EBA/CP/2023/28
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# Consultation Paper

## Draft Regulatory Technical Standards

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

**Question 1: Is the procedure clear and the timelines for the issuer to provide views on the assessment and submit the plan reasonable?**

We understand that, given the novelty of issuers of asset-referenced tokens or e-money tokens and the tokens themselves, it is difficult for competent authorities to evaluate the risks of an issuer of asset-referenced tokens or e-money tokens. It is crucial that competent authorities have the flexibility to increase the own funds requirements of issuers of asset-referenced tokens if they observe a higher degree of risk. We appreciate that prior to finalizing the determination referred to in Article 35 (3) of Regulation (EU) 2023/1114, competent authorities shall make available to the issuer of asset-referenced tokens or, where applicable, the issuer of e-money tokens issued by electronic money institutions, a relevant draft thereof and take due account of any views expressed by such issuer.

However, it is unclear in the procedure whether the competent authorities' decision to require the issuer to increase its own funds has been made by weighing and considering the interests of the issuer. In contrast to MiFID, MiCAR provides the opportunity for non-financial small and mid-cap entities to provide relevant (non-financial) services. The requirement for an increase of own fund requirements may have a significant and direct impact and may be greatly detrimental to the business operations, the risk management and also the business case of any issuer of asset-referenced tokens or e-money tokens. Moreover, raising the appropriate capital may be more difficult and costly for crypto asset service providers than for financial institutions since there may be more limited access to the capital markets. Accordingly, there should clearly be a different standard applied by the competent authorities between issuers of asset-referenced tokens and financial institutions.

Therefore, it would be beneficial for transparency reasons to outline in the draft clearly, in addition to the reasoning as to the higher degree of risk according to Art. 1 No. 2 (b), also, if and to what extent the relevant interests of the issuer of the asset-referenced token has been duly considered, specifically with respect to the amount of a potential increase requirement. This is specifically required, since there are no proper limits outlined for such a requirement, which issuers of asset-referenced tokens could anticipate and such requirement could be unbalanced.

**Question 2: Are the timeframes for issuers to adjust to higher own funds requirements feasible?**

We consider the timeframe of one year as feasible. However, the timeframe of three months or less is not feasible. Raising the appropriate capital may be more difficult and costly for crypto asset service providers than for financial institutions since there may be a more limited access to the capital markets. Accordingly, there should clearly be a different standard applied by the competent authorities for issuers of asset-referenced tokens. In order to meet the higher own funds requirements, the issuer may have to raise additional capital, which would take at least six months, or alternatively, the issuer may need to redeem a proportion of the outstanding asset-referenced token to meet the higher own funds requirements. The latter alternative should be avoided, since the redemption of a significant amount of E-money token might trigger market effects.

Therefore, we strongly suggest that the option should be introduced to extend the three months to up to six months if

- the issuer can demonstrate a plan to reach the higher own fund requirements within the next six months, or
- the issuer can demonstrate a plan to mitigate any identified material risks within the next six months.

**Question 3: During the period when own funds need to be increased by the issuer, should there be more restrictions on the issuer to ensure timely implementation of the additional own funds requirements, for example banning the issuance of further tokens?**

While we fully support raising own fund requirements in the event of increased risks to the financial market, it is of utmost importance to be able for the issuer to remain operable and to meet its requirements for the benefit of the markets and the investors, as laid out in the white paper. In particular, it is important to ensure that the asset-referenced token keeps the peg to the specific underlying asset. The creation and redemption of new asset referenced tokens are therefore essential. However, the restrictions should not limit the issuer in providing services deriving from the white paper as well as its regulatory obligations, nor endanger the issuer to significant operational risk. Therefore, we suggest foreseeing a hearing process in which the issuer should have the opportunity to comment on proposed restrictions and explain if certain requirements are operationally not feasible (or not feasible to the proposed extent) or imbalanced, respectively.

In addition, we suggest that EBA elaborate its justification that risk is being mitigated by prohibiting new issuance when own funds are being raised. These funds are linked to operational expenses, not reserve assets. If the risks are “issuer external” and likely to crystallise, issuance throttling might be justified; if it due to relative size with nothing likely to crystallise then there is no justification and own funds increases should form part of the standard regulatory cycle. Regulatory induced throttling etc. could create runs which should be easily manageable but would unduly impact the issuers likelihood of commercial success.

**Question 4: Do you agree with the criteria to identify if an issuer has a higher degree of risk?**

In principle, we agree with the criteria to identify if an issuer has a higher degree of risk. However, specifically for crypto asset service providers not qualifying as financial institutions, the competent authority's methodology of determining whether certain requirements are likely to be breached within the following 12 months, should be made transparent. Moreover, it would be helpful if the terms "stressed conditions" and "significant deterioration of the reserve assets" were clearly defined, so the issuers would be able to adapt to their own risk management, appropriately.

**Question 5: Do you agree with the procedure to assess whether an issuer has a higher degree of risk?**

Please see the answer to question 4 above.

**Question 6: Do you consider the criteria and their evaluation benchmarks sufficiently clear?**

Please see the answer to question 4 above.

**Question 7: Do you agree with the need for a solvency and liquidity stress-test and the requirements of the stress-test?**

In principle, we agree with the need for solvency and liquidity stress-tests and the requirements of the stress-tests.

**Question 8: Do you agree with the frequency and time horizon of the solvency and liquidity stress-test? Should there be more differentiation between significant and not-significant issuers? Should the stress testing be more frequent for issuers of asset-referenced tokens referenced to official currencies?**

While the minimum frequency for solvency stress test shall be at least quarterly for issuers of significant asset-referenced tokens or significant e-money tokens, the minimum frequency for solvency stress tests with respect to issuers of regular, i.e. non-significant, asset-referenced tokens or e-money tokens is rather unclear, i.e. whether the wording "the frequency shall be, at least, semi-annual for such issuers" applies to those issuers. This should be clarified.

We understand that there are several strict requirements applying for the reserve of assets to cover relevant risks, e.g. legal and operational segregation, very specific liquidity requirements, as well as clear investment restrictions. Therefore, we consider the minimum frequency of liquidity stress test on a monthly basis as not required and too onerous.

**Question 9: Should a reverse stress testing requirement/methodology be introduced? Please provide your reasoning**

In our opinion, there is no need to introduce reverse stress testing. As reverse stress tests aim to find exactly those scenarios that cause institutions to default by changing single variables while leaving other variables unchanged, they often lead to results that are highly extreme and rather unrealistic. Therefore, in our opinion the focus should rather be on normal stress testing. However, it is reasonable to implement reserve stress testing for significant issuers on a yearly basis. For non-significant issuers, we do not see justification for such a requirement.

**Question 10: Do you have any other comments in relation to the stress-testing part in these RTS?**

With respect to Art. 9, we request to provide additional guidance regarding how the different types of risks shall be addressed, specifically if there will be fixed calculation guidelines provided.