GDF Markets in Crypto-Assets Working Group

AMENDEMENTS
1 - 33

January 2021

About GDF

GDF is a not-for-profit industry body that promotes the adoption of best practices for crypto and digital assets, and digital finance technologies through the development of conduct standards, in a shared engagement forum with market participants, policymakers and regulators.

Established in 2018, GDF has convened a broad range of industry participants, with 300+ global community members - including some of the most influential digital asset and token companies, academics and professional services firms supporting the industry.

GDF is proud to include 100x Group, Coinbase, Diginex, DLA Piper, EY, Hogan Lovells, the London Stock Exchange Group, R3, and SDX as patron members. The GDF Code of Conduct (the "Code") is an industry-led initiative driving the creation of global best practices and sound governance policies. GDF is informed by close conversations with regulators and developed through open, inclusive working groups of industry participants, legal, regulatory and compliance experts, financial services incumbents and academia. The principles set out in the Code undergo multiple stages of community peer review and open public consultation prior to ratification.

The following amendments have been drafted by the GDF MiCA Working Group.

Working Group Participants:

GDF
XReg
Hogan Lovells
SDX
Coolbitx
ING
100x
R3
Huobi
Archax
Solidus Labs
DLA Piper

Please direct any queries to lavan@gdf.io.

Summary of Amendments

The GDF MiCA Working Group was convened to analyse the European Commission's proposed Regulation on Markets in Crypto-assets.

The Working Group identified key areas that will require further drafting consideration for purposes of clarity and proportionality. The three core areas identified are:

1. Required clarity with regards to terms and definitions;
2. Proportionality of application and creating a level-playing field; and
3. Operational challenges and procedural recommendations.

Required clarity with regards to terms and definitions

The Working Group notes that the definition of crypto-assets creates an extremely wide scope. As such, MiCA's scope and definitions should be complemented with a hierarchy or set of questions with consequence that would define which token will fall under each category.

Further, utility tokens need to be further defined including clarifying types of utility tokens that do not fall within the scope of MiCA. It may otherwise become unattractive and prohibitive to tokenise certain assets, particularly in cases where the same *thing* would not fall under MiCA if not tokenised.

Additionally, the definition of utility tokens is limited to instances where tokens are only accepted by the issuer, however, there will be cases where several parties in the utility token ecosystem accept the token, such as participants, users and providers. The definition should be revised to reflect these situations.

Title II provides exemptions from the requirement to draft a white paper for the issuance of crypto-assets. One of the criteria that would allow an issuer to make use of the exemption is wherever the crypto-assets are unique and not fungible. However, neither of these terms are defined within MiCA. To ensure legal clarity it would be helpful to include a set of parameters clarifying what is considered unique and fungible and what is not, including whether this also refers to the derivatives of crypto markets.

Other terms that the Working Group considered needed to be defined, or complemented with guidelines include, "marketing communications", "customer", "established", "independent", and "registered".

Proportionality of application and creating a level-playing field

With regards to the Commission's stated objective of creating a level-playing field, the Working Group identified two main areas within MiCA where this has not been achieved. Firstly, the EUR 1 000 000 threshold under which issuers of crypto-assets will not be required to produce and publish a white paper is significantly lower than the thresholds under the crowdfunding regulation (EUR 5 000 000) and the prospectus regulation (EUR 8 000 000). The threshold proposed creates an unlevel playing field making it unattractive to raise capital through the issuance of crypto-assets. To ensure a level playing field and to support innovative venues to raise capital, this threshold should be increased to EUR 8 000 000.

Secondly, the exemptions available to credit institutions and investment firms do not seem to be proportionate or justified. It would be helpful to understand the rationale behind these exemptions, particularly the reason for assuming that credit institutions have implicit expertise in a new area where there is no historical experience. It appears that the burden of authorisation will be placed on entities that can handle it the least, in a disproportional manner.

Operational challenges and procedural recommendations

Finally, there are other provisions that would create operational challenges in practice, such as the requirement to safeguard funds or crypto-assets in custody with a credit institution or a CASP, when a CASP will likely not be authorised from the moment this requirement is applicable.

Further, the right of withdrawal to customers (14-day cooling off period on issuance) may cause unwanted consequences. Whenever the primary purpose of certain tokens is utilitarian and investment based, an issuer will know at the end of the submission whether certain criteria has been met. If at any point after that customers exercise their right of withdrawal, the circumstances could change considerably, creating challenges. For this reason, closure would have to be conditional.

The Working Group considers that the assessment of the application to be authorised as an issuer of asset-referenced tokens needs to be streamlined. To avoid unnecessary delays, the EBA, ESMA, and the ECB should not have a role in the assessment process.

The provision allowing NCA's to withdraw authorisation whenever the authorisation has not been used six months after it was granted could be problematic. Whenever the process includes raising regulatory capital, it should not be assumed that the entity is ready to launch its products as soon as it is authorised given that some things cannot be accessed until authorisation is granted. For example, MTFs need to onboard CSDs, which they cannot do until they have been granted authorisation and the process could take longer than six months. MiCA should allow for this to be extended on a case-by-case basis.

The Working Group have also suggested the inclusion of a third country regime, that will facilitate the exporting of the standards agreed upon in MiCA through ensuring third country issuers or service providers can operate within the EU should be granted equivalence.

Amendment 1

Proposal for a regulation
Article 3 – paragraph 1 (2)

Text proposed by the Commission	*Amendment*
(2) 'crypto-asset' means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;	(2) 'crypto-asset' means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;

Or. en

Explanation

Including 'similar technology' in the definition of 'crypto-asset' creates an extremely wide scope. For example, when a central securities depositary dematerialises a security or a share, it is already a digital representation of value.

Amendment 2

Proposal for a regulation
Article 3 – paragraph 1 (2), (3), (4), (5)

Text proposed by the Commission	*Amendment*
(2) 'crypto-asset' means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;	(2) 'crypto-asset' means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;
(3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;	(3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;
(4) 'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;	(4) 'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;
(5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token;	(5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token;

Or. en

Explanation

There needs to be a hierarchy or a set of questions that the issuer needs to go through to determine which category they will fall within. This will provide a clearer process for token classification.

Amendment 3

Proposal for a regulation
Article 3 – paragraph 1 (5)

Text proposed by the Commission	*Amendment*
(5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT***, and is only accepted by the issuer of that token***;	(5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT;

Or. en

Justification

There are instances where tokens are accepted by several parties in the utility token ecosystem, such as participants, users and providers and not just the issuer.

Amendment 4

Proposal for a regulation
Article 3 – paragraph 1 (28a) (new)

Text proposed by the Commission	*Amendment*
	(28a) 'marketing communications' means any information or communication from an issuer of crypto-assets or a crypto-asset service provider to a third party regarding an offer to the public.

Or. en

Justification

This is a term that is referred to in the Regulation but not addressed in the definitions and could lead to confusion if left undefined

Amendment 5

Proposal for a regulation
Article 4 – paragraph 1 (a)

Text proposed by the Commission	*Amendment*
(a) ***is a legal*** entity;	(a) ***has identified an*** entity ***or person(s) who are accountable***;

Or. en

Justification

This is difficult for certain parts of the market, certainly when it comes to DeFi.

Amendment 6

Proposal for a regulation
Article 4 – paragraph 2 (c)

Text proposed by the Commission	*Amendment*
(c) the crypto-assets are unique and not fungible with other crypto-assets;	(c) the crypto-assets are unique and not fungible with other crypto-assets;

Or. en

Explanation

'Unique' and 'fungible' are not defined in MiCA. To ensure legal clarity, it would be helpful to include a set of parameters setting out what is considered unique and fungible and what is not, including whether this also refers to the derivatives of crypto markets.

Amendment 7

Proposal for a regulation
Article 4 – paragraph 2 (e)

Text proposed by the Commission	*Amendment*
(e) over a period of 12 months, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR ***1*** 000 000, or the equivalent amount in another currency or in crypto-assets;	(e) over a period of 12 months, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR ***8*** 000 000, or the equivalent amount in another currency or in crypto-assets;

Or. en

Justification

The EUR 1 000 000 threshold, under which issuers of crypto-assets will not be required to produce and publish a white paper, is significantly lower than the thresholds under the crowdfunding regulation (EUR 5 000 000) and the prospectus regulation (EUR 8 000 000). The threshold proposed creates an unlevel playing field making it unattractive to raise capital through the issuance of crypto-assets. To ensure a level playing field, and to support innovative venues to raise capital, this threshold should be increased to EUR 8 000 000.

Amendment 8

Proposal for a regulation
Article 4 – paragraph 2 (fa) (new)

Text proposed by the Commission	*Amendment*
	(fa) the crypto-asset is defined as a utility token whose activity but for the use of DLT would not be otherwise regulated.

Or. en

Justification

Further clarity is needed in respect of utility tokens. Certain utility tokens should be exempted from the requirements under Title II. It may otherwise become unattractive and even prohibitive to tokenise certain assets. As an example, existing e-commerce marketplaces currently sell products that can be tokenised, for instance re-selling tickets to football matches. If UEFA decided to tokenise these tickets, would it then be considered a utility token and subject to MiCA? If tokenised, they would fall under the scope of MiCA. If not tokenised, they would not. In the draft proposal, technology seems to be the determining factor of whether something is regulated or not and this is not in line with the principle of technology neutrality.

To address this issue, we propose either:
To further clarify and refine the definitions of crypto-assets and utility tokens;
To include specific exemptions under Article 2(2) to delineate certain utility tokens from others; or
To clarify that if an asset can be sold both on-chain and off-chain with the same product characteristics, it does not fall under the scope of MiCA whenever it is sold on-chain on the basis that if sold off-chain, it would not be subject to MiCA.

Amendment 9

Proposal for a regulation
Article 5 – paragraph 9

Text proposed by the Commission	*Amendment*
9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ***a language customary in the sphere of international finance***.	9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ***English***.

Or. en

Justification

Would documents written in a non-EU language really be acceptable?

Amendment 10

Proposal for a regulation
Article 6 (da) (new)

Text proposed by the Commission	*Amendment*
	(da) For their marketing communications, crypto-asset service providers shall use one or more of the

official languages of the Member State in which the crowdfunding service provider is active or English;

Or. en

Justification

Marketing communications should be clearly defined within MiCA, in particular for entities outside of the EEA.

Amendment 11

Proposal for a regulation
Article 9 – paragraph 2 (a) (b)

Text proposed by the Commission	*Amendment*
2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such issuers shall ensure that the funds or other crypto-assets collected during the offer to the public are kept in custody by either of the following:	2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such issuers shall ensure that the funds or other crypto-assets collected during the offer to the public are kept in custody by either of the following:
(a) a credit institution, where the funds raised during the offer to the public takes the form of fiat currency;	(a) a credit institution, where the funds raised during the offer to the public takes the form of fiat currency;
(b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties.	(b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties.

Or. en

Explanation

The requirement to safeguard funds or other crypto-assets raised during the offer, placing them in custody with a credit institution or a CASP, has the potential to be problematic. CASPs may not be available from the end of the transition period and it may be difficult to get a credit institution to provide services to issuers of crypto-assets.

Amendment 12

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Issuers of crypto-assets, other than	1. Issuers of crypto-assets, other than

asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer.	asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer.
Consumers shall have a period of 14 calendar days to withdraw their agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the consumers' agreement to purchase those crypto-assets.	Consumers shall have a period of 14 calendar days to withdraw their agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the consumers' agreement to purchase those crypto-assets.

Or. en

Explanation

This can pose create some unintended consequences. An issuer will know at the end of the submission whether a certain criteria has been met. If a consumer can exercise their right to withdraw at any point after that, this could alter whether that criteria can be met – creating challenges. Therefore if the right to withdrawal is granted, closure would need to be conditional.

Amendment 13

Proposal for a regulation
Article 15 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Only ***legal entities that are established in the Union*** shall be granted an authorisation as referred to in paragraph 1.	2. Only ***issuers that have identified an entity or person(s) who are accountable*** shall be granted an authorisation as referred to in paragraph 1.

Or. en

Justification

The requirement to be established in the EEA has the potential to be highly burdensome from an operational perspective, particularly in respect of issuers of non-significant asset-referenced tokens.

Amendment 14

Proposal for a regulation
Article 15 – paragraph 3 (a)

Text proposed by the Commission	*Amendment*
(a) over a period of 12 months, calculated at the end of each calendar day, the average outstanding amount of asset-referenced tokens does not exceed EUR	(a) over a period of 12 months, calculated at the end of each calendar day, the average outstanding amount of asset-referenced tokens does not exceed EUR

5 000 000, or the equivalent amount in another currency;	***8*** 000 000, or the equivalent amount in another currency;

Or. en

Justification

In line with the comments made on article 4(2)(e) above and the Prospectus Regulation, this threshold should be set at EUR 8 000 000 rather than 5 000 000.

Amendment 15

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Paragraph 1 shall not apply where the issuers of asset-referenced tokens are authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU.	***deleted***

Or. en

Justification

This is not tech neutral and does not apply the principle of same activity, same risk, same rules. Whilst credit institutions are perhaps establishes, the risk involved here is different and as such it is not a given that they have the expertise to be able to deal with this. It is likely that it will be the contrary.

Amendment 16

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission	*Amendment*
Such issuers shall, however, produce a crypto-asset white paper as referred to in Article 17, and submit that crypto-asset white paper for approval by the competent authority of their home Member State in accordance with paragraph 7.	Such issuers shall, however, produce a crypto-asset white paper as referred to in Article 17, and submit that crypto-asset white paper for approval by the competent authority of their home Member State in accordance with paragraph 7.

Or. en

Explanation

It is unclear here as to whether submitting a white paper for approval will be subject to fees. If so, the Commission should look to ensure that a pragmatic approach is taken that fosters innovation.

Amendment 17

Proposal for a regulation
Article 16 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards to specify the information that an application shall contain, ***in addition to the information referred to in paragraph 2***.	4. The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards to specify the information that an application shall contain.

Or. en

Justification

The EBA and ESMA will develop RTSs to specify the information that an application must contain. These RTSs should only be drafted to support the items set out in paragraph 2, and not to any further extent.

Amendment 18

Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Competent authorities shall, after the three months referred to in paragraph 2, transmit their ***draft*** decision to the applicant issuer***, and their draft decision and the application file to the EBA, ESMA and the ECB***. Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall consult the central bank of that Member State. ***Applicant issuers shall have the right to provide their competent authority with observations and comments on their draft decisions.***	3. Competent authorities shall, after the three months referred to in paragraph 2, transmit their ***final*** decision to the applicant issuer. Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall consult the central bank of that Member State. Applicant issuers shall have the right to provide their competent authority with observations and comments on their draft decisions.

Or. en

Justification

The primary ask will be to have ESMA just maintain a register and for NCAs to do both authorisation and supervision themselves (this is welcomed by many NCAs for sovereignty purposes) ESMA would work within their mandate to ensure the consistent application of the

legislation and that is as far as it goes.

Amendment 19

Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue a non-binding opinion on the application and transmit their non-binding opinions to the competent authority concerned. That competent authority shall duly consider those non-binding opinions and the observations and comments of the applicant issuer.	***deleted***

Or. en

Justification

The primary ask will be to have ESMA just maintain a register and for NCAs to do both authorisation and supervision themselves (this is welcomed by many NCAs for sovereignty purposes) ESMA would work within their mandate to ensure the consistent application of the legislation and that is as far as it goes.

Amendment 20

Proposal for a regulation
Article 19 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Competent authorities shall inform the EBA, ESMA and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted. ESMA shall ***include the following information in the*** register of crypto-assets and crypto-asset service providers referred to in Article 57:	3. Competent authorities shall inform the EBA, ESMA and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted. ESMA shall ***establish a*** register of ***all*** crypto-assets and crypto-asset service providers ***authorised by NCAs across the union and, separately, of all third country crypto-assets and crypto-asset service providers as*** referred to in Article 57. ***This will include:***

Or. en

Justification

The primary ask will be to have ESMA just maintain a register and for NCAs to do both authorisation and supervision themselves (this is welcomed by many NCAs for sovereignty purposes) ESMA would work within their mandate to ensure the consistent application of the legislation and that is as far as it goes.

Amendment 21

Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Competent authorities ***shall*** withdraw the authorisation of issuers of asset-referenced tokens in any of the following situations:	1. Competent authorities ***may*** withdraw the authorisation of issuers of asset-referenced tokens in any of the following situations:

Or. en

Justification

Discretion should remain with the NCA

Amendment 22

Proposal for a regulation
Article 20 – paragraph 1 (a)

Text proposed by the Commission	*Amendment*
(a) the issuer has not used its authorisation within ***6*** months after the authorisation has been granted;	(a) the issuer has not used its authorisation within ***12*** months after the authorisation has been granted;

Or. en

Justification

The provision allowing NCA's to withdraw authorisation when it has not been used six months after being granted could be problematic. Whenever the authorisation process includes raising regulatory capital, it should not be assumed that the entity is ready to launch its products as soon as it is authorised. In many cases, operational elements cannot be accessed until authorisation is received. For example, an MTF needs to onboard a CSD and the process cannot commence until the MTF has been authorised. The process to onboard a CSD can take longer than six months. MiCA should allow for this to be extended on a case-by-case basis.

Amendment 23

Proposal for a regulation
Article 31 – paragraph 1 (a)

Text proposed by the Commission	*Amendment*
(a) ***EUR 350 000;***	(a) ***An absolute Euro amount;***

Or. en

Justification

EUR 350 000 seems onerous for small issuers who may have to hold 7% in ownfunds. RTS should put in place an absolute Euro amount.

Amendment 24

Proposal for a regulation
Article 31 – paragraph 1 (b)

Text proposed by the Commission	*Amendment*
(b) ***2%*** of the average amount of the reserve assets referred to in Article 32.	(b) ***A percentage*** of the average amount of the reserve assets referred to in Article 32.

Or. en

Justification

The 2% figure in respect of the own funds requirement may be too onerous for entities seeking small raises. The suggested amendment in paragraph 1(b) seeks to clarify the suitability of the limits imposed, reducing the risk of these being and remaining arbitrary. The methodology mentioned in paragraph 4(a) should be reviewed periodically. These limits should be set via RTS.

Amendment 25

Proposal for a regulation
Article 31 – paragraph 4 (ca) (new)

Text proposed by the Commission	*Amendment*
	(ca) the ownfund amounts specified in paragraph 1.

Or. en

Amendment 26

Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Without prejudice to Article 30(11), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets every six months, as of the date of its authorisation as referred to in Article 19.	5. Without prejudice to Article 30(11), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets every six months, as of the date of its authorisation as referred to in Article 19.

Or. en

Explanation

The requirement for an independent audit of the reserve assets every six months does not seem to recognise the transparency offered by the blockchain, where the status of assets would be disclosed daily. It would be helpful for the Commission to provide the rationale for this requirement. It would also be helpful to provide a definition or guidance on what would be considered independent.

Amendment 27

Proposal for a regulation
Article 44 – paragraph 7

Text proposed by the Commission	*Amendment*
7. Where issuers of e-money tokens does not fulfil legitimate redemption requests from holders of e-money tokens within the time period specified in the crypto-asset white paper and which shall not exceed 30 days, the obligation set out in paragraph 3 applies to any following third party entities that has been in contractual arrangements with issuers of e-money tokens:	***deleted***
(a) entities ensuring the safeguarding of funds received by issuers of e-money tokens in exchange for e-money tokens in accordance with Article 7 of Directive 2009/110/EC;	
(b) any natural or legal persons in charge of distributing e-money tokens on behalf of issuers of e-money tokens.	

Or. en

Justification

This provision requires that whenever an issuer of e-money tokens fails to redeem a redemption request by holders of the e-money token, the obligation to redeem falls on a variety of other parties. Based on the drafting of this paragraph, it would appear that any entity that has had a contractual relation with the issuer of e-money tokens becomes liable. This would result in unquantifiable contingent liabilities. For this reason, we have removed paragraph 7.

Amendment 28

Proposal for a regulation
Article 53 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the Union and that have been authorised as crypto-asset service providers in accordance with Article 55	1. Crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the Union***, for example a branch,*** and that have been authorised as crypto-asset service providers in accordance with Article 55

Or. en

Justification

The language used in the authorisation provisions applicable to issuers of asset-referenced tokens and CASPs are different ('established' and 'registered'). It would be helpful to clarify what is meant by 'registered' and within this deem having a branch in a Member State sufficient to meet this requirement. Examples of what would be considered as registered would be useful.

Amendment 29

Proposal for a regulation
Article 60 – paragraph 1 (a)

Text proposed by the Commission	*Amendment*
(a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;	(a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;

Or. en

Explanation

We recommend edits to Annex IV as we disagree with placing CASPs that offer custody services in a lower class than exchanges as custodians present a higher risk to consumers. The number of categories for minimum capital requirements should be reduced to two and custodians should be in the highest category.

Amendment 30

Proposal for a regulation

Article 63 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Crypto-asset service providers shall, promptly place any client's funds, with a central bank or a ***credit institution***.	3. Crypto-asset service providers shall, promptly place any client's funds, with a central bank or a ***CASP***.
Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds held with a central bank or a ***credit institution*** are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.	Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds held with a central bank or a ***CASP*** are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

Or. en

Justification

Securing banking services in the crypto-asset sector is often challenging. This provision requires CASPs to place any clients' funds with a central bank or credit institution. The recommended amendment to Article 63(3) would allow CASPs to safeguard clients' funds with other institutions, including equivalent institutions outside of the EU. This would be consistent with other EU regulated financial services sectors.

Amendment 31

Proposal for a regulation
Article 67 – paragraph 8

Text proposed by the Commission	*Amendment*
8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be liable to their clients for loss of crypto-assets as a result***ing from a*** malfunction or hack***s*** up to the market value of the crypto-assets lost.	8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be liable to their clients for loss of crypto-assets as a result ***of the CASP's*** malfunction or ***if the CASP is*** hack***ed***, up to the market value of the crypto-assets lost.

Or. en

Justification

Paragraph 8 appears to hold a CASP liable for loss of crypto-assets as a result of a malfunction or hack, even in instances in which the CASP has had no involvement in the malfunction. This provision has the potential to make the EEA unattractive as a regime to a large number of entities based outside of Europe. The suggested amendment would limit liability for loss only to cases where the malfunction is specifically the CASP's malfunction or instances in which the CASP is hacked.

Amendment 32

Proposal for a regulation
Article XX (new)

Text proposed by the Commission	*Amendment*
	Authorisation of third-country crypto-asset service providers/Issuers
	1) A crypto asset service providers/Issuers established in a third country may provide services in the Union provided that the following conditions are met:
	a) the Commission has adopted, in accordance with paragraph 2 of this Article, an equivalence decision with regards to the country of establishment of the crypto asset service provider/Issuers;
	b) the crypto asset service provider/Issuers is authorised, and is subject to supervision, in the third country in question;
	c) cooperation arrangements referred to in paragraph 4 of this Article have been established and are operational;
	Once those conditions are met, the crypto asset service provider/Issuers shall register with EBA its intention to provide services in the Union.
	2) The Commission may adopt an implementing act recognising that the legal framework and supervisory practices of a third country ensures that:
	a) crypto asset service providers/Issuers authorised in that third country comply with this Regulation or crypto asset service providers/Issuers authorised in that third country comply with binding requirements which are equivalent to the requirements of applicable Union law.
	b) crypto asset service providers/Issuers authorised in

that third country comply with any binding requirements which are equivalent to any ancillary requirements to this regulation the requirements under this Regulation of applicable Union law.

c) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.

Such implementing act shall be adopted in accordance with the examination procedure referred to in Article 37a(2).

3) EBA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify at least:

a) the mechanism for the exchange of information between EBA and the competent authorities of third countries concerned, including access to all relevant information regarding the crypto asset service providers/Issuers authorised in that third country that is requested by EBA;

b) the mechanism for prompt notification to EBA where a third country competent authority deems that the administrator authorised in that third country that it is supervising is in breach of the conditions of its authorisation or other national legislation in the third country;

c) the procedures concerning the coordination of supervisory activities.

4) EBA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 3 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation.

EBA shall submit those draft regulatory technical standards to the Commission by [XX months after entry into force of this Regulation] 6 months after entry into force.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

Crypto-Assets are cross-border by nature. A third country regime will make Europe a desirable location for crypto businesses but also act as an export of best practice.

Amendment 33

Proposal for a regulation
Article XX (new)

Text proposed by the Commission	*Amendment*
	Supervision
	1) Each Member State shall designate the national competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of crypto-asset services providers/Issuers and shall inform ESMA thereof.
	Where a Member State designates more than one competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with other Member States' competent authorities, and ESMA, where specifically referred to in this Regulation.
	EBA shall publish on its website a list of the competent authorities designated in accordance with the first subparagraph.
	The national competent authorities shall have the supervisory and investigatory powers necessary for

the exercise of their functions.

2) ***Crypto asset service providers/Issuers shall provide their services or issuance under the supervision of the NCA.***

3) ***Crypto asset service providers/Issuers shall comply at all times with the conditions for authorisation.***

4) ***The NCA shall assess compliance of crypto-asset service providers/Issuers with the obligations provided for in this Regulation. The NCA shall determine the frequency and depth of that assessment having regard to the size and complexity of the activities of the service provider/Issuer. For the purpose of that assessment, the NCA may subject the service provider/Issuer to on-side inspection.***

5) ***Crypto asset service providers/Issuers shall notify the NCA of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.***

6) ***EBA shall ensure the consistent the consistency application of this regulation across all NCAs.***

Or. en

Justification

Authorisation and Supervision are the responsibilities of the NCAs, however the EBA will have an important role in ensuring the consistent application of the Regulation across all Member States.