS specifying the requirements for those policies and procedures as well as the details and methodology for the content of the disclosure. The ESMA is mandated to develop a similar RTS for CASPs under Article 72(5) of that Regulation.

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<sup>4</sup> ESMA's draft RTS provide that the disclosures shall be made available in the languages used by the CASPs to market their services or communicate with clients in the relevant Member State



# 4. Draft regulatory technical standards

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

of **XXX**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council as regards to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for issuers of asset-referenced tokens**

(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, of 31 May 2023<sup>5</sup>, and in particular Article 32 (5) thereof,

Whereas:

- (1) Pursuant to Article 32(1) of Regulation (EU) 2023/1114, issuers of asset-referenced tokens are to implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest.
- (2) Where implementing and maintaining the policies and procedures required pursuant to Article 32(1) of Regulation (EU) 2023/1114, issuers of asset-referenced tokens should take into account the principle of proportionality with a view to ensuring that the policies and procedures are commensurate with their size and internal organisation, and to the group where applicable, relevant to their business model, suitable for the nature, scale and complexity of their activities and sufficient to effectively achieve the objectives of that Article.
- (3) A broad range of situations, relationships and affiliations may create conflicts of interest. When deciding what kind of situations and circumstances should be covered by their conflicts of interest policies and procedures, issuers of asset-referenced tokens should take into consideration all situations which may influence or affect, or which may be perceived to influence or affect, the issuers of asset-referenced tokens' ability or the ability of any person connected to the issuer of asset-referenced tokens such as its employees, members of the management body, shareholders or members, including those, whether direct or indirect, that have a qualifying holding in the issuers, to take impartial and objective decisions.
- (4) Ensuring the sound governance and management of issuers of asset-referenced tokens is fundamental for their functioning and to ensure trust in this segment of the financial market. For this reason, the conflicts of interest policies and procedures should specifically cover those conflicts that may impede the ability of members of the management body to take objective and impartial decisions that aim to be in the best interests of the issuer of asset-referenced tokens without prejudice to the consideration of interests of the holders of asset-referenced tokens.

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<sup>5</sup> OJ L150 [volume 66], [09 June 2023], [p40].

- (5) The reserve of assets is a key element of asset-referenced tokens, and its sound management contributes to the protection of holders of asset-referenced tokens as well as of prospective holders of such tokens. It is essential that when identifying, preventing, managing and disclosing conflicts of interest, issuers of asset-referenced tokens give particular attention to the potential conflicts of interest arising from the management and investment of the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114. Similarly, issuers of asset-referenced tokens should give particular attention to the potential conflicts of interest with third parties that provide services in the context of the reserve of assets, with regard to the operating, the investment or the custody of the reserve assets and, where applicable, the distribution of the asset-referenced tokens to the public. For the same reason, issuers of asset-referenced tokens shall establish, implement and maintain arrangements to ensure that the third party, that provides one of the functions as referred in Article 34(5), point (h) of that Regulation act in a manner consistent with their conflicts of interest policies and procedures.
- (6) Pursuant to Article 32(1) of Regulation (EU) 2023/1114, the potential and actual conflicts of interest to be taken into consideration by issuers of asset-referenced tokens in their conflicts of interest policies and procedures should be those affecting, or potentially affecting, the interests of holders of asset-referenced tokens as well as those affecting or potentially affecting the interests of the issuer of asset-referenced tokens which may affect its performance and situation and thus, indirectly, also affect interests of holders of asset-referenced tokens.
- (7) In order to ensure that conflicts of interest policies and procedures meet their objective, issuers of asset-referenced tokens should not rely on disclosure requirements to holders of their asset-referenced tokens set out in Article 32(3) of Regulation (EU) 2023/1114 as a way to manage conflicts of interest. Instead, they should ensure the identification, prevention and management of conflicts of interest. Where a conflict of interest occurs, the issuer of asset-referenced tokens should manage it, by assessing and evaluating it and deciding on and implementing appropriate measures to mitigate or prevent it so as to ensure that holders of asset-referenced tokens interests as well as the issuer of asset-referenced tokens' interests are sufficiently protected.
- (8) As such, the steps taken to mitigate conflicts of interest, in accordance with Article 32(3) of Regulation (EU) 2023/1114, should ensure with reasonable confidence that risks of damage to holders of asset-referenced tokens' interests or to the issuer of asset-referenced tokens will be appropriately mitigated.
- (9) To ensure trust in the issuer of asset referenced token as well as to prevent the issuer from a reputational damage or from legal risks, the conflicts of interest policies and procedures should identify conflicts of interest that should be prevented, as those conflicts of interest could otherwise not be effectively managed and disclosed by the issuer.
- (10) For the purpose of ensuring at all time their appropriate implementation, maintaining and review, conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 should ensure that there are sufficient resources available that are responsible for the management of conflicts of interest and that are independent from the business they control. Such dedicated resources should also have the necessary skills, knowledge and expertise. For the same reason, the person responsible for the management of conflicts of interest should be able to access and report directly to

the management body in its management function and, where applicable, in its supervisory function, where necessary.

- (11) To ensure that holders of asset-referenced tokens can take an informed decision about the asset-referenced-tokens, issuers of asset-referenced tokens should keep up-to-date the information disclosed to the holder of asset-referenced tokens in accordance with Article 32(3) of Regulation (EU) 2023/1114, about the general nature and sources of conflicts of interest as well as the steps taken to mitigate them. This disclosure should include a description of the identified conflicts of interest and the measures taken to manage or prevent them.
- (12) In order to make clear to holders of asset-referenced tokens in what capacity or capacities the issuer of asset-referenced tokens is acting, especially as it may often be operating in close cooperation with affiliated entities or entities of the same group, the disclosures referred to in Article 32(3) of Regulation (EU) 2023/1114 should include a sufficiently detailed, specific and clear description of the situations which give or may give rise to conflicts of interest, including the role and capacity in which the issuer of asset-referenced tokens is acting and whether the issuer of asset-referenced tokens is part of a group comprising also a crypto asset service providers.
- (13) For the same reason, as well as to ensure appropriate investor protection, prospective holders and holders of asset-referenced tokens should have access to the disclosures referred to in Article 32(3) of Regulation (EU) 2023/1114 in a language with which they are familiar. Therefore, issuers of asset-referenced tokens should make available such disclosures in an official language of the home Member State and in a language customary in the sphere of international finance. Where the asset-referenced tokens are also offered in a Member State other than the home Member State, the disclosure may also be made available in an official language of the host Member State. At the time of adoption of this Regulation, the English language is the language customary in the sphere of international finance but that could evolve in the future.
- (14) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the European Banking Authority Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>6</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:

- (a) ‘connected person’ means any of the persons referred to in Article 32(1), point (a) to (d) and point (f) of Regulation (EU) 2023/1114.

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<sup>6</sup> Regulation (EU) No 109x/2010 of the European Parliament and of the Council ...[+full title] (OJ L [number], [date dd.mm.yyyy], [p. ]).

(b) ‘group’ means a group as defined in Article 2(11) of Directive 2013/34/EU<sup>7</sup>.

## *Article 2*

### **Conflicts of interest potentially detrimental to the holders of asset-referenced tokens**

1. For the purposes of identifying the types of conflicts of interest that arise in the course of issuing, processing and redeeming asset-referenced tokens or of investing or managing the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114 and whose existence may damage the interests of holders of asset-referenced tokens, issuers of asset-referenced tokens shall take into account, whether any connected person is in any of the following situations:

- (a) it is likely to make a financial gain, avoid a financial loss, or receive another kind of benefit, at the expense of the holder of asset-referenced tokens;
- (b) it has an interest in the outcome of an activity carried out to the benefit of the holder of asset-referenced tokens, including the redemption of the token, which is distinct from the interest of the holder of asset-referenced tokens;
- (c) it carries out the same business as any holder of asset-referenced tokens.

2. For the purposes of identifying the types of conflicts of interest that arise in the course of their activities, notably, when they invest and manage the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114, the issuer of asset-referenced tokens shall assess whether it receives or will receive from a person other than the holder of asset-referenced tokens an inducement in relation to that activity in the form of monetary or non-monetary benefits or services in a way that may damage the interest of the holder of asset-referenced tokens.

## *Article 3*

### **Conflicts of interest potentially detrimental to the issuer of asset-referenced tokens**

1. For the purposes of identifying the circumstances which could adversely influence the performance of a connected person’s duties and responsibilities, in particular when investing and managing the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114, issuers of asset-referenced token shall take into account situations or relationships where a connected person:

- (a) has an economic interest in a person, body or entity with interests conflicting with those of the issuer of asset-referenced tokens;

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<sup>7</sup> 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).

(b) has or has had within at least the last 3 years a personal relationship with a person, body or entity with interests conflicting with those of the issuer of asset-referenced tokens;

(c) has or has had within at least the last 3 years a professional relationship with a person, body or entity with interests conflicting with those of the issuer of asset-referenced tokens;

(d) has or has had within at least the last 3 years a political relationship with a person, body or entity with interests conflicting with those of the issuer of asset-referenced tokens;

(e) carries out conflicting activities, is entrusted with conflicting responsibilities.

2. For the purposes of identifying the persons, bodies or entities with conflicting interests, as set out in paragraph 1, issuers of asset-referenced tokens shall take into account whether that person, body or entity is in any of the following situations:

(a) it is likely to make a financial gain, or avoid a financial loss, at the expense of the issuer of asset-referenced tokens;

(b) it has an interest in the outcome an activity carried out or a decision taken by the issuer of asset-referenced tokens, which is distinct from the issuer of asset-referenced token's interest in that outcome;

(c) it carries out the same business as the issuer of asset-referenced tokens or is a holder of asset-referenced tokens, consultant, adviser, delegatee, outsourcee, service providers or other supplier including subcontractors of the issuer of asset-referenced tokens.

3. For the purposes of paragraph 1, point (a), issuers of asset-referenced tokens shall take into account the following situations or relationships where the connected person:

(a) holds shares, tokens (including governance tokens), other ownership rights or membership in that person, body or entity;

(b) holds debt instruments of or has other debt arrangements with that person, body or entity;

(c) has any form of contractual arrangements, such as management contracts, service contracts, delegation or outsourcing contract or intellectual property licenses, with that person, body or entity.

## Article 4

### Conflicts of interest policies and procedures

1. The conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall be set out in writing. The issuer of asset-referenced tokens' management body shall be responsible for the definition, adoption, permanent implementation of these policies and procedures, and for periodically assessing and reviewing their effectiveness and addressing any deficiencies in that respect.

Issuers of asset-referenced tokens shall establish effective internal channels to inform employees and management body of such rules and provide appropriate updated training.

2. Where the issuer of asset-referenced-token is a member of a group, the policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall also take into account any circumstances which may give rise to a conflict of interest due to the structure and business activities of other entities within the group.

3. The conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall include the following content:

(a) a description of the circumstances which may give rise to a conflict of interest in accordance with Article 2, Article 3;

(b) the policies and procedures to be adopted in order to prevent or manage, and disclose, such conflicts.

4. The policies and procedures referred to in paragraph 3, point (b), should differentiate between conflicts of interest that persist and need to be managed permanently and conflicts of interest that occur with regard to a single event for which a one-off measure can be appropriate.

5. The policies and procedures referred to in paragraph 3, point (b), shall specify rules:

(a) for reporting and communicating promptly any matter that may result, or has resulted, in a conflict of interest using the reporting channel;

(b) to prevent and control the exchange of information between connected persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of the holder of asset-referenced tokens or may affect the performance of such connected person's duties and responsibilities;

(c) to ensure that conflicting activities or transactions are entrusted, where possible, to different persons or otherwise be subject to additional monitoring;

(d) to prevent connected persons who are also active outside the issuer of asset-referenced tokens from having inappropriate influence within the issuer of asset-referenced tokens regarding those other activities;

(e) to cover the risk of conflicts of interest at the level of the management body, or its committees, that provide sufficient guidance on the identification and management of conflicts of interest that may impede the ability of members of the management body to take objective and impartial decisions that aim to fulfil the best interests of the issuer;

(f) to establish the responsibility of the members of the management body to inform other members of and abstain from voting on any matter where a member has or may have a



conflict of interest or where the member's objectivity or ability to properly fulfil his or her duties to the issuer of asset-referenced tokens may be otherwise compromised;

(g) to prevent members of the management body from holding directorships in competing issuers outside of the same group;

The policies and procedures listed in this paragraph shall cover the management and investment of the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114.

6. The policies and procedures referred to in paragraph 3, point (b), shall ensure with reasonable confidence that risks of damage to holders of asset-referenced tokens or the issuer of asset-referenced tokens' interests will be prevented or appropriately mitigated.

The policies and procedures shall ensure that in circumstances where it is not possible to manage the conflicts of interest, measures are in place to ensure that those conflicts of interest are prevented.

7. The conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall specify that issuers of asset-referenced tokens have to keep records and document the types of activities or situations giving rise or which may give rise to conflicts of interest of the kind referred to in Article 2(1) and Article 3(1) and the measures taken to mitigate such conflicts in the relevant situations.

## *Article 5*

### **Scope of personal transactions**

1. A personal transaction shall be an exchange of asset-referenced tokens issued by the issuer for funds or other crypto assets including redemption of asset-referenced tokens where the personal transaction is carried out for the account of any of the following persons:

(a) the connected person;

(b) any person with whom a connected person has a close family relationship, or close links;

(c) a person in respect of whom the connected person has a direct or indirect material interest in the outcome or the conditions of the personal transaction, other than obtaining a fee or commission for the execution of the transaction.

2. For the purposes of paragraph 1, point (b), "person with whom a connected person has a close family relationship" shall mean any of the following:

(a) the spouse of the connected person or any partner of that person considered by national law as equivalent to a spouse;

(b) a dependent child or stepchild of the connected person;

(c) any other relative of the connected person who has shared the same household as that person for at least one year on the date of the personal transaction concerned or the previous 5 years.

## *Article 6*

### **Policies and procedures on personal transactions in relation to conflicts of interest**

1. Issuers of asset-referenced tokens shall establish, implement and maintain adequate arrangements aimed at ensuring that personal transactions are identified or notified before a decision is taken, documented and that decisions to enter into personal transactions are taken objectively, in the interest of each party, and shall correspond to the conditions that would have applied between independent parties for the same transactions in the absence of a conflict of interest.

2. The arrangements shall be designed to ensure that:

(a) the applicable decision-making processes for entering into personal transactions is set out. The issuer of asset-referenced tokens shall set appropriate thresholds (per transaction or depending on the conditions) above which the personal transaction requires the approval by the management body;

(b) each connected person is aware of the rules applied on personal transactions, and of the measures established by the issuer of asset-referenced tokens in connection with personal transactions;

(c) the issuer of asset-referenced tokens is informed promptly of any personal transaction entered into by a connected person, either by notification of that transaction or by other procedures enabling the issuer of asset-referenced tokens to identify such transactions;

(d) a record and documentation is kept of the personal transaction notified to the issuer of asset-referenced tokens or identified by it, including any authorisation or prohibition in connection with such a transaction.

3. In the case of the provision of services by a third party, the issuer of asset-referenced tokens shall ensure that the entity from whom the service is received maintains a record of personal transactions entered into by any connected person and provides that information to the issuer of asset-referenced tokens promptly on request.

## *Article 7*

### **Remuneration procedures, policies and arrangements**

Issuers of asset-referenced tokens shall within their policies and procedures ensure that remuneration procedures, policies and arrangements:

(a) do not create a conflict of interest or provide for incentives in the short, medium or long term that may lead the employees or members of the management body to favour their own interests or the issuer of asset-referenced tokens' interests to the potential detriment of any holder of asset-referenced tokens, shareholders or members of the issuer of asset-referenced tokens;

(b) identify and appropriately mitigate conflicts of interest potentially caused by the award of variable remuneration, underlying key performance indicators and risk alignment



mechanisms, including the pay out of instruments to employees or management body as part of the variable or fixed remuneration.

### *Article 8*

#### **Arrangements with third parties providing one of the functions as referred in Article 34(5), point (h) of Regulation (EU) 2023/1114**

1. Issuers of asset-referenced tokens shall within their policies and procedures ensure that the written arrangements with the third party providing one of the functions as referred in Article 34(5), point (h) of Regulation (EU) 2023/1114 :

(a) oblige the third party to act in a manner consistent with the conflicts of interest policies and procedures elaborated by the issuer of asset-referenced tokens referred to in Article 4;

(b) ensure that when the functions as referred in Article 34(5), point (h) of Regulation (EU) 2023/1114 are provided by a third party that is part of the same group as the issuer of asset-referenced tokens, the conditions, including financial conditions, are taken objectively, in the interest of each party, and shall correspond to the conditions that would have applied between independent parties for the same transactions in the absence of a conflict of interest. However, within the pricing of services synergies resulting from providing the same or similar services to several entity within a group may be factored in, as long as the service provider remains viable on a stand-alone basis; within a group this shall be irrespective of the failure of any other group entity;

(c) ensure that the fees offered to provide one of the functions as referred in Article 34(5), point (h) of Regulation (EU) 2023/1114 do not promote the issuer or the third party's own interest in a way that may conflict with the holder of asset-referenced tokens' interests.

### *Article 9*

#### **Adequate resources**

1. The conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall ensure that the issuer of asset-referenced tokens appoints a person responsible for the management of conflicts of interest, being independent from the business they control, and having available sufficient resources at all times for an appropriate implementation, maintaining and review of those policies and procedures. Such policies and procedures shall also define the minimum skills, knowledge and expertise necessary for employees to discharge their responsibilities and ensure they have access to all relevant information. They shall set out the internal reporting channel of the conflicts of interest.

2. The conflicts of interest policies and procedures referred to in Article 32(1) of Regulation (EU) 2023/1114 shall specify that the person in charge of the management of conflicts of interest shall access and report directly to the management body on at least an annual basis, as well as, where material deficiencies are identified, on an ad hoc basis, on the management of the conflicts of interest including:

(a) a detailed description of the situations referred to in Article 9 paragraph 1;

- (b) the measures taken to prevent and mitigate conflicts of interest arising or which may arise from the situations referred to in Article 9 paragraph 1;
- (c) the deficiencies identified in the issuer of asset-referenced token's conflicts of interest policies, procedures and arrangements and the measures taken to remedy them.

### *Article 10*

#### **Disclosures of the general nature and source of conflicts of interest and the steps taken to mitigate them**

1. Issuers of asset-referenced tokens shall keep the information referred to in Article 32(3) of Regulation (EU) 2023/1114 updated at all times.
2. The disclosure made in accordance with Article 32(3) of Regulation (EU) 2023/1114 shall contain
  - (a) the circumstances giving rise or which may give rise to conflicts of interest of the kind referred to in Article 2(1) and Article 3(1), including the role and capacity in which the issuer is acting in relation to the holder of asset-referenced tokens. Where the issuer of asset-referenced tokens is also a crypto asset-service provider it shall be set out clearly in the disclosure;
  - (b) the nature of the conflicts of interest identified;
  - (c) the associated risks identified in relation to the conflicts of interest referred to in (a) above;
  - (d) the steps and measures taken to prevent or mitigate the identified conflicts of interest.
3. The disclosure to the holders of asset-referenced token referred to in paragraph 2 shall not be considered as a means or a way to manage and mitigate conflicts of interest.
4. The disclosure referred to in paragraph 2 shall be available to holders of asset-referenced tokens on the website of the issuer of asset-referenced tokens and be accessible at all times. Where the issuer of asset-referenced tokens offers asset-referenced tokens to the public or seek admission to trading on the relevant device, the issuer of asset-referenced tokens should also provide, on its website, a link to the disclosures.
5. The disclosure referred to in paragraph 2 shall be made available by issuer of asset-referenced tokens in an official language of the home Member State and in a language customary in the sphere of international finance. Where the asset-referenced tokens are also offered in a Member State other than the home Member State, the disclosure may also be made available in an official language of the host Member State.

*Article 11*

**Entry into force and application**

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

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### 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 the draft RTS developed by the EBA. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA) which analyses ‘the potential related costs and benefits.’

This analysis presents the IA of the main policy options regarding the draft RTS on the identification, prevention, management and disclosure of conflicts of interest under Article 32(5) under MiCAR.

#### A. Problem identification

MiCAR sets out a new legal framework for the issuers of ARTs and e-money tokens (EMTs). This includes the obligation of issuers of ARTs to implement and maintain policies and procedures to identify, prevent, manage and disclose conflicts of interest between themselves and a range of stakeholders (shareholders or members, including, those with qualifying holdings, members of management body, employees, holders of ARTs, third party providers operating, investing or providing custody of the reserve of assets, and third party providers distributing the ARTs to the public).

A broad range of situations, relationships and affiliations may create conflicts of interest. Such situations may influence or affect, or may be perceived to influence or affect, the issuers of ARTs’ ability or the ability of any person connected to the issuer of ARTs such as its employees, members of the management body, shareholders to take impartial and objective decisions. In turn this may damage the best interests of the issuer of ARTs and / or the interests of the holder of asset-referenced token.

In addition, various crypto-asset entities combine multiple functions. For example, in addition to issuing ARTs, they could also be authorised as crypto-assets service providers, which increases interconnectedness and the risk of contagion with cryptoasset markets.

#### B. Policy objectives

The aim of these RTS is to specify the requirements for the issuers of the ARTs in identifying and most importantly addressing the existing or potential conflicts of interest.

The RTS were mostly inspired from the MiFID II framework on conflicts of interest, due to the similarities of business models of issuers of ARTs with issuers of financial instruments as well as from the existing CRD framework on conflicts of interest. To ensure a consistent framework, the RTS also drew on the relevant general principles included in the [Guidelines on internal governance](#)

[under the IFD](#) as well as the [Guidelines on outsourcing arrangements | European Banking Authority \(europa.eu\)](#). Furthermore, the RTS have taken inspiration from the RTS specifying conflicts of interest requirements for crowdfunding service providers.

To foster convergence of requirements between ART issuers and CASPs, considering, in particular, that some issuers of ARTs will very likely also be authorised as CASPs, the draft provides to the extent possible consistency with the ESMA draft, while adjusting for issuers of ARTs.

Finally, the RTS have taken inspiration from the IOSCO Principles and Standards as well as the FSB work<sup>8</sup> to economically equivalent crypto-assets and activities to address the sizeable and proximate market integrity and investor protection risks in the sector, covering conflicts of interest (among others).

### C. Baseline scenario

In a baseline scenario, the issuers of ARTs would need to apply the MiCAR requirements to identify, prevent, manage and disclose conflicts of interest in line with Article 32 of the MiCAR, without further specifications of the requirements for the policies and procedures as well as without details and methodology for the content of the disclosure. This scenario would lead to divergent approaches. This in turn would lead to competent authorities having data that is not comparable and for the holders or potential holders of ARTs to have very dispersed, unorganised information in the disclosures. Moreover, such a divergence in approaches may lead to unreliable identification of conflicts of interest which will create level playing field issues. This would also lead ultimately to a weaker identification, prevention and management of conflicts of interest and would not meet the objectives of MiCAR explained above.

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

### D. Options considered

This section looks at alternative policy options considered.

#### **Policy issue: Alignment with ESMA RTS on conflicts of interest for CASPs**

Option A: Full alignment with ESMA RTS on conflicts of interest under MiCAR

Option B: RTS Alignment with ESMA's version, while taking into account the specificities of issuers of ARTs

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<sup>8</sup> [High-level Recommendations for the Regulation, Supervision and Oversight of Global Stablecoin Arrangements](#) And [High-level Recommendations for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets'](#)

Under MiCAR Article 72 (5), ESMA is mandated to develop RTS on Identification, prevention, management, and disclosure of conflicts of interest by CASPs, similarly to the EBA mandate in Article 32.<sup>9</sup>

Option A envisages full alignment with ESMA's RTS. Such an approach would ensure consistency across MiCAR and especially in cases when an entity is both a CASP and an issuer of ART. However, due to the different business models of CASPs and issuers of ARTs, the conflicts of interest that may arise for each of these entities may differ. Indeed, for example, the final distribution of tokens to the economy and investors is performed by the CASPs and not the issuer of ARTs. In the case of CASPs, there could be conflicts of interest between individual clients or groups of clients of the crypto asset service provider, while those are not covered by the legal mandate given to the EBA related to the issuers of ARTs. Given these differences, the full alignment of the two RTS (Option A) would not be appropriate.

Option B instead aligns the EBA's RTS with ESMA RTS, while taking into accounts specificities of issuers of ARTs. For example, the legal mandate given to the EBA covers the conflicts of interest between the issuer of ARTs and third parties providing one of the functions as referred in Article 34(5) point (h) regarding the operation, the investment, and the custody of the reserve assets and, where applicable, the distribution of the ARTs to the public, an area that is not relevant for CASPs. Similarly, Option B enables to provide additional clarifications inspired from principles in the existing EBA's Guidelines not taken into account at this stage in ESMA's draft such as the setting up of the minimum timeline to consider personal or professional relationships. Such an approach ensures maximum consistency, but also relevance to the issuers of ARTs' business models and greater clarity.

Therefore, Option B is preferred.

#### E. Cost-Benefit Analysis

When comparing with the baseline scenario (where the issuer will need to identify, prevent, manage, and disclose conflicts of interest without specifications on policies and procedures and without a clear methodology or guidance on the information to be disclosed), the RTS are expected to bring benefits by providing a more comprehensive framework for the identification, prevention and management of Col, ensuring that all main elements are covered, and strengthening the governance related to the Col. In addition, the RTS will allow achieving a higher level of harmonisation of methodology, comparability of data, and better data quality. This in turn will lead to better more investor protection, as investors will be better informed, with data that is of good quality and comparable across issuers. It will also contribute to more effective supervision and monitoring of the ART issuers, in line with the MiCA requirements. In that way, these RTS contribute to ensuring the safety and soundness of the European financial system.

The RTS are expected to lead to moderate costs to issuers in relation to the application of the methodology for disclosures. The costs related to the adoption of policies and procedures are

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<sup>9</sup> The Consultation Paper for this RTS as well as other mandates was published on 12 July 2023.

expected to be small, as they would need to be developed in any case in accordance with MiCAR requirements. Overall, the costs are expected to be moderate, given that the costs of the RTS are only incremental to the costs for implementing the existing requirements set out in MiCAR.

Stakeholders	Cons	Pros
Issuers of ARTs	Incremental administrative costs related to the application of the requirements in the RTS, including identification, prevention, management, and disclosure of COIs.	<p>Stronger framework and more robust governance for the identification, prevention, management, and disclosure of COIs.</p> <p>Harmonized and comprehensive approach to identification, prevention, management and disclosure of conflicts of interest</p> <p>Investor protection and trust in the issuer and the financial system</p>
Shareholders, or members, shareholders or members, whether direct or indirect, that has a qualifying holding, members of the management body , employees	Costs related to the assessment of existence of actual or potential COIs	
Holders of ARTs	None	<p>Better and more comparable information on conflicts of interest, more awareness and transparency related to ARTs</p> <p>Investor protection</p>
Third parties providing one of the functions listed in Article 34(5) point h) of the MiCAR	Costs related to arrangements with the issuer of ARTs related to the Conflicts of Interest (see Article 8 of the draft text)	

Competent authorities	None	Investor protection and safety and soundness of the European financial system  Facilitation of supervision of the application of the RTS
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## 5.2 Overview of questions for consultation

Q1: Do you have any comments on the definitions proposed in Article 1? If so, please explain your reasoning.

Q2: Do you think that other types of specific circumstances should be covered by Articles 2 and 3?

Q3: Do you think that other types of specific prevention or mitigation measures should be highlighted in Article 4?

Q4: Do you have any comments on the provisions proposed in Article 5 and 6 related to the scope and the arrangements to deal with personal transactions? If so, please explain your reasoning.

Q5: Do you have any comments on the provisions proposed in Article 7 on the Remuneration procedures, policies and arrangements? If so, please explain your reasoning.

Q6: Do you have any comments on the provisions proposed in Article 8 related to the Arrangements with third parties providing one of the functions as referred in Article 34(5), point (h) of Regulation (EU) 2023/1114? If so, please explain your reasoning.

Q7: Do you have any comments on the provisions proposed in Article 9 related to the Adequate resources? If so, please explain your reasoning.

Q8: Do you have any comments on the provisions proposed in Article 10 related to Disclosures of the general nature and source of conflicts of interest and the steps taken to mitigate them? If so, please explain your reasoning.