

Regulating Crypto-Assets: Stablecoins

EU-Requirements to address Financial Stability and Other Risks

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Stablecoins – such as Diem (formerly: Libra) whose launch is scheduled for 2021 – are crypto assets that can be used to buy goods and services and may allow for cheap, safe and fast payments. They can pose risks to investors, financial stability, monetary transmission and the monetary order. Therefore, an EU Regulation on crypto assets proposes requirements for stablecoins and stablecoin issuers.

Key propositions

- ▶ Uniform EU rules on stablecoin issuance increase legal certainty, address the risks to investors, financial stability, monetary transmission and the monetary order and may foster markets for stablecoins.
- ▶ The provisions on stablecoins require further clarity, particularly as regards the differentiation between the two types of stablecoins – Asset-Referenced Tokens (ART) and E-Money Tokens (EMT).
- ▶ Dividing supervisory responsibilities between national authorities and the European Banking Authority is appropriate. However, the rules on rejecting stablecoin projects are too vague, illogical and may stifle innovation.

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1 Introduction

In December 2019, the Council of the European Union and the European Commission issued a joint statement on “stablecoins”, emphasising that „no global stablecoin arrangement should begin operation in the EU until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed“.¹ This call was repeated on 14 September 2020 by the finance ministers from Germany, France, Italy, Spain, and the Netherlands.²

Stablecoins are crypto-assets³ that are mainly used as a means of exchange, e.g. to buy or sell goods and services. The most well-known ones are Tether, USD Coin and DAI. They aim to serve the functions of money more effectively than cryptocurrencies like the well-known Bitcoin do, by providing a higher degree of stability through backing from “reserve assets”.⁴ The most common stablecoins are fiat-backed stablecoins.⁵ They are backed by a fiat currency like the US Dollar or the Euro or a basket of fiat currencies. Unlike cryptocurrencies, stablecoins have a dedicated issuer who may commit to redeeming units of stablecoins and who holds reserve assets to back the stablecoin.

On the one hand, stablecoin projects often promise to enable fast, cheap and safe payments. They may make cross-border transactions more convenient and enhance financial inclusion as bank accounts may no longer be required. They may also allow for disintermediation, i.e. the use of fewer payment providers, thus saving costs. In addition to serving as a means of exchange, stablecoins may become a means to store value. This would e.g. be the case if they offer a more favourable remuneration than bank deposits.⁶

On the other hand, successful stablecoin projects could have a number of repercussions for the stability of financial markets, for monetary transmission and monetary sovereignty. According to the Commission, this is not the case for the 54 existing stablecoins on the market. They have a market capitalisation of more than € 4 billion. However, concerns regarding the far-reaching implications for financial markets and monetary policy have been voiced, particularly in respect of Libra (now: Diem), a stablecoin arrangement that the Libra Association (now: Diem Association) plans to launch in 2021.⁷

As a consequence, in September 2020, the Commission adopted a Digital Finance Package⁸, which

¹ Council of the EU Press Release, Joint statement by the Council and the Commission on "stablecoins", 5 December 2019, point 6, accessible at <https://www.consilium.europa.eu/en/press/press-releases/2019/12/05/joint-statement-by-the-council-and-the-commission-on-stablecoins/>.

² <https://www.eu2020finance.de/en/news/joint-statement-on-asset-backed-crypto-assets-stablecoins>.

³ Crypto assets are digital assets that depend on cryptography – a “technique of protecting information by transforming it into unreadable format that can only be deciphered by someone who possesses a secret key” – and exist on a distributed ledger – “a repeated digital copy of data available at multiple locations.” [European Parliament (2018), Cryptocurrencies and blockchain - Legal context and implications for financial crime, money laundering and tax evasion, July 2018, p. 20; EU Commission (2019), On an EU framework for markets in crypto assets, Consultation document, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, December 2019, p. 56]

⁴ Philipp Eckhardt and Victor Warhem, The money of tomorrow? Cryptocurrencies, stablecoins, central bank digital currencies, cepInput 4/2020, p. 10.

⁵ European Parliament (2019b), Public or Private? The Future of Money, Monetary Dialogue Papers, December 2019, p. 9.

⁶ European Central Bank (2020), Stablecoins: Implications for monetary policy, financial stability, market infrastructure and payments, and banking supervision in the euro area, Occasional paper series, No 247, September 2020.

⁷ Commission Staff Working Document, Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets and amending Directive (EU) 2019/1937, SWD(2020) 380/2, p. 19 and 20.

⁸ EU Commission, Digital Finance Package: Commission sets out new, ambitious approach to encourage responsible innovation to benefit consumers and businesses, Press release, 24 September 2020.

includes Action Plans on Digital Finance⁹ and Retail Payments¹⁰ (see [cepInput](#)). It also proposed the Regulation on Markets in Crypto-assets (MiCA).¹¹ The MiCA Regulation defines and regulates crypto-assets. Stablecoins are a sub-set of these crypto-assets and the MiCA Regulation introduces a common regulatory framework for stablecoins at EU-level. This [cepInput](#) illustrates the proposed new requirements for stablecoin issuers and assesses their suitability. Another [cepInput](#), to be published in the following weeks, sets out in more general terms the aim and content of the MiCA Regulation.

2 Types of Stablecoins

The MiCA Regulation establishes two different types of stablecoins, which share some similarities, but also differ in some respects. It distinguishes between “asset-referenced tokens” (ART) and “e-money tokens” (EMT).¹² Table 1 sets out the most relevant differences.

Table 1: Asset-Referenced Tokens vs. E-Money Tokens

| Asset-referenced tokens (ART) | E-money tokens (EMT) |
|--|--|
| <p>ART are crypto-assets that purport to achieve a stable value by referring to the value of [Art. 3 (1) point (3)]</p> <ul style="list-style-type: none"> – several fiat currencies that are legal tender (e.g. Euro and US-Dollar), or – one or several commodities (e.g. gold, oil), or – one or several crypto-assets (e.g. Bitcoin, Ethereum), or – a combination of such assets. | <p>EMT are crypto-assets that purport to achieve a stable value by referring to the value of [Art. 3 (1) point (4)]</p> <ul style="list-style-type: none"> – one fiat currency that is legal tender (e.g. Euro or the US-Dollar). |
| – | Any EMT is automatically deemed “electronic money” ¹³ as defined under the E-Money Directive (EMD) [Art. 43 (1) lit. c]. |

The Commission may adopt delegated acts to lay down “technical elements” of the definitions relating to ART and EMT and to adapt them to market and technological developments [Art. 3 (2)].

3 The Issuance of Stablecoins: Requirements

3.1 Issuance process

Both ART and EMT must have specific and identifiable issuers. The issuers¹⁴ can issue stablecoins in the

⁹ EU Commission, Communication [COM\(2020\) 591](#) of 24 September 2020, Communication on a Digital Finance Strategy for the EU.

¹⁰ EU Commission, Communication [COM\(2020\) 592](#) of 24 September 2020, Communication on a Retail Payments Strategy for the EU.

¹¹ Crypto-assets are defined under MiCA as “digital representations of value or rights which may be transferred and stored electronically, using distributed ledger technology” [EU Commission, Proposal [COM \(2020\) 593](#) of 24. September 2020 for a Regulation on Markets in Crypto-assets, Art. 3 (1) (2)].

¹² Recital 10 MiCA Regulation.

¹³ Electronic money is defined as “electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions [...], and which is accepted by a natural or legal person other than the electronic money issuer” [Art. 2 (2) of [Directive 2009/110/EC](#) of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institution (in the following: EMD II)].

¹⁴ The issuance of stablecoins by public actors such as the European Central Bank (ECB), the central bank of a Member State, public authorities or the European Investment Bank (EIB) is not covered by the MiCA Regulation [Art. 2 (3) MiCA Regulation]. However, if a crypto-asset service provider (CASP) deals with stablecoins issued by such public entity, such activity is covered by the Regulation.

EU either by offering them to the public in exchange for fiat currency (ART and EMT), commodities (only ART) or other crypto-assets (only ART) or by seeking admission to trade them on a trading platform for crypto-assets¹⁵ [Art. 3 (1) (6) and (7)].¹⁶

- ART may only be issued by issuers that are legal entities established in the EU. There is no specification on the form such legal entities must take. [Art. 15 (2)]
- EMT can only be issued by authorised banks or by authorised electronic money institutions (hereinafter: e-money institutions)¹⁷ [Art. 43 (1) MiCA].

3.2 Authorisation of Stablecoin Issuers

Issuers of ART need a prior authorisation by the competent authority of their home Member State, i.e. the Member State where they have their registered office [Art. 15 (1) and Art. 3 (1) point (22)].¹⁸ Banks that want to issue ART do not need a separate authorisation [Art 15 (4)]. The competent authority will issue a draft decision to approve or deny an application for authorisation. After that, the European Banking Authority (EBA), the European Securities Markets Authority (ESMA), the ECB and, if affected, the central banks of non-euro Member States may issue non-binding opinions on the draft decision. The competent authority may decide to approve or refuse the application, “duly considering” the non-binding opinions. [Art. 18 (1–4)] Any authorisation granted to issue an ART is valid for the entire EU (“EU-Passport”) [Art. 15 (5)].

An application can only be rejected based on one of the following reasons [Art. 19 (2)]:

- The issuer is not able to guarantee (i) effective, sound and prudent management, (ii) business continuity, (iii) a focus on clients’ interests or (iv) market integrity;
- The issuer fails or is likely to fail to meet the requirements of the MiCA Regulation; or
- The business model of the issuer “may” pose serious threats to financial stability, monetary transmission or monetary sovereignty.

EMT can only be issued by authorised banks or e-money institutions. They do not need an additional authorisation for issuing EMT. [Art. 43 (1)]¹⁹

No authorisation (whether for ART or for EMT) is necessary if the average outstanding amount of stablecoins over a period of 12 months is less than € 5 million²⁰, or if the stablecoins are solely addressed to professional investors and held by them. Such stablecoin issuers only have to produce a white paper and notify it to their competent authority. A prior approval of the white paper before the issuance of the stablecoins is not envisaged (see next section). [Art. 15 (3) and Art. 43 (2)]²¹

¹⁵ The operation of a trading platform for crypto-assets is an activity which is also regulated under the MiCA Regulation.

¹⁶ EMT that refer to the value of an EU currency are always deemed to be offered to the public in the EU [Art. 43 (1)].

¹⁷ E-money institutions perform services like selling or reselling electronic money products to the public [Recital 10 EMD II].

¹⁸ The application for authorisation of an ART issuer must include a legal opinion that the ART do not qualify as financial instruments (as defined in MiFID-Directive 2014/65/EU), electronic money (as defined in EMD II), deposits (as defined in DGS-Directive 2014/49/EU) or structural deposits (as defined in MiFID-Directive 2014/65/EU) [Art. 16 (2) (d)].

¹⁹ There is no requirement for EMT issuers to provide a legal opinion that an EMT does not qualify as financial instruments, electronic money, deposits or structural deposits.

²⁰ Member States may even set a lower threshold than € 5 million in case of EMT issuances, if such a lower threshold is applicable to e-money issuances according to national law transposing the EMD II [Art. 43 (2)].

²¹ While these stablecoin issuers do not have to be authorised, they still have to comply with other requirements of the MiCA Regulation presented below.

3.3 White Paper

In order to ensure consumer protection, all issuers²² of ART or EMT must produce a white paper, which informs potential purchasers of stablecoins, inter alia, about their “characteristics, functions and risks”, about the issuers and about the rights and obligations attached to the stablecoins [Recital 14].²³ All information contained in white papers must be “fair, clear and not misleading” [Art. 5 (2) and Art. 46 (3)]. Holders of stablecoins may claim damages from issuers if information in the white papers is not complete, fair or clear, or is misleading. The burden of proof lies with the holders and the infringement must have had an impact on their decision to purchase, sell or exchange the stablecoins. [Art. 22 and Art. 47]

While white papers from ART issuers need to be approved by the competent authority of their home Member State, those from EMT issuers only need to be notified [Art. 15, 19, 43 and 43]. White papers that have been approved by a competent authority are valid for the entire EU [Art. 15 (6)].²⁴

4 Rights of Token Holders

All holders of ART have a direct redemption right vis-à-vis the issuer that can be activated if the value of the issued tokens “varies significantly” from the value of the reserve assets [Art. 35 (4)].²⁵ In all other cases, it is up to the issuers of ART to grant some or all token holders a direct claim on the issuers or on the reserve assets and/or to grant redemption rights that allow holders to redeem all or part of their tokens [Art. 35 (2) and (3)]. Issuers must specify ex-ante to whom such rights are granted and to what extent [Art. 35 (1) and (2)]. In case issuers are wound down, stop their business or have their authorisation withdrawn, token holders have a right to the proceeds of the reserve assets [Art. 35 (4)].

All holders of EMT have a claim on issuers and may redeem their tokens at any time, at par value and either in cash or by credit transfer. A “proportionate” redemption fee is allowed when stated in the EMT white paper. [Art. 44 (2–5)]

5 Further Requirements for Stablecoin Issuers

(1) Treatment of Stablecoin Holders: Issuers of ART must act honestly, fairly and professionally, must communicate with the holders of their ART in a “fair, clear and not misleading” manner and act in the best interests of token holders. They must treat token holders equally, unless stated otherwise in the white paper. [Art. 23] There are no equivalent obligations for issuers of EMT.

(2) Marketing Material of Stablecoin Issuers: Marketing communications of both ART and EMT issuers must be clearly identifiable, fair, clear, not misleading, and consistent with the released white paper [Art. 25 (1) and Art. 48 (1)]. If ART do not offer a direct claim on the reserve assets or if issuers do not grant a redemption right to the token holder, the communications must clearly state this fact [Art. 25 (2)].

²² This also includes issuers that do not require an authorisation.

²³ Issuers of crypto-assets other than ART or EMT – not dealt with in this publication – must also produce a white paper. While issuers of ART must produce white papers that also include information that is obligatory for non-ART or non-EMT issuances, this is not the case for issuers of EMT. Thus, EMT white papers are less comprehensive. [Art. 17 (1) and Art. 46 (1)].

²⁴ The MiCA Regulation leaves open whether this also applies to notified white papers.

²⁵ The EBA develops and the Commission subsequently adopts regulatory technological standards specifying the variations that trigger a direct redemption right [Art. 35 (5)].

Marketing communications on EMT must include the information that all token holders have a redemption right at par value and at any time [Art. 48 (2)].

(3) Information on Issuers' Websites: Issuers of both ART and EMT must publish their white papers on their websites. Issuers of ART must also publish their related marketing communications. [Art. 24 and Art. 46] Furthermore, issuers of ART must publish information, at least monthly, on their websites on the number of tokens in circulation and on the value and composition of reserve assets. Furthermore, they must make public all events that are likely to have a significant effect on the value of the tokens or reserve assets. [Art. 26] There are no equivalent obligations for issuers of EMT.

(4) Conflicts of Interest: Issuers of ART must establish policies and procedures to “prevent, identify, manage and disclose” conflicts of interest between themselves and e.g. their stakeholders or token holders. This includes conflicts of interests related to the management and investment of the reserve assets backing the ART. Issuers must also implement measures to mitigate those conflicts. [Art. 28] There are no equivalent obligations for issuers of EMT.²⁶

(5) Governance: Issuers of ART must [Art. 30]

- establish robust governance arrangements, e.g., they must have a clear organisational structure,
- implement policies and procedures on, inter alia, the handling of the reserve assets and their custody, the functioning of the distributed ledger used and the redemption or liquidity safeguards,
- set up clear arrangements with third parties that perform certain services on their behalf, e.g. investment or custody of the reserve assets,
- ensure the “continued and regular performance of their services and activities” and the minimisation of sources of operational risks,
- establish a business continuity policy, and
- implement effective risk management and assessment procedures, inter alia with respect to their information communication systems.

There are no equivalent obligations for issuers of EMT.²⁷

(6) Own Funds: In addition to reserve assets (see section 6), all issuers of ART and EMT must have own funds in place in order to cover unexpected losses and address potential risks to the financial stability of the wider financial system [Recital 36 and Art. 31 MiCA Regulation, Art. 4 and 5 EMD II].

Issuers of ART must, at all times, hold own funds of € 350,000 or 2% of the average amount of the reserve assets (over the last six months), whichever is higher. Competent authorities may raise or lower the own funds requirement by up to 20% with respect to the 2% share of reserve assets²⁸, if they deem the issued ART to be either more, or less, risky.²⁹ The EBA will specify the methodology for calculating the own funds and the requirements for the raising or lowering of own funds via regulatory technical standards. [Art. 31]

EMD issuers must have initial capital in place which amounts to at least € 350,000 [Art. 4 EMD II]. At the same time, the E-Money Directive demands own funds of at least € 350,000 or 2% of the average outstanding EMT, whichever is higher [Art. 4 and 5 EMD II]. Competent authorities may raise or lower

²⁶ If the issuer of an EMT is a bank, conflict of interest rules of the Capital Requirement Directive 2013/36/EU may apply. For e-money institutions, there are no conflict of interest rules.

²⁷ If the issuer of an EMT is a bank, governance requirements of the Capital Requirement Directive 2013/36/EU may apply. For e-money institutions, there are no governance rules at all.

²⁸ Thus, the threshold may fall to 1.6% of the reserve assets or rise to 2.4% of the reserve assets.

²⁹ The assessment shall take into account, inter alia, the quality and volatility of the reserve assets and the types of rights granted by the issuer to the token holders.

that ceiling by up to 20% [Art. 5 EMD II].³⁰

(7) Interest Payments: Issuers of stablecoins are not allowed to provide for any interest or other benefits to holders of their tokens that are related to the length of the period of time they hold the tokens [Art. 36 and Art. 49].³¹

(8) Wind-down: All issuers of ART as well as issuers of significant EMT must have a plan in place to ensure an orderly wind-down “without causing undue economic harm” to token holders or to the stability of the markets of the reserve assets [Art. 42 and Art. 52]. There are no equivalent obligations for issuers of non-significant EMT.

6 Reserve Assets

6.1 General Requirements

Issuers of ART are, at all times, required to maintain a reserve of assets – i.e. cash or short-term government bonds – in order to stabilise the value of the tokens. The management body must ensure their “effective and prudent management” to avoid “any adverse impacts” on the markets for these reserve assets. Any increase or decrease in ART³² needs to be accompanied by a corresponding increase or decrease in reserve assets of the same volume. [Recital 37, Art. 32 (1) and (3)] Furthermore, issuers must, inter alia, make public [Art. 32 (4)]

- which assets their tokens are referencing to,
- the composition of the reserve assets as well as their type and precise allocation, and
- potential risks connected with the ART, e.g. credit, market, and liquidity risks.

For issuers of EMT, there are no similar rules in the MiCA Regulation exceeding those specified in the following sections 6.2 and 6.3.

6.2 Custody of Reserve Assets

All issuers of ART as well as issuers of significant EMT³³, must establish an adequate custody policy for their reserve assets to prevent the loss of the assets and to preserve the value of the ART or EMT. Thus, reserve assets must [Recital 38, Art. 33 (1), (3) and (4) and Art. 52]

- be segregated from the assets of the ART issuers,
- not be encumbered or pledged as collateral, and
- be held in custody by a bank (for fiat currencies and commodities) or by a crypto-asset service provider (for crypto-assets).³⁴

For issuers of non-significant EMT, the less prescriptive rules of the Electronic Money Directive and the Payment Services Directive apply. They stipulate that such issuers shall [Art. 7 EMD II in connection with Art. 10 PSD II]

³⁰ The assessment shall take the issuers’ risk-management processes, risk loss databases and internal control mechanisms into account.

³¹ In case of ART, the Regulation refers to the length of time for which holders of ART hold the asset-referenced “assets”. We believe this is a mistake.

³² This process is usually referred to as mining or construction of a token, or conversely destruction or burning, as appropriate.

³³ On the classification of a stablecoin as significant and the requirements resulting from such classification see section 7.

³⁴ A crypto-asset service provider is an undertaking authorised under the MiCA Regulation to perform specific services related to crypto-assets, e.g. the operation of a trading platform for crypto-assets or the exchange of crypto-assets against fiat currencies. The Regulation distinguishes eight different services. [Art. 3 (1) point (9)]

- not commingle the funds they receive from EMT holders with funds of other natural or legal persons,
- deposit the funds in a separate bank account or invest them in low-risk assets and protect them against claims of the creditors of the issuer, in particular in the event of insolvency; or
- insure the funds they receive from EMT holders to meet claims in case the EMT issuer is unable to meet its financial obligations.

6.3 Investment of the Reserve Assets

All issuers of ART as well as issuers of significant EMT may invest “part” of the reserve assets in highly liquid financial instruments – determined by the EBA with the help of ESMA and the European System of Central Banks – that can be rapidly liquidated at any time and with “minimal adverse price effect” [Art. 34 and Art. 52]. All gains or losses from the investments are borne by the issuers [Art. 34].

Issuers of non-significant EMT must either invest in secure, liquid low-risk assets or deposit funds at a bank [Art. 7 EMD II in connection with Art. 10 PSD II]. However, any investment by EMT issuers must take place in assets that are denominated in the same currency as the one referenced by the tokens [Art. 49].

7 Special Requirements for Issuers of Significant Stablecoins

The MiCA Regulation entails stricter requirements for issuers of stablecoins that have been classified as “significant”. The Commission argues that this is indispensable as such stablecoins “raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty” [Recital 41]. This section will elaborate on these issues.

7.1 Criteria for Classifying Stablecoins as “Significant”

Six criteria – equally relevant for ART and EMT – are taken into account when deciding upon the classification of stablecoins. At least three of them must be fulfilled for a stablecoin to be deemed significant (see Table 2). [Art. 39 (1) and Art. 50 (1)]

Table 2: Criteria for Significant Stablecoins

| | Criteria | Applicable threshold |
|---|---|--|
| 1 | Size of the – customer base of the stablecoin “promoter” (without further definition thereof), – shareholders of the issuer, or – third-parties dealing with the reserve assets backing the stablecoin | – customer base ≥ 2 million – – |
| 2 | Value of the stablecoins issued or their market capitalisation | ≥ € 1 billion |
| 3 | Number and volume of transactions in those stablecoins | ≥ 500,000 transactions/day, or ≥ € 100 million /day |
| 4 | Size of the reserve of assets | ≥ € 1 billion |
| 5 | Number of Member States – where the stablecoin is used, or – where third-parties relevant for the management of the reserve assets backing the stablecoin are established, or – where the stablecoin is used for cross-border payments and remittances | ≥ seven Member States |
| 6 | Interconnectedness of the stablecoin with the financial system | – |

The Commission may decide via delegated acts upon the exact thresholds, above which a stablecoin is to be classified as significant. The thresholds mentioned in Table 2 only set the absolute lower limit. The Commission may also further define the criterion of “interconnectedness”. [Art. 39 (1) and (6) and Art. 50 (1)]

7.2 Decision on Stablecoin Classification and Supervisory Approach

On the basis of the criteria above (see Table 2), if the EBA deems a stablecoin to fulfil at least three of them, it must prepare a draft decision to classify the stablecoin as significant. In this case, it must notify both the issuer of the stablecoin and its competent authority. Both may make comments on the draft decision and the EBA must “duly consider” them. [Art. 39 (2–5) and Art. 50 (2–5)].

If the EBA decides that a certain ART is significant, it fully takes over the supervisory responsibility from the competent authority [Art. 39 (2–5) and Art. 50 (2–5)].

If the EBA decides that a certain EMT is significant, it takes over the supervisory responsibility from the competent authority, but only with respect to the specific additional requirements emanating from the MiCA Regulation for issuers of significant EMT (see next section). Other requirements applicable to EMT issuers emanating from the E-Money Directive and the MiCA Regulation (e.g. on compliance with the white paper requirements) remain within the remit of the competent authority. [Art. 98 (4)]

The EBA will establish supervisory colleges for all significant stablecoins. The colleges consist of various actors such as ESMA, national competent authorities and central banks (see Table 3). [Art. 99 (1) and (2) and Art. 101 (1) and (2)]

Table 3: Supervisory colleges

| Participants of colleges for significant ART | Participants of colleges for significant EMT |
|--|---|
| EBA (chair) | |
| ESMA | |
| Competent authority of home Member State | |
| Competent authorities of most relevant banks and custodians ensuring the custody of reserve assets (where applicable) | |
| Competent authorities of most relevant trading platforms, where ART/EMT are admitted to trading (where applicable) | |
| ECB | ECB, if - EMT is referencing to the euro, or - EMT issuer is established in euro Member State |
| Central bank of a non-euro Member State, if - issuer of ART is established in that state, or - the non-euro currency is part of the reserve assets | Central bank of a non-euro Member State, if - EMT is referencing to non-euro, or - EMT issuer is established in non-euro Member State |
| – | Competent authorities of the “most relevant” payment institutions that provide payment services with respect to EMT |
| Competent authorities of crypto-asset service providers ensuring the liquidity of the ART (where applicable) | – |
| Competent authorities of crypto-asset service providers acting as third-party entities on behalf of the ART issuers dealing with the reserve assets (where applicable) | – |
| Third country supervisory authorities, with which EBA has concluded administrative arrangements on exchange of information | |

The supervisory colleges may issue non-binding opinions regarding the supervisory decisions of the EBA and of the national competent authorities [Art. 99 (4), Art. 100 (1), Art. 101 (4) and Art. 102 (1)].

Opinions require a simple majority of the college members [Art. 100 (4) and Art. 102 (4)].³⁵ The EBA and the competent authorities shall “duly consider” the non-binding opinions. Where they do not agree with an opinion, they must provide reasons and explanations. [Art. 100 (5) and Art. 102 (5)]

7.3 Specific Additional Requirements for Issuers of Significant Stablecoins

Issuers of significant stablecoins – equally relevant for ART and EMT – must comply with several additional requirements. They must [Art. 41 and Art. 52]

- implement sound remuneration policies that allow for an effective risk management,
- ensure that the stablecoins can be taken into custody by several³⁶ crypto-asset service providers on “fair, reasonable and non-discriminatory” terms,
- establish a dedicated liquidity management policy and procedures; they must ensure that the issuer can continue operating even under “liquidity stressed scenarios”, and
- hold own funds amounting to at least 3% of the reserve assets.³⁷

As already mentioned above, some requirements that apply to all issuers of ART do not apply to issuers of non-significant EMT, but only to issuers of significant EMT. This is the case for the requirements on the custodianship of reserve assets (see section 6.2), on investments of reserve assets (see section 6.3) and on rules for an orderly wind-down of issuers (see section 5, point 8) [Art. 52].

8 Assessment

8.1 Arguments for Common European Rules in General

Setting up common European rules – within the MiCA Regulation – for the issuance of and services related to stablecoins is to be welcomed for four reasons:

- (1) Common EU rules will increase legal certainty for both stablecoin issuers and providers of related services because it is currently unclear whether and which European or national financial legislation is applicable to stablecoins. Also, applicable laws may not be fit for purpose given the technologically innovative characteristics of stablecoin projects.
- (2) Common EU rules reflect the cross-border nature of many stablecoins. Stablecoins are often promoted and used in multiple Member States and stablecoins may have cross-border implications, e.g. when they reference to various fiat currencies.
- (3) Common EU rules may foster the markets for stablecoins, which are still in their infancy. Absent or blurry regulatory regimes have undermined the confidence of established market players. Adequate rules for stablecoin issuers and a targeted supervisory approach may function like a seal of approval and create confidence.
- (4) Common EU rules are warranted to deal with the consequences and risks that large stablecoin initiatives – regularly referred to as “global stablecoins” – may pose to consumers, financial market stability and the monetary order. To give just four examples:
 - Popular stablecoin projects may cause customers to replace bank deposits with stablecoins. A drop in deposit holdings may limit the ability of banks to provide lending to the real economy.

³⁵ If a college consists of up to 12 members, a maximum of two members from the same Member State shall have a vote. If a college consists of more than 12 members, the threshold increases to three members. When a member, the ECB always has two votes. Supervisory authorities from third-countries do not have a voting right.

³⁶ In case of non-significant stablecoins, one crypto-asset service provider may be sufficient.

³⁷ In case of non-significant stablecoins, the threshold is 2% (see section 0).

Depending on the speed with which this process takes place, liquidity problems may arise. Also, the monetary transmission channel will be affected.

- Stablecoins are likely to have a major impact on payment markets as they may allow for cheap and instant payments, nationally and across borders. This could affect existing intermediaries in the payment markets infrastructure and negatively influence their profitability.
- Significant stablecoin issuers will be major investors in markets for reserve assets, e.g. short-term government bonds. This may have an impact on the refinancing costs of governments, interest rate levels and hence on monetary policy.
- Operational inefficiencies or cyber risks may cause stablecoin users to rapidly lose confidence in the tokens. As a consequence, they may redeem a large share of tokens at the same time. In such situations, stablecoin issuers will have to liquidate reserve assets at large scale. This may lead to instabilities in the markets of said assets, which could negatively affect the wider financial system as a whole.

8.2 Assessment of the Requirements for Stablecoin Issuers

Although common EU rules on stablecoins are necessary, the question arises whether the proposed rules are fit for purpose. Seven considerations have to be taken into account:

- (1) The differentiation between ART and EMT is adequate. ART often reference to several fiat currencies, commodities or crypto assets. They are more complex than EMT, have a stronger cross-border focus and the interlinkage with financial markets and various monetary orders is more pronounced. EMT are basically e-money, based on distributed ledger technology. The risks related to them do not differ greatly from those related to traditional e-money. It is thus appropriate to take a less rigorous regulatory approach towards EMT by placing them under the milder E-Money Directive and selected MiCA-rules only. Nonetheless, some issues should be considered in the legislative process:
 - More clarity is necessary for competent authorities to distinguish the various crypto assets, including ART and EMT, from each other. Only then will a coherent approach be guaranteed that avoids forum shopping.
 - A legislative definition of “stability” in the definitions of ART and EMT is required. Issuers may claim that their stablecoin is “stable”, thereby limiting redemption by holders. It is inappropriate to grant the Commission the power to tackle these issues by way of delegated acts. Criteria should be provided instead by the co-legislators on Level 1.
 - Clarification is required as to whether ART, which fulfil the definition of e-money under the E-Money Directive, could also be subject to that Directive and not solely to the MiCA Regulation.
- (2) The authorisation procedure for stablecoin issuers and the requirement of an establishment in the EU are essential to safeguard proper supervision of stablecoins. It is also appropriate, for subsidiarity reasons, to empower national competent authorities to grant authorisations for smaller, non-significant issuers. The EU-passport for stablecoin issuers strengthens the internal market. However, three issues must be addressed:
 - Banks issuing an ART are subject to most MiCA requirements but do not have to request an explicit authorisation. This gives them an improper competitive advantage over non-bank

issuers.³⁸ Although it is true that banks are already heavily regulated, it is by no means certain that each and every bank can properly deal with the risks related to ART.

- The options given to competent authorities to refuse a request for authorisation by an ART issuer are unconvincing. Refusal is possible if, e.g., business models “may pose a serious threat to financial stability, monetary policy transmission or monetary order”. Firstly, this reason for refusal is too vague and grants too much leeway for supervisors to block undesired stablecoin projects. It should be made more precise in order to avoid stifling innovation. Secondly, an ART project that is not deemed significant – for whose authorisation the competent authority and not the EBA is responsible – is unlikely to pose a serious threat to financial stability or monetary policy. Thus, only the EBA should be able to refuse authorisation on these grounds and only for significant stablecoins.
 - Even if non-significant ART could endanger financial stability or monetary policy – which we doubt (see above) –, the fact that banks do not require an authorisation by competent authorities to issue them is striking: There is no reason to believe that only those that are issued by non-banks pose a serious threat to financial stability or monetary policy.
- (3) The obligation to publish a white paper is appropriate. White papers are an important instrument for reducing information asymmetries between issuers and investors. As with investments in securities, where issuers must publish prospectuses, white papers for stablecoins serve to strengthen market efficiency and investor confidence. They are thus reasonable from an investor protection perspective. However, the level of detail required in a white paper should reflect both the issuance size and whether the issuer is also required to be authorised. Otherwise, it may be too burdensome for small issuers, create a significant barrier to entering the market and stifle innovation.³⁹
- (4) It is to be welcomed that the proposal establishes provisions on the rights of token holders, which allow for an informed decision on whether an investment in stablecoins is adequate from a risk perspective. However, the provisions should be further clarified to enhance legal clarity and provide sufficient investor protection:
- It should be made clear whether issuers of ART have the option to refrain from offering redemption rights to token holders.
 - The fewer rights that are granted to token holders, the higher the level of information to be provided by issuers should be, as the risks of holding stablecoins increase. This should be spelled out more explicitly in the Regulation.
 - The proposal stipulates a direct redemption right “for all token holders” in the event that the value of tokens deviates significantly from the value of the reserve assets. This also applies where some token holders have not been granted redemption rights and may lead to a situation where token holders have different rights dependant on the value of the tokens and reserve assets. Furthermore, it indirectly prevents ART issuers from granting different rights to different groups of token holders.
- (5) The further requirements for issuers of ART (see section 5) may enhance investor protection and increase confidence in stablecoin projects. This also holds true for the various governance requirements that ensure business continuity and operational resilience. While the systemic

³⁸ It is, for instance, unclear why investment fund managers require extra authorisation for issuing an ART, although ART are regularly comparable to investment fund structures. The ECB once considered Libra (now: Diem) to be similar to a money market fund.

³⁹ Issuers of stablecoins with a small issuance size should also only be required to fulfil the requirements established by MiCA in a proportionate manner.

consequences of a collapse of an EMT project are often less pronounced than with ART arrangements, it is still not clear why basic requirements on the treatment of token holders, conflicts of interest rules and governance provisions apparently do not apply to issuers of EMT. This should be reconsidered.

- (6) The proposed regulatory limits on the investment risks that an issuer may take on, which may prevent him e.g. from engaging in lending activities, are necessary to safeguard the stability of stablecoins. Therefore, the need for asset separation and custodianship arrangements, as well as prohibitions on interest payments and requirements on the types of assets issuers may invest in, is reasonable. Similar precautionary measures are also inherent in the business of investment funds and, as investment fund structures share similarities with stablecoin arrangements, comparable treatment is a wise regulatory approach.
- (7) It is appropriate that national authorities are responsible for supervising non-significant stablecoins and the EBA for supervising significant ones. Smaller stablecoin projects have less of a cross-border or EU wide impact than bigger arrangements and their threat to EU financial markets or monetary policy is less pronounced. Nevertheless, both national authorities and the EBA must build up sufficient expertise as stablecoin markets are still niche and experiencing fast technological change and innovation. Supervision of significant stablecoins, which are also likely to have an impact on third countries, is a major challenge. On the one hand, supervisors in both the EU and third countries understandably want to act in the best interests of their respective jurisdictions. Thus, their desire to reserve the right to become active at their own discretion and prevent the authorities of a third country from being involved in their decisions, is legitimate. On the other hand, burdensome or even contradictory supervisory measures against one and the same stablecoin by different supervisors should be avoided. Given that there is no global supervisor, coordination between supervisors offers the best solution to this dilemma. It is therefore appropriate that MiCA's supervisory colleges for significant stablecoins include third country supervisors. If those third countries were also to include European supervisors in their supervisory structures, it would be a first step towards a consistent, global supervisory approach of significant stablecoins.



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