

Public Hearing on the RTS & ITS on reporting and the RTS on supervisory colleges under MICAR

17 January 2024



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1. Introduction to the EBA

- The EBA is an independent member-based authority, accountable to the EU Parliament and EU Council and has as its highest governing body the EBA Board of Supervisors, comprising the Heads of the 27 national supervisory authorities.
- The EBA has the objective of protecting the public interest by contributing to the stability and effectiveness of the financial system and by protecting consumers.
- The EBA achieves this objective through many tasks, including through contributing to the sound, effective and consistent level of regulation and supervision.
- The EBA has different legal instruments at its disposal, including Technical Standards, Guidelines, Opinions. While these were originally addressed primarily to credit institutions, the EBA's remit has been continuously extended across time so that many instruments are now addressed to non-bank entities.

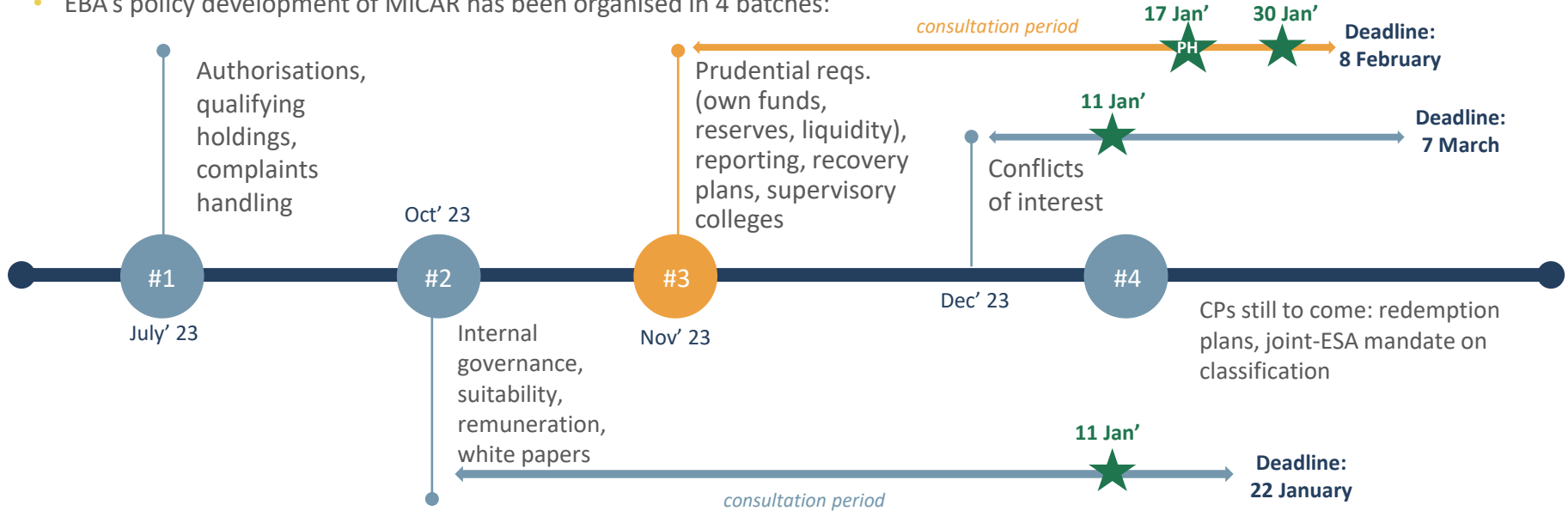
2. Public Hearing goals

Goals

- The EBA organises ‘public hearings’ during the public consultation period for its RTS/ ITS/ GL to allow interested parties to ask clarifications.
- The purpose of the hearing is for the EBA to present a summary of the CP and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.
- The public hearing does therefore not replace written responses to the CP: the EBA can only consider the views of stakeholders via written responses.

3. Progress of the MiCAR L2/L3 policy development

- MiCAR L2/L3 mandates EBA to develop 20 RTS / ITS / GLs (2 of them jointly with ESMA, 1 jointly with both ESMA and EIOPA).
- EBA’s policy development of MiCAR has been organised in 4 batches:



4. Draft RTS on the methodology to estimate the number and value of transactions with ARTs and EMTs denominated in a non-EU currency as a means of exchange

Outline

- The mandate
- Scope of transactions covered by Art. 22(1)(d)
- Reporting of transactions per 'single currency area'
- Reconciliation of the data reported by CASPs
- Reporting of transactions between non-custodial wallets
- Next steps
- Q&As

4.1 The mandate

- Art. 22(1) MiCAR requires the issuer of an ART, for each ART with an issue value higher than EUR 100 million, to report to its CA, on a quarterly basis:
 - a) the number of holders;
 - b) the value of the ART issued and the size of the reserve of assets;
 - c) the average number and average aggregate value of transactions per day during the relevant quarter; and
 - d) **an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of the ART as a means of exchange within a single currency area.**
- To note, the transactions referred to in Art. 22(1)(d) are subject to the caps in Art. 23 MiCAR

In support of these provisions, Art. 22(6) requires the EBA to develop draft RTS **specifying the methodology to estimate “the quarterly average number and average aggregate value of transactions per day that are associated to uses [of an ART] as a means of exchange within a single currency area”** (i.e, the transactions referred to in Art. 22(1)(d) MiCAR).

The requirements in Art. 22 and 23 MiCAR, including this RTS, also apply to EMTs denominated in a non-EU currency (Art. 58(3) MiCAR)

4.2 Scope of transactions covered by Art. 22(1)(d)

Art. 3 of the draft RTS specifies that the transactions covered by Art. 22(1)(d) MiCAR:

- include on-chain & off-chain transactions with ARTs/EMTs denominated in a non-EU currency

... where the token is **used as a means of exchange (incl. for paying for goods and services)**

- exclude transfers between accounts/addresses of the same person
- exclude the exchange of these tokens for funds or other crypto-assets with the issuer or with a CASP

... **unless** *'where the token is used for settlement of transactions in other crypto-assets'*. According to recital 61 MiCAR, this would be the case *'where a transaction involving two legs of crypto-assets, which are different from the ART, is settled in the ART'*.

- cover transactions where **at least the payer or the payee is located in EU.**

Consultation questions 1 to 3 are asking if respondents agree with these proposals and seek feedback on any observed or foreseen use cases 'where transactions involving two legs of crypto-assets, that are different from an ART, are settled in the ART', as referred to in recital 61 of MiCAR.

4.3 Reporting of transactions per ‘single currency area’

Art. 2(1) and 4 of the draft RTS clarify that:

- A single currency area (SCA) refers to one or several countries that have the same official currency.
- The reporting in Art. 22(1)(d) covers both transactions where the payer and the payee are located in the same SCA, **and transactions where they are located in different SCAs.**
- In the EBA’s view, this is in line with the objectives of Art. 22(1)(d) MiCAR of:
 - preventing risks that the wide use of ARTs and EMTs denominated in a non-EU currency may pose to monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects; and
 - ensuring a “comprehensive monitoring over the whole ecosystem of ARTs”

- Issuers should report transactions per SCA as follows:
 - Where the payer and the payee are located in the same SCA -> the issuer should report the transaction for that SCA (once)
 - Where the payer and the payee are located in different SCAs -> the issuer should report the transaction as a *sent transaction* for the SCA where the payer is located, and as a *received transaction* for the SCA where the payee is located.

Consultation question 4 is asking if respondents agree with these proposals.

4.4 Reconciliation of the data reported by CASPs

- Art. 6(2) of the draft RTS requires issuers to have systems and procedures in place that allow them to reconcile, for each transaction :
 - the data reported by the CASP of the payer and the CASP of the payee under Art. 22(3) and the ITS for each transaction
 - ✓ the hash
 - ✓ the distributed ledger address/crypto-asset account number of the payer/payee, as applicable
 - ✓ the value and date of the transaction
 - ✓ the country of the payer and the payee
 - data available to the issuer from other sources (including, where applicable, data available on the distributed ledger).
 - Aim: ensure that the data reported by issuers is correct and complete, and avoid double-counting of transactions reported by CASPs

Consultation questions 6 and 7 are seeking feedback from respondents on whether:

- **the transactional data to be reported by CASPs to the issuer will allow the issuer to reconcile the information received from the CASP of the payer and the CASP of the payee**
- **this reconciliation (on a transactional basis) can be done in an automated manner, and if not, what obstacles do respondents see and how could these be overcome.**

4.5 Reporting of transactions between non-custodial wallets

- Issue: for transactions between non-custodial wallets, there is currently no accurate way for issuers of determining:
 - Whether the transfer is made between addresses of different persons (relevant to determine whether it qualifies as a ‘transaction’ that needs to be reported); or
 - The location of the payer and the payee (relevant to determine the SCA for which transactions under Art. 22(1)(d) should be reported).

- Policy options assessed

Option 1: reporting under Art. 22(1)(d) on a best-efforts basis, using distributed ledger analytics tools, and under point (c)

- **Pros:** more granular data on the use of ARTs/EMTs denominated in a non-EU currency for payments
- **Cons:** unreliable data; higher implementation costs; risk of underreporting to avoid reaching the caps in Art. 23

Option 2: reporting only under Art. 22(1)(c) (not under point (d))

- **Pros:** CAs would still have info on such transactions under Art. 22(1)(c), with the possibility to introduce more detailed reporting reqs. at a later stage; lower implementation costs
- **Cons:** no data on how many of these transactions relate to payments; may incentivise the market to promote the use of non-custodial wallets for payments, to circumvent the reporting reqs. for other transactions

- Preliminary view: option 2 is preferable. To be further assessed after the public consultation.

Consultation questions 8-9 are asking feedback on the proposed approach for reporting transactions between non-custodial wallets, and on:

- **the analytics tools and methodology that could be used by issuers for estimating, in the case of such transactions, whether the transfer is made between addresses of different persons and the location of the payer and of the payee**
- **the costs associated to using such tools**
- **the degree of accuracy of such estimates**

4.6 Next steps



Q&As



5. Draft ITS to establish standard forms, formats and templates for the purpose of reporting on ARTs and EMTs denominated in a non-EU currency

Outline

- The mandate and objectives of reporting
- Timeline and next steps
- Reporting on holders
- Reporting on the value of ARTs issued and related reserve of assets
- Reporting on transactions
- Overview of the consultation questions
- Q&As

5.1 The mandate and objectives of reporting

- Art. 22(1) MiCAR requires the issuer of an ART, for each ART with an issue value higher than EUR 100 million, to report to its CA, on a quarterly basis:
 - a) the number of holders;
 - b) the value of the ART issued and the size of the reserve of assets;
 - c) the average number and average aggregate value of transactions per day during the relevant quarter; and
 - d) an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of the ART as a means of exchange within a single currency area.
- Art. 22(3) MiCAR specifies, that:

Crypto-asset service providers (CASPs) that provide services related to asset-referenced tokens shall provide the issuer of the asset-referenced token with the information necessary to prepare the report referred to in paragraph 1, including by reporting transactions outside the distributed ledger.

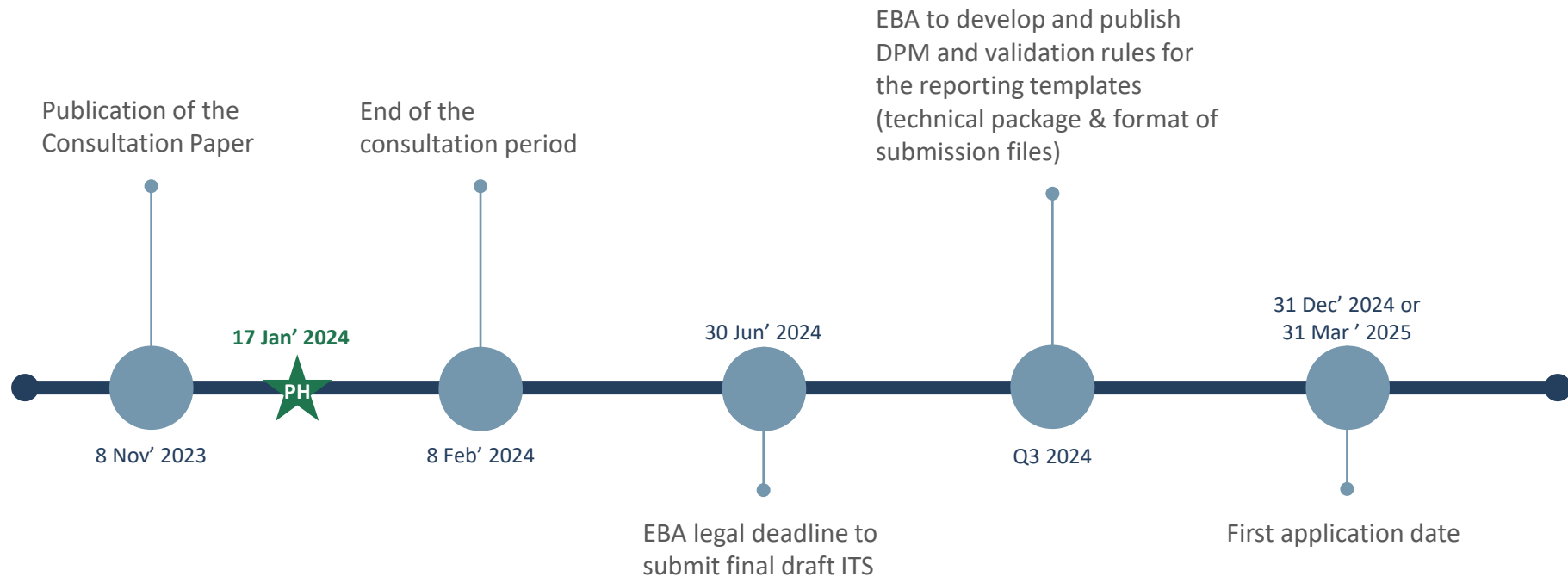
In support of these provisions, Art. 22(7) requires the EBA to develop draft ITS to **establish standard forms, formats and templates for the purposes of reporting referred to in paragraph 1 [of Art. 22 MiCAR] and the provision of the information referred to in paragraph 3 [of Art.22 MiCAR]**.

The requirements in Art. 22 MiCAR also apply to EMTs denominated in a non-EU currency (Art. 58(3) MiCAR)

Main objectives of reporting following the mandate:

- Provide information to assess whether an ART or EMT meets the **criteria to be classified as significant** following Art. 43(1) and 56(1) MiCAR
- Monitor transactions subject to **caps as defined in Art. 23** MiCAR
- Being the **only common supervisory reporting mandate** set out in MiCAR, **to provide sufficient information to the CAs** for their supervisory and other statutory activities

5.2 Timeline and next steps



5.3 Reporting on holders

Templates S 01.00 - NUMBER OF HOLDERS - AT REFERENCE DATE and S 06.00 - INFORMATION ON HOLDERS cover the reporting of Art. 22(1)(a) MiCAR related to the number of holders.

- Reporting for issuers of ARTs/EMTs denominated in a non-EU currency:

S 01.00 - NUMBER OF HOLDERS - AT REFERENCE DATE

- Template reported separately by the **countries** in scope
- Breakdown included for **custodial/non-custodial wallets and retail holders**
- Each **holder to be counted only once**, regardless of how many accounts/wallets they have simultaneously. Issuers **to reconcile the list of holders** received from the CASPs.

- Reporting for CASPs on holders:

S 06.00 – INFORMATION ON HOLDERS

- CASPs to specify the exact ART/EMT in scope for the holders
- List the holders with the information of Name/Identifier/Type of identifier used/Retail or Non-retail/Country

5.4 Reporting on the value of ARTs issued and related reserve of assets

Templates S 02.00 - VALUE OF THE TOKEN ISSUED AND THE SIZE OF THE RESERVE OF ASSETS, S 03.01 - COMPOSITION OF THE RESERVE OF ASSETS BY TYPE OF ASSETS AND MATURITIES and S 03.02 - COMPOSITION OF THE RESERVE OF ASSETS BY COUNTERPARTY/ISSUER cover the reporting of Art. 22(1)(b) MiCAR.

- Reporting for issuers of ARTs/EMTs denominated in a non-EU currency:

S 02.00 - VALUE OF THE TOKEN ISSUED AND THE SIZE OF THE RESERVE OF ASSET

- Value of the token issued and the reserve of assets reported with a breakdown of:
 - At reference date
 - **Maximum (trigger for the reporting obligation** for the value of the token issued)
 - Average
 - Minimum

S 03.01 - COMPOSITION OF THE RESERVE OF ASSETS BY TYPE OF ASSETS AND MATURITIES and S 03.02 - COMPOSITION OF THE RESERVE OF ASSETS BY COUNTERPARTY/ISSUER

- The size and composition of the reserve of assets in line with the requirements set out in MiCAR and **in line with the draft RTS on reserve of assets following Art. 36(4) and Art.38(5).**

5.5 Reporting on transactions

Below templates are to cover the reporting of Art. 22(1)(c) MiCAR:

- Reporting for issuers of ARTs/EMTs denominated in a non-EU currency:

S 04.01 - TRANSACTIONS PER DAY - AVERAGE

- The average aggregate value and number of transactions per day during the relevant quarter with a **geographical (country) breakdown**, and within that separately for the transactions made:
 - **Within the country**
 - **Received transaction to the country**
 - **Sent transaction from the country**

S 04.02 - TRANSACTIONS PER DAY – AVERAGE_EU

- The average aggregate value and number of transactions per day during the relevant quarter **within the scope of the EU**, and within that separately for the transactions made:
 - **Within the EU**
 - **Received transaction to the EU**
 - **Sent transaction from the EU**

S 04.03 - TRANSACTIONS AND TRANSFERS PER DAY BETWEEN NON-CUSTODIAL WALLETS – AVERAGE

- The average aggregate value and number of **transactions and transfers** per day during the relevant quarter **between non-custodial wallets**.

These templates cover transactions where at least the originator or the beneficiary is located in the EU, with the exception for those transactions that are made with ARTs that references at least one EU currency. In this latter case neither the originator nor the beneficiary of the transaction have to be located in the EU.

Template S 05.00 - TRANSACTIONS PER DAY THAT ARE ASSOCIATED TO ITS USES AS A MEANS OF EXCHANGE WITHIN A SINGLE CURRENCY AREA – AVERAGE is to cover the **reporting of Art. 22(1)(d) MiCAR, for which the exact scope is defined in the separate RTS of Art.22(6) MiCAR**. The structure of the template mirrors the structure of templates S 04.01 and S 04.02.

5.5 Reporting on transactions

Below templates are to cover the reporting of Art. 22(1)(c)-(d) MiCAR:

- Reporting for CASPs:

S 07.01 – INFORMATION ON TRANSACTIONS

- CASPs to share with the issuers the list of transactions occurred in the reporting period. CASPs should prepare separate templates for each ART/EMT denominated in a non-EU currency and share it with only the respective issuer of that ART/EMT. The template should include the **necessary information related to the transactions for issuers to reconcile** the templates received from the different CASPs and to prepare their reports on transactions (see previous slide).

S 07.02 - DISTRIBUTED LEDGER ADDRESSES FOR MAKING TRANSFERS ON BEHALF OF CLIENTS

- This list is also to be shared with the issuers by the CASPs, in order to facilitate issuers' reporting on transactions.

5.6 Overview of the consultation questions

Question 1: Do you agree with the proposal included in the ITS on how issuers and CASPs should report on holders in Article 22(1)(a) of MiCAR? If not, please provide your reasoning and suggest an alternative approach.

Question 2: Do you agree with the template S 02.00 - VALUE OF THE TOKEN ISSUED AND THE SIZE OF THE RESERVE OF ASSETS on how issuers should report the different values of the token issued in Article 22(1)(b) of MiCAR, and in particular do you agree with how the maximum value that would trigger the reporting obligation is defined? If not, please provide your reasoning and suggest an alternative approach.

Question 3: Do you agree with template S 02.00 - VALUE OF THE TOKEN ISSUED AND THE SIZE OF THE RESERVE OF ASSETS on how issuers should report the size of the reserve of assets in Article 22(1)(b) of MiCAR, and with templates S 03.01 - COMPOSITION OF THE RESERVE OF ASSETS BY TYPE OF ASSETS AND MATURITIES and S 03.02 - COMPOSITION OF THE RESERVE OF ASSETS BY COUNTERPARTY/ISSUER related to the requirements specified on the RTS developed under Articles 36(4) and 38(5) of MiCAR? If not, please provide your reasoning and suggest an alternative approach.

Question 4: Do you agree with templates S 04.01 - TRANSACTIONS PER DAY - AVERAGE, S 04.02 - TRANSACTIONS PER DAY - AVERAGE_EU and S 05.00 - TRANSACTIONS PER DAY THAT ARE ASSOCIATED TO ITS USES AS A MEANS OF EXCHANGE WITHIN A SINGLE CURRENCY AREA - AVERAGE on how issuers should report transactions under Article 22(1)(c) and (d) of MiCAR? In particular, do you agree to include a separate template (S 04.03 - TRANSACTIONS AND TRANSFERS PER DAY BETWEEN NON-CUSTODIAL WALLETS - AVERAGE) requesting information

on transactions and transfers made between non-custodial wallets or other types of distributed ledger addresses where there is no CASP involved? If not, please provide your reasoning and suggest an alternative approach.

Question 5: Do you agree with template S 07.01 - INFORMATION ON TRANSACTIONS how CASPs should report transactions of Article 22(1)(c) and (d) of MiCAR to the issuers? Do you agree with template S 07.02 - DISTRIBUTED LEDGER ADDRESSES FOR MAKING TRANSFERS ON BEHALF OF CLIENTS to be reported by the CASPs to the issuers? If not, please provide your reasoning and suggest an alternative approach.

Question 6: Do you agree that issuers should define and agree on one common harmonized format and file extension, that they request the CASPs to use for submitting the reports for them? If yes, please provide your suggestions for this common format and file extension.

Question 7: Do you have any other comments on the ITS, the templates or instructions?

Q&As



6. Draft RTS on supervisory colleges

Outline

- The role of supervisory colleges under MiCAR
- The mandate
- Criteria for identifying the 'most relevant' entities in Art. 119(2)(d), (e), (f) and (h)
- Criteria for determining when an ART/EMT is 'used at large scale' as referred to in Art. 119(2)(l)
- General conditions for the functioning of supervisory colleges
- Next steps
- Q&As

6.1 The role of supervisory colleges under MiCAR

- Under MiCAR, the EBA shall become a **direct supervisor** of: (i) all issuers of a significant ART (sART) and (ii) EMI's issuing a significant EMT (sEMT).
- Art. 119(1) MiCAR requires the EBA **to establish, manage and chair a consultative supervisory college for each issuer of a sART/sEMT**. EBA is required to establish such a college within 30 calendar days of a decision to classify an ART/EMT as significant.
- EBA is required to establish a college also for CIs issuing a sEMT, even if CIs issuing a sEMT will remain subject to supervision by the CA of their home MS.
- The role of a supervisory college under MiCAR is to facilitate (i) the exercise of the EBA's supervisory tasks and (ii) the cooperation and exchange of information among its members.
- A college 'may' issue **non-binding opinions**, addressed to the EBA and/or the relevant CAs, on the items listed in Art. 120, e.g in relation to:
 - changes to the authorisation of an issuer of a sART/sEMT;
 - a draft amended crypto-asset white paper submitted by an issuer of a sART/sEMT, and any change to the business model of an issuer of a sART;
 - any decision to require an issuer of a sART/sEMT to hold a higher amount of own funds;
 - any envisaged supervisory measures concerning an issuer of a sART/sEMT

6.2 The mandate

Art. 119(2) MiCAR: A college shall include, among others:

- the CAs of the **‘most relevant’**:
 - CASPs, CIs or investment firms ensuring the custody of the reserve assets in accordance with Art. 37 or of the funds received in exchange of the sEMTs (Art. 119(2)(d));
 - Trading platforms where the sARTs/sEMTs are admitted to trading (Art. 119(2)(e));
 - PSPs providing payment services in relation to the sEMTs (Art. 119(2)(f));
 - CASPs providing custody and administration of crypto-assets on behalf of clients in relation to the sARTs/sEMTs (Art. 119(2)(h))
- the CAs of MS where the ART/EMT is **‘used at large scale’**, at their request (Art. 119(2)(l)).

In support of these provisions, Art. 119(8) MiCAR mandates the EBA to develop draft RTS specifying:

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

6.3 Criteria for identifying the ‘most relevant’ entities in Art. 119(2)(d), (e), (f) and (h)

‘Most relevant’ CASPs, CIs or investment firms ensuring the custody of the reserve assets in accordance with Art. 37 or of the funds received in exchange of the sEMTs (Art. 119(2)(d))

EBA to take into account in particular, the 3 CASPs, CIs or investment firms that:

- held in custody the **highest value of the reserve of assets** in accordance with Art. 37 MiCAR (in the case of an issuer of a sART, or of an EMI issuing a sEMT)
- held in custody the **highest percentage of the funds received [by the CI] in exchange of the EMTs** (in the case of a CI issuing a sEMT)

‘Most relevant’ trading platforms where the sARTs/sEMTs are admitted to trading (Art. 119(2)(e))

EBA to take into account in particular:

- the 3 CASPs ensuring the operation of a trading platform for crypto-assets that have executed the **highest average number of transactions per day** with the sART/sEMT; and
- the 3 CASPs ensuring the operation of a trading platform for crypto-assets that have executed the **highest average aggregated value of transactions per day** with the sART/sEMT.

6.3 Criteria for identifying the ‘most relevant’ entities in Art. 119(2)(d), (e), (f) and (h) (cont.)

‘Most relevant’ PSPs providing payment services in relation to the sEMTs (Art. 119(2)(f))

EBA to take into account in particular:

- the 3 PSPs that have executed the **highest average number of payment transactions in relation to the sEMT** per day
- the 3 PSPs that have executed the **highest average aggregate value of payment transactions in relation to the sEMT** per day.

‘Most relevant’ CASPs providing custody and administration of crypto-assets on behalf of clients in relation to the sARTs/sEMTs (Art. 119(2)(h))

EBA to take into account in particular:

- the 3 CASPs providing custody and administration of crypto-assets on behalf of clients that have executed the **highest average number of transactions per day with the sART/sEMT**; and
- the 3 CASPs providing custody and administration of crypto-assets on behalf of clients that have executed the **highest average aggregated value of transactions per day** with the sART/sEMT.

- Reference period: the most recent 6-month period covered by the reporting req. in Art. 22(1) of MiCAR
- Criteria consistent with the criterion in Art. 43(1)(c) MiCAR for assessing significance. ‘Transaction’ has the meaning in Art. 22(1) MiCAR
- **Consultation questions 1- 4 are asking feedback whether respondents agree with these criteria.**

6.4 Criteria for determining when an ART/EMT is ‘used at large scale’ as referred to in Art. 119(2)(I)

- Two alternative criteria proposed for determining whether a sART/sEMT is deemed to be used at large scale in a MS for the purpose of Art. 119(2)(I):
 - a) the **number of holders** of the sART/sEMT located in that MS, on at least one day during the reference period, is of at least 20% of the population of that MS; **or**
 - b) the **average number and average aggregate value of transactions** with the sART/sEMT **per day, where at least one party is located in that MS**, during the reference period is higher than 1 250 000 transactions and 250 000 000 EUR respectively.
- Reference period: the most recent 6-month period covered by the reporting obligation in Art. 22(1) MiCAR
- The thresholds in (b) represent 50% of the thresholds in Art. 43(1)(c) MiCAR for assessing the significance of a token
- The location of a holder of the sART/sEMT or of a party to a transaction with such tokens refers to:
 - for natural persons, their habitual residence
 - for legal persons, their registered office address

Consultation question 5 is asking feedback on whether respondents agree with these criteria

6.5 General conditions for the functioning of supervisory colleges

- Art. 6-11 draft RTS specify aspects regarding the functioning of supervisory colleges under MiCAR, e.g, in relation to:
 - the conclusion of the **written agreement between the members of the college**
 - **participation in college meetings and exercise of voting rights**
 - frequency of meetings
 - exchange of information between the members of the college
 - entrustment of tasks amongst the members of the college.
- The provisions remain rather high-level to allow for flexibility, taking into account that supervisory colleges under MiCAR may vary in size and complexity.

Consultation question 6 is asking respondents whether they have suggestions regarding other aspects that their view should be covered in the draft RTS, taking into account the scope of the mandate .

6.6 Next steps



Q&As



Thank you!
