
EBA/RTS/2024/06

06/06/2024

Final Report

Draft Regulatory Technical Standards

on the minimum content of the governance arrangements on the remuneration policy under Article 45 of Regulation (EU) 2023/1114

Contents

1. Executive Summary	3
2. Background and rationale	4
3. Draft regulatory technical standards	6
4. Accompanying documents	16
4.1 Draft cost-benefit analysis / impact assessment	16
4.2 Feedback on the public consultation	20

1. Executive Summary

Article 45(1) Regulation (EU) 2023/1114 requires “Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.”

The aforementioned requirements apply by virtue of Article 58(1), point b, of Regulation (EU) 2023/1114 as well to electronic money institutions that are issuing significant e-money tokens. The scope of application of those requirements can be further expanded to e-money institutions issuing e-money tokens that are not significant, if the competent authority of the home Member State requires this in line with Article 58(2) of that Regulation.

As per Article 45(7)(a) of Regulation (EU) 2023/1114, the EBA, in close cooperation with ESMA, is mandated to develop draft RTS specifying “the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1...”. The mandate forms a part of the suite of mandates under Article 45(7) which also require to specify (b) the minimum content of the liquidity management policy and procedures and minimum amount of deposits with credit institutions in each official currency referenced and (c) the procedure and timeframe to adjust the amount of required own funds.

The RTS set out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy’s elements that should be adopted by the issuer as part of the remuneration policy.

Next steps

The draft regulatory technical standards will be submitted to the Commission for endorsement following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

2. Background and rationale

Article 45(1) Regulation (EU) 2023/1114 requires “Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.” In addition, Articles 45(1) of that Regulation also applies to issuers of significant e-money tokens and, where decided by competent authorities, issuers of non-significant e-money tokens, as per Articles 58(1), point (a), and (2) of Regulation (EU) 2023/1114, of that Regulation. Therefore, these RTS should also be relevant and applicable for those.

As per Article 45(7)(a) of Regulation (EU) 2023/1114, EBA, in close cooperation with ESMA is mandated to develop draft RTS specifying “the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1...”

The RTS set out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy’s elements that should be adopted as part of the remuneration policy.

To ensure that remuneration policies promote the sound and effective risk management of issuers, do not create incentives to reduce risk standards and ensure the cross sectoral consistency, the RTS set a framework similar to the remuneration framework for investment firms that aims at achieving the same regulatory objectives. The requirements are tailored to the business model of issuers, which issue significant tokens, that are not considered financial instruments.

The RTS provide for a level playing field between issuers of significant asset-referenced tokens and other institutions that are able to issue significant tokens as part of their authorisation. It ensures that gender neutral remuneration policies for all staff are applied and are compatible with risk management objectives, business objectives, corporate and risk culture of the issuer. Furthermore, the RTS specify the elements of variable and fixed remuneration that can be granted. It also ensures that there are no incentives to lower risk standards, including by setting specific requirements for the variable remuneration of control functions so that they are remunerated mainly based on control objectives.

The proposed framework leads to a risk alignment of variable remunerations for staff that has a material impact on the risks of the issuer or of the significant tokens they issue and includes specific requirements that ensure the risk alignment of variable remunerations in the longer run. To this end, the RTS requires issuers to set a maximum ratio between the variable and the fixed remuneration as well as to apply other typical rules to elements of remuneration frameworks, e.g., link variable remuneration to performance of the issuer and its staff, pay out variable remuneration partly in instruments, apply deferral arrangements and malus and claw back, where appropriate.

The instruments used for the pay out of a part of the variable remuneration comprise shares and share-linked instruments. Considering risks related to the management of the reserve-assets and

operational risks, issuers of asset-referenced tokens should also be able to use the significant tokens they issue for the pay out of variable remuneration. However, this should not be applicable to issuers that are authorised as credit institution, investment firm, UCITS management company or Alternative Investment Funds Managers (AIFM), that have to pay out a part of the variable remuneration in instruments as specified under their sectorial specific requirements.

As Regulation (EU) 2023/1114 refers to ESG risks in general and considering the energy consumption of the processes and procedures supporting significant tokens, some specific performance criteria that relate to ESG risks are required to be applied.

3. Draft regulatory technical standards

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

of **XXX**

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum content of the governance arrangements on the remuneration policy pursuant to Article 45(1) of Regulation (EU) 2023/1114.

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937¹, and in particular Article 45(7)(a) thereof, that requires the EBA, in close cooperation with ESMA, to develop draft regulatory technical standards specifying the minimum content of the governance arrangements on the remuneration policy,

Whereas:

- 1) Article 45(1) of Regulation (EU) 2023/1114 requires issuers of significant asset-referenced tokens (ARTs) to adopt, implement and maintain remuneration policies that promote sound and effective risk management of such issuers and that do not create incentives to relax risk standards.
- 2) Requirements set out in Articles 45(1) of Regulation (EU) 2023/1114 also apply to issuers of significant e-money tokens as per Article 58(1), point (a) of this Regulation and, where required by the competent authority under Article 58(2) of this Regulation, to issuers of non-significant e-money tokens.
- 3) Credit institutions, investment firms, UCITS management companies and Alternative Investment Funds Managers (AIFM) that are issuers of ARTs shall comply with the relevant more specific or stricter requirements set for the issuers of ARTs. Credit institutions and investment firms issuing significant tokens, are subject to remuneration requirements under this Regulation while remaining subject to the remuneration requirements under Directive (EU) 2013/36 and Directive (EU) 2019/2034 respectively. To achieve those objectives remuneration policies should

¹ OJ L 150, 9.6.2023 p. 40–205

provide incentives for staff for long-term oriented risk-taking behaviour in line with the issuers of significant asset-referenced or e-money tokens risk appetite and contribute to the protection of the holders of asset-referenced.

- 4) While Regulation (EU) 2023/1114 itself does not specify the elements of remuneration policies that should contribute to the risk alignment of the remuneration of staff, but considering the similarities of the business model of issuers of significant asset-referenced or e-money tokens to the business model of investment firms that issue financial instruments, and in order to ensure a level playing field across the Union, it is necessary to set out a framework for governance arrangements on remuneration policies that includes the same elements as the remuneration framework of investment firms, but is tailored to the business model of issuers of significant asset-referenced or e-money tokens, as it aims at ensuring the same objectives as the remuneration framework for investment firms under Directive (EU) 2019/2034.
- 5) In order to ensure that remuneration policies are consistent with and promote sound and effective risk management of the issuers of significant asset-referenced tokens or of the electronic money institutions issuing significant e-money tokens, do not provide incentives for excessive risk taking and are aligned with the long-term interests of these issuers across the European Union, it is necessary to specify the main aspects of the remuneration policies to be applied by such issuers.
- 6) Issuers of significant asset-referenced tokens' or electronic money institutions issuing significant e-money tokens' remuneration policies should be gender neutral for all staff and be compatible with their risk management and business objectives, corporate and risk culture.
- 7) The Regulation specifies the main governance processes regarding the adoption and maintenance of remuneration policies. While the main responsibility for the adoption and implementation of the remuneration framework is with the management body, the business and control functions must ensure that the adopted remuneration policies are being complied with.
- 8) In order to ensure that the remuneration framework has no incentives to lower risk standards, specific requirements for the variable remuneration of control functions are set to ensure that they are remunerated mainly based on control objectives while the remuneration policies for marketing or sales staff are required not to provide incentives for a preferential treatment of clients or counterparts.
- 9) To ensure cross sectoral consistency and to ensure that remuneration does not provide incentives for excessive risk taking, a distinction between variable and fixed remuneration should be made. Issuers of significant asset-referenced tokens or electronic money institutions issuing significant e-money tokens should be required to specify an appropriate maximum ratio between the two different types of remuneration. Additional requirements have been set to align the variable remuneration of staff that has a material impact on the risk profile of the issuers of significant asset-referenced tokens or electronic money institutions issuing

significant e-money tokens or the tokens they issue, to ensure that the variable remuneration is linked to the risk adjusted performance of the issuer, including by requiring the application of deferral arrangements, malus and claw back.

- 10) To ensure a proper risk alignment of the variable remuneration awarded in instruments, the instruments awarded should consist of shares, share-linked or equivalent instruments or the significant tokens issued.
- 11) To ensure a level playing field across the Union and cross sectoral consistency, issuers of significant asset referenced tokens or electronic money institutions issuing significant e-money tokens should have a policy on remuneration covering the whole legal entity is authorised to issue such tokens independent of the fact that the issuer may pursue other different business activities other than issuing tokens as well.
- 12) Environmental, social and governance (ESG) factors, such as through the adverse impact on the climate stemming from energy use and carbon footprint associated with the underlying information technology infrastructures and consensus mechanisms algorithms, used for the validation of transactions in blockchain systems are relevant for issuers of significant asset-referenced and electronic money institutions issuing significant tokens. ESG factors can affect the risk profile of such issuers, its business model and the acceptance of the significant asset-referenced or electronic money tokens. While climate and environmental factors are particularly relevant to the activities and services of such issuers, other types of ESG factors such as tax transparency, human rights, employment conditions and adequate management of risks related to money laundering and other financial crimes are also relevant factors. It is therefore necessary that issuers of significant asset-referenced tokens and electronic money institutions issuing significant e-money tokens ensure that their remuneration policies are consistent with ESG risk-related objectives and take into account ESG risks and possible adverse impacts of ESG risk factors. In particular, the variable remuneration should be aligned to the ESG risk factors relevant for climate and other environmental impacts caused by the consensus and validation mechanisms used.
- 13) This Regulation is based on the draft regulatory technical standards developed by the European Supervisory Authority (European Banking Authority, EBA) in consultation with the European Securities Markets Authority (ESMA) and submitted by the EBA to the Commission.
- 14) EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

- 1) For the purposes of this Regulation, the following definitions shall apply:
 1. ‘Staff’ means all employees of an issuer of significant asset-referenced tokens or of an electronic money institution issuing significant e-money tokens, and all members of their respective management bodies.
 2. ‘Senior management’ means those natural persons who exercise executive functions within an issuer of significant asset-referenced tokens or within an electronic money institution issuing significant e-money tokens and who are responsible, and accountable to the management body, but are not members of that body, for the day-to-day management of the issuer or of the electronic money institution under the direction of its management body.
 3. ‘Identified staff’ means staff that has a material impact on their risk profile of the issuer or the risk profile of the significant asset-referenced or electronic-money tokens they issue.
 4. ‘Managerial responsibility’ means a situation, in which a staff member:
 - a) heads a business unit or a control function and is directly accountable to the management body as a whole or to a member of the management body or to the senior management;
 - b) heads one of the functions laid down in Article 4 (2) point (c).
 5. ‘Risk appetite’ means the aggregate level and types of risk an issuer of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens is willing to assume within its risk capacity, in line with its business model, to achieve its strategic objectives.
 6. ‘Material business unit’ means a business unit that is assessed by the issuer of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens as having a material impact on the issuer’s business model or which represents a material source of revenue, profit, or franchise value for an issuer.
 7. ‘Business unit’ means any separate organisational or legal entity, business line or geographical location.
 8. ‘Control function’ means a function that is independent from the business units it controls and that is responsible for internal control procedures and includes the compliance, risk management and audit function.
 9. ‘Remuneration’ includes all forms of fixed and variable remuneration and includes payments and benefits, monetary or non-monetary, awarded directly to staff by or on behalf of issuers of significant asset-referenced tokens or an electronic money

institution issuing significant e-money tokens in exchange for professional services rendered by staff, carried interest payments within the meaning of Article 4(1)(d) of Directive 2011/61/EU², and other payments made via methods and vehicles which, if they were not considered as remuneration, would lead to a circumvention of the remuneration requirements of Regulation (EU) 2023/1114 and this Regulation.

- 2) Where in accordance with Article 58(2) of Regulation (EU) 1114/2023 electronic money institutions issuing e-money tokens that are non-significant are required to comply with the requirements under Article 45(1), the application of provisions of this Regulation referring to the “issuer of significant electronic money token” shall be extended also to such issuers of non-significant electronic money tokens.

Article 2

Governance of remuneration

- 1) The management body of the issuer of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens shall:
 - a) approve and retain ultimate responsibility for the issuer’s remuneration policy;
 - b) approve any changes to the remuneration policy;
 - c) seek advice from the remuneration committee, where it has been established by the issuer, on the issuer’s remuneration policy.
- 2) Issuers of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens shall ensure that:
 - a) the implementation of their remuneration policies is, at least annually, subject to review for compliance with policies and procedures by control functions. The review may be outsourced to an external party;
 - b) the compliance function and the risk management function, where established, or staff entrusted with the performance of compliance or risk management procedures, the internal audit, where established, and human resources’ function provide effective input on the design of the remuneration policies;
 - c) potential conflicts of interest caused by the pay out of instruments as part of the variable or fixed remuneration are identified and appropriately mitigated.

Article 3

Remuneration policies

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

- 1) Issuers of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens shall ensure that remuneration policies for all staff meet the following criteria:
 - a) are consistent with the rights and interests of holders of tokens with a view to ensuring that holders are treated fairly, and their interests are not impaired by the remuneration practices adopted by the issuer;
 - b) are gender neutral and based on the principle of equal pay for male and female staff for equal work or work of equal value;
 - c) are consistent with the objectives of the business and risk strategy, including environmental, social and governance (ESG) risk-related objectives, corporate culture and values, risk culture, risk appetite, and incorporate measures to avoid conflicts of interest;
 - d) ensure that the staff in control functions are remunerated in accordance with the achievement of the objectives linked to their functions and independently of the performance of the business areas they control;
 - e) are consistent with the management of ESG risks and provide for incentives for the control and limitation of ESG impacts caused by the issuers business activities.
- 2) Issuers of significant asset-referenced tokens or an electronic money institution issuing significant e-money tokens shall ensure that the remuneration policies:
 - a) do not create a conflict of interest or incentive that may lead staff members to favour their own interests or the issuer's interests to the potential detriment of any holder of significant tokens they issue;
 - b) do not encourage risk-taking that exceeds the level of risk appetite of the issuer;
 - c) are available to the staff concerned at all times;
 - d) are transparent to all staff regarding the fixed remuneration, processes and criteria for setting the variable remuneration and the award criteria used;
 - e) are clear, well documented, transparent, proportionate to their size, internal organisation and nature, as well as to the scope and complexity of their activities.
- 3) Issuers of significant asset-referenced tokens or electronic money institutions issuing significant e-money tokens shall ensure that the remuneration policies for staff identified under Article 4, taking into account national contract and labour law, make a clear distinction between the following two components of total remuneration:
 - a) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in a staff member's job description as part of the terms of employment; and
 - b) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the staff member's job description as part of the terms of employment.

Article 4

Identification of staff

- 1) Issuers of significant asset-referenced tokens or electronic money institutions issuing significant e-money tokens shall identify all staff that has a material impact on their risk profile or the risk profile of the tokens they issue and apply for this purpose at least the qualitative criteria set out in paragraph 2.
- 2) For the purposes of identification of staff set out in paragraph 1, staff shall be identified if they meet one or more of the following criteria:
 - a) staff that are members of the management body or senior management;
 - b) staff members with managerial responsibility over the issuer's control functions or material business units;
 - c) the staff member has managerial responsibility for:
 - (i) the management of at least one of the following risk categories: liquidity risk, operational risk, including legal and information and communication technology risk;
 - (ii) Information and communication technology – used for the processing of the tokens;
 - (iii) the prevention of money laundering and terrorist financing;
 - (iv) the management of reserve assets;
 - (v) the tokens' issuance function;
 - (vi) the managing of outsourcing arrangements supporting critical or important functions or arrangements with third-party service providers supporting critical or important functions;
 - (vii) finance, including taxation and budgeting;
 - (viii) legal affairs;
 - (ix) the soundness of accounting policies and procedures;
 - (x) human resources
 - (xi) the establishment or internal approval of white papers;
 - d) other categories of staff whose professional activities have an impact on the issuer's risk profile or tokens they issue comparably as the staff members specified in points (a) to (c) of this paragraph.

Article 5

Variable remuneration

- 1) Issuers of significant asset-referenced tokens or electronic money institutions issuing significant e-money tokens shall, within their remuneration policies for identified staff under Article 4:
 - a) ensure that variable remuneration is linked to the assessment of the performance of the issuer, the business unit and the individual staff member concerned; when assessing performance, financial and non-financial criteria, including the management of ESG risks and control over adverse ESG impacts, are taken into account;

- b) ensure that there is an effective risk adjustment mechanism to integrate all relevant types of current and future risks;
- c) ensure that there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff;
- d) ensure that remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the issuer;
- e) ensure that payments relating to the early termination of an employment contract reflect performance achieved over time by the individual staff member and shall not reward failure or misconduct;
- f) ensure that fixed and variable components of total remuneration are appropriately balanced, and the fixed components represent a sufficiently high proportion of the total remuneration to allow the operation of fully flexible policies on variable remuneration components, including the possibility to reduce the variable remuneration to zero;
- g) set the appropriate maximum ratios between the variable and the fixed components of the total remuneration, taking into account the business activities of the issuer and associated risks, as well as the impact of different categories of staff;
- h) ensure that variable remuneration for control functions is predominantly linked to control objectives and that the ratio between the variable and the fixed components of total remuneration for control functions is set significantly lower compared to the ratio applicable to the business units they control;
- i) ensure that at least 50 % of the variable remuneration, consists of any of the following instruments:
 - i. shares or equivalent ownership interests, subject to the legal structure of the issuer concerned;
 - ii. share-linked instruments, subject to the legal structure of the issuer concerned;
 - iii. Additional Tier 1 instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the issuer as a going concern;
 - iv. significant asset-referenced tokens issued by the issuer or significant e-money tokens issued by electronic money institutions; unless the issuer is a credit institution, investment firm, UCITS management company or Alternative Investment Funds Managers (AIFM) and is required to pay out a part of the variable remuneration of staff in instruments in accordance with Article 94(1) lit l of Directive (EU) 2013/36, Article 32(1) lit j of Directive (EU) 2019/2034 or Article 14b(m) of Directive 2009/65/EC or paragraph 1 (m) of Annex II of Directive 2011/61/EU;
 - v. other instruments that may be used for the pay-out of variable remuneration by the issuer, where the issuer is also authorised in

- accordance with any other Union legal acts that require that parts of the variable remuneration are paid out in instruments.
- j) set specific criteria for the application of malus and clawback on variable remuneration. Such criteria shall in particular cover situations where the staff member:
 - i. participated in or was responsible for conduct which resulted in significant losses to the issuer, as defined in the issuer's remuneration policy;
 - ii. failed to meet appropriate standards of fitness and propriety;
 - k) ensure that at least 40% of the variable remuneration of identified staff is deferred for a period of at least 3 to 5 years, depending on the business cycle of the issuer, the nature of its business, its risks and the activities of the individual staff member concerned, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred, in the same condition, is at least 60 %;
 - l) ensure that the deferred portion of the variable remuneration shall not vest sooner than 12 months after the start of the deferral period and that it vests no faster than on a pro-rata basis.
 - m) ensure that no interest or dividend on instruments which have been awarded as variable remuneration under deferral arrangements is paid to identified staff members for periods before the instrument has vested;
 - n) ensure that the variable remuneration is awarded and vests only if it is sustainable according to the financial situation of the issuer as a whole and justified on the basis of the performance of the issuer, of the business unit and of the staff member concerned;
 - o) ensure that no obligation is created to pay variable remuneration during the period when the issuer failed to meet prudential requirements set in accordance with Article 67 of Regulation (EU) 2013/1114.
- 2) The requirement in paragraph 1(i) shall apply to the deferred and the non-deferred part of variable remuneration. Where issuer of significant asset-referenced tokens or electronic money institutions issuing significant e-money tokens pays out a higher portion than 50% of the deferred remuneration in instruments, it may pay out a lower portion than 50% of the non-deferred part of variable remuneration in instruments, as long as in total the minimum requirement for the pay out of variable remuneration in instruments of at least 50% is met.
- 3) Paragraph 1, points (i) and (k) shall not apply to an individual staff member whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual staff member's total annual remuneration.

Article 6

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

4. Accompanying documents

4.1 Draft cost-benefit analysis / impact assessment

According to Article 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of the draft RTS developed by the EBA. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA) which analyses ‘the potential related costs and benefits.’

Regulation (EU) 2023/1114 sets out a new legal framework. As part of the specific requirements applicable to issuers of significant asset-referenced tokens (ARTs) and issuers of significant e-money tokens (EMTs), the respective issuers are required to implement and maintain a remuneration policy that promotes the sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

This analysis presents the IA of the main policy options included in these draft regulatory technical standards (RTS) on the minimum content of the governance arrangements on the remuneration policy under Article 45 of Regulation (EU) 2023/1114.

A. Problem identification

While the objectives of the remuneration policy are clearly specified in Regulation (EU) 2023/1114, remuneration policies can take different approaches to achieve them. This in turn may lead to a significant divergence in the remuneration policies, which can have an impact on the level playing field between different issuers of ARTs.

B. Policy objectives

The draft RTS aim to ensure remuneration policies that support the sound and effective risk management of issuers. More specifically, it aims to make sure that the remuneration policies do not create incentives to reduce the risk standards and to ensure a level playing field between issuers and cross sectoral consistency, particularly with respect to the remuneration framework for investment firms, which has similar regulatory objectives.

C. Baseline scenario

In a baseline scenario, the issuers of significant asset-referenced tokens and electronic money institutions issuing significant e-money tokens would need to apply the Regulation (EU) 2023/1114 requirements to implement and maintain a remuneration policy that promotes sound and effective risk management and that does not create incentives to relax risk standards, without any additional specifications on the minimum contents of the governance arrangements on the remuneration

policy in the form of an RTS. This scenario would lead to a diverse approaches and interpretation on how such a remuneration policy could be designed and implemented. This could potentially endanger the level playing field across issuers of significant ARTs and electronic money institutions issuing significant e-money tokens.

The costs and benefits of the underlying Regulation are not assessed within this impact assessment.

General approach

Given that the objectives for remuneration policies of the underlying Regulation are similar to the objectives for remuneration policies under the Investment Firm Directive, the general approach followed has been aligned with the one taken for investment firms, while some specifications have been made to better align the provisions to the business model of issuers of ARTs and electronic money institutions issuing significant e-money tokens. Moreover, issuers and investment firms as well as credit institutions compete to some extent for the same staff and therefore a consistent, but tailored, remuneration framework is the most appropriate to ensure a level playing field on the financial market regarding remuneration policies and practices.

Policy issue 1: Pay out in instruments

Option 1A: shares or equivalent ownership instruments or share-linked, equivalent ownership linked instruments and Tier 1 capital instruments.

Option 1B: Option A + significant asset-referenced tokens issued by the issuer but limited to issuers that do not hold a licence as credit institution or investment firm.

Option 1C: Option B + other instruments that a firm that is authorised also in accordance with other Union legal acts may use for the pay out of variable remuneration under this sectorial framework that can be fully written down or converted.

Option 1A was considered as it is aligned with the framework for investment firms (IFD). The list does not include instruments of the portfolio (as for IFs) as it would be difficult to relate these instruments to performance of issuers. Tier 2 capital instruments are not eligible as own funds instruments under MiCAR and have therefore not been included. Option 1A may create additional burden, where shares are not listed (in particular as the valuation of shares would be needed and the creation of share-linked instruments could also be more complex) or where eligible Tier 1 capital instruments are not available.

Option 1B allows in addition the use of significant asset-referenced tokens issued by issuer as instruments for remuneration. This option would not be available for credit institutions and investment firms, UCITS management companies or Alternative Investment Funds Managers that have to pay out variable remuneration to identified staff in instruments, to ensure that they comply with their sector specific remuneration provisions. Where such firms are subject to the derogations to the requirement to pay out variable remuneration in instruments under their sectorial directives, they may use asset referenced tokens for the pay out of variable remuneration if they are issuers of significant asset referenced tokens. Similarly, to shares or share-linked instruments, awarded tokens are connected to the risk profile of the issuer (e.g., the risk of loss to the reserve assets, and operational risks related to the underlying IT processes). Where the variable remuneration is based

on a fixed amount of tokens, reflecting the change of the price of tokens, staff would have incentives to care for the viability of the tokens, while the value of the tokens depend on the value of the assets it is referenced to. The pay out in tokens would create an alignment towards the operational and liquidity risks of the issuer. Therefore, similarly, to shares and share-linked instruments, it is expected that these would add to the risk alignment of variable remuneration and represent a tool to incentivise performance, i.e. sound liquidity management and avoiding operational risks. The use of tokens, that would in any case be available to the issuer, would also reduce the costs for the pay out of variable remuneration. Considering the strict provisions on how reserve assets must be invested, the risk of inappropriate incentives for increased risk taking in order to increase the profits of the firm and therefore potentially also the variable remuneration received, should be very low. Considering that the value of tokens depends on the referenced assets or currency, the pay out of tokens to staff has no impact on the market value of the token.

Option 1C, same as 1B would allow for the use of tokens for issuers unless they have to use instruments for the pay out of variable remuneration to identified staff under other sectorial legislations, i.e. are credit institutions, investment firms, UCITS management companies or Alternative Investment Funds Managers and do not benefit from derogations from the requirements to pay out variable remuneration partly in instruments. For such entities the use of instruments that are available for the pay out in variable remuneration under the respective legal framework should reduce the burden by ensuring that they can pay out to all their identified staff the variable remuneration in the same instruments. This additional flexibility will reduce in such cases potentially the costs for the pay out in instruments as the need to revise the existing remuneration policy regarding this aspect would be avoided.

As a result, Option 1C was chosen as the preferred one.

On the scope of application, MiCAR requires issuers to apply such remuneration policies that do not create incentives to relax risk standards. Therefore, staff that has functions relevant for the risk standards or the risk profile of the issuer should be subject to requirements that ensure that their variable remuneration does not create incentives to reduce such standards. Therefore, it is also needed to set criteria for the identification of such staff.

The issuer is the legal entity that holds the authorisation. Therefore, the remuneration requirements apply to the whole legal entity. The scope of application is directly defined under MiCAR.

As the corresponding MiCAR provisions apply also to electronic money institutions issuing significant e-money tokens, the provisions in this RTS apply as well. Hence, it seemed to be appropriate in terms of providing clarity to specify in the legal provisions within this RTS that they apply also to such issuers.

Policy issue 2: Scope of identified staff

To determine to whom specific requirements on variable remuneration should apply, it is necessary to determine the staff whose professional activities have a material impact on the issuers risk profile.

Option 2A: Qualitative Criteria linked to the functions relevant for the risk profile of the issuer and the token it issues should be identified. This should always comprise the top two hierarchical levels of the issuer and other staff in core functions that has managerial responsibilities over key units relevant for the business and internal functioning of the issuer.

Option 2B: Option 2A + Quantitative criteria linked to the remuneration of staff are an indicator for the responsibilities and risk taking of staff.

Option 2A defines qualitative criteria to ensure appropriate identification of staff that has a material impact on the issuer's risk profile. MiCAR Article 45 defines the remuneration policy to promote the sound and effective risk management of the issuer. In addition, the expected size of issuers in terms of staff and the business model is to be limited.

Option 2B was considered as it is aligned with the IFD Article 30 and CRD Article 92. However, introducing quantitative criteria that assume staff members significantly impact the risk profile of the issuer, solely based on the level of remuneration received, would trigger additional in-depth risk assessments. These assessments would aim to establish that the person has indeed a material impact on the risk profile of the issuer. While this approach would increase the burden for issuers, it is unlikely to lead to a material increase of staff being identified.

As a result, Option 2A was chosen as the preferred one.

Overall cost-benefit analysis

The overall cost impact of the RTS compared with the baseline scenario is low, while the benefits are medium. The implementation of the RTS will, in particular, create one-off costs for the change of policies and procedures in issuers of significant asset-referenced tokens and electronic money institutions issuing significant e-money tokens. Ongoing costs will be limited to the administration of remuneration for identified staff by issuers of significant tokens in line with the set requirements. However, having such remuneration policies is a requirement under MiCAR and is therefore not assessed within this IA, the additional costs by the specification of the requirements is low and at the same time limits costs for supervisory assessments in a scenario where less specific requirements would be set. Similar requirements on remuneration policies are already in place for issuers that are credit institutions, investment firms managers of UCITS or AIFM and therefore these draft RTS do not increase their costs. They create a long-term benefit by achieving a higher level of harmonisation, providing a clear definition of variable and fixed remuneration and achieving sound risk management, and thus ensuring that compliance with the remuneration requirements implemented by the legislators can be affectively ensured. In that way, these RTS contribute to ensuring the safety and soundness of the issuers and to promoting the effective, efficient and stable functioning of the European financial system.

Stakeholders	Costs	Benefits
Issuers	<ul style="list-style-type: none"> Costs related to the implementation of additional requirements 	<ul style="list-style-type: none"> Sound and effective risk management

	for remuneration policies specified in the RTS <ul style="list-style-type: none"> • Ongoing administration of remuneration 	<ul style="list-style-type: none"> • Ensure proper risk standards by aligning variable remuneration (incentives) to the risk related performance. • Legal clarity regarding regulatory and supervisory expectations
CAs	<ul style="list-style-type: none"> • Supervision costs related to additional requirements 	<ul style="list-style-type: none"> • Reduction of costs for individual assessments based on non-specific MiCAR requirements • Sound and effective risk management by issuers • Financial stability • Cross-sectoral consistency
Clients/ token holders	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Financial stability • Confidence in the quality of the risk standards of the issuer

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for 3 months and ended on 22 January 2024. Five responses were received and published on the EBA website. The EBA's Banking Stakeholder Group did not provide its views.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Proportionality	One respondent suggests introducing further proportionality in order to better reflect a risk-based approach.	The RTS apply to issuers of significant ARTs as specified in MiCAR directly. Further restrictions have not been seen as appropriate as they would risk the level playing field.	No change
Specific framework	remuneration One respondent considers that the RTS should not set a framework similar to the remuneration framework for investment firms and that the requirements need to be further tailored to the business model of issuers of significant ARTs.	Considering the similarities between the business model of issuers, issuing tokens and the one of investment firms that issue financial instruments and to ensure cross sectoral consistency, the RTS take into account the applicable remuneration framework for investment firms. Specifics of the business model of issuers have been taken into account regarding the use of tokens for the pay out of variable remuneration and the identification of staff that has a material impact on the risk profile of the issuer.	No change
Responses to questions in Consultation Paper EBA/CP/2023/22			
Question 1. Are the definitions within Article 1 appropriate and sufficiently clear?			
General	One respondent suggests clarifying the segregation criteria for significant ART issuers and emerging significant ART issuers.	The RTS apply to issuers of significant ARTs as specified in MiCAR directly, it does not apply to other ART issuers. They apply at the moment the token issued by the issuer becomes significant.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
1) Definition of 'Staff'	One respondent suggests clarifying whether the definition of 'Staff' also comprises contractors who have the same status as employees within the organization.	The RTS state that "Staff" means all employees of an issuer of significant asset-referenced tokens, and all members of their respective management bodies.	No change
2) Definition of 'Senior management'	One respondent suggests amending the definition of 'senior management' so that it only applies to the management body and members of the management body, as persons appointed to duly represent the issuer of significant ARTs and/or holding executive functions within an issuer of significant A. Alternatively, issuers of significant ARTs shall include the definitions of management body, senior managers, and managerial responsibilities within their internal policies.	In the absence of a specific definition for "senior management" within MiCAR, the EBA adopted the established definitions from CRD and MiFID to ensure consistent application across different sectors. The definition of "management body" is set out under MiCAR directly.	No change
3) Definition of 'Managerial responsibility'	One respondent suggests amending the definition of 'Managerial responsibility' so that it applies to a staff member who falls under points (a) or (b) "and has the authority to enter into legal transactions or to make independent personnel and organisational decisions". Many employees may be addressed as managers (or are 'heading' a particular position), but have no real powers within the issuer.	Such a change would not be consistent with the criteria for identifying staff set by Commission delegated Regulations under Directive 2013/36/EU and Directive 2019/2034/EU. In practice managerial responsibility is not always limited to the first two hierarchical layers of an organisation. The formulation "heading" contains that there are some relevant managerial powers vested in this position. If this is not the case and staff is merely coordinating a unit without any responsibility for the staff and its management or without having power to steer the business of the unit, this is not covered by the criterion.	TBD at SGGR

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
6) Definition of 'Business unit'	<p>One respondent suggests modifying the definition 'Business unit' to exclude the reference to a 'legal entity'. A 'Business unit' is generally considered a section within the same organisation and not necessarily a separate legal entity.</p>	<p>The definition includes the concept of a separate organisational unit, implying a distinct entity within a larger structure or legal entities, business lines or geographical locations. It is not necessary that a business unit is a legal entity, it is only one of the criteria that determines a business unit.</p> <p>To ensure a consistent approach the regulatory framework the same definition as in Article 142 CRR has been used.</p>	No change
7) Definition of 'Control function'	<p>One respondent suggests amending the definition of 'control function'. It is unclear whether its purpose is to establish a requirement for a separate function in addition to compliance, risk management and audit functions or whether this applies to internal control procedures within different departments/units.</p> <p>One respondent suggests clarifying whether the control function can be vested with the same personnel conducting internal audit or leading compliance and risk management procedures within a business unit.</p>	<p>The notion is clarified in the EBA Guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens under MiCAR.</p> <p>Control functions is the term for functions in the 2nd line of defence, they include the compliance, risk management and audit functions.</p>	No change
New definitions	<p>One respondent suggests including definitions of 'Remuneration', 'Quantitative criteria' and 'Qualitative criteria'.</p>	<p>Remuneration, quantitative and qualitative criteria are concepts that are well known. However, to provide legal certainty a definition of remuneration has been added.</p>	RTS amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	One respondent suggests including a definition of ‘Obligated Entity’ for the issuer of significant asset-referenced tokens or other entities under the scope of application of the RTS.	The scope of application is clear, there is no need to define another term.	No change
Question 2. Are the provisions within Article 2 appropriate and sufficiently clear?			
General	One respondent suggests clarifying whether the remuneration policy and changes thereof further trigger the revision of employment contracts and related agreements or agreements of a similar nature to ensure the policies are respected in the actual agreements.	To effectively apply the established requirements set out under MiCAR and these draft RTS, it's essential to reflect those in the remuneration policies and within all relevant contracts, where necessary to ensure compliance with the remuneration policy.	No change
(1)(c)	<p>One respondent suggests including ‘remuneration committee’ as a defined term in Article 1. This definition should provide further clarity on the constitution, composition, compulsory or non-compulsory nature and other features of the remuneration committee.</p> <p>One respondent suggests including a distinction between the supervisory board of the management body and the remuneration committee and whether the supervisory board shall provide consent to the remuneration policy as a mandatory requirement.</p>	<p>MiCAR does not require the management body to have a supervisory function and therefore no requirement to establish a remuneration committee. For firms that have a supervisory function, it is often praxis. Where it is established, it should perform certain roles, including giving advice on remuneration policies.</p> <p>The remuneration policy shall be adopted by the management body, where a supervisory function exists, it is usually adopted by it.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
2) (c)	One respondent suggests referring to common market practices or internal policies regarding addressing conflict of interests.	The EBA has been mandated to develop RTS on COI, no further specification is needed in these RTS.	No change
Question 3. Are the provisions within Article 3 appropriate and sufficiently clear?			
General	One respondent suggests replacing the reference to fixed and variable remuneration with fixed/recurring remuneration and variable/non-recurring remuneration in order to avoid misinterpretations and align the RTS with the rules of remuneration policies for investment firms.	The RTS are based on the remuneration framework for investment firms which uses also the concepts fixed and variable remuneration. The definition of remuneration has been added.	No change
1) (c) ESG Factors	One respondent considers that integrating Environmental, Social, and Governance (ESG) risk-factors into the remuneration policies, represents a complex challenge. The demand for incorporating ESG policies into remuneration could create conflicts between various regulatory standards, and issuers of ARTs may be unreasonably burdened.	MICAR makes reference to ESG risks in general. Issuers remuneration policies must be aligned with the long-term interest of the issuer and the risks they are exposed to including the ESG risks. Conflicts towards other standards have not been identified. There is also no unreasonable burden, all financial firms that are subject to specific remuneration requirements have to take such risks into account.	No change
Question 4. Are the criteria of identification of staff appropriate and sufficiently clear?			
1)	One respondent suggests rewording Article 4(1) as follows:	The paragraphs have been revised to provide further clarity	RTS amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>“Issuers of significant asset-referenced tokens shall consider staff that meet one or more of the following criteria listed from a) to e) to have a material impact on their risk profile or the risk profile of the significant asset-referenced tokens they issue but should also identify all other staff that has a material impact taking into consideration qualitative criteria reflected in the list from a) to f).”</p>		
2)	<p>One respondent considers the criteria of identification of staff to be overly detailed/prescriptive and applies existing remuneration rules for credit institutions and investment firms to issuers of ARTs without taking into account the specificities of digital asset companies’ business models. Such an exhaustive list of criteria for identified staff, particularly in para. 2 e), would have the impact of applying these rules to practically all staff.</p>	<p>The list of identified staff has been reviewed considering the business model of issuers. The identification criteria are only qualitative and not complex, but mainly based on the issuers organisational structure.</p> <p>It is important to interpret correctly the term managerial responsibility, see also comment above.</p>	RTS amended
	<p>One respondent suggests including an explicit mention of any type of trading or market-making function in these criteria to avoid any doubt or uncertainty.</p>	<p>Where issuers provide such functions themselves, they would be required to have an authorisation as CASP or investment firm and require the respective authorisation for such services. The mandate is limited to issuers, hence, such criterion cannot be added.</p>	No change
	<p>One respondent suggests aligning Article 4 of the draft MiCAR RTS as much as possible with Article 3 of the Commission Delegated Regulation (EU) 2021/2154 that define the qualitative criteria for the</p>	<p>A full alignment with IFD would lead to even wider identification of staff not tailored to the business model of issuers.</p>	RTS amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Risk Taker identification under the Investment Firm Directive.</p> <p>If that should not be possible for the EBA, the respondent suggests the following:</p> <p>Article 4, paragraph 2, point c): Point c) should be removed in its entirety as staff members with managerial responsibility over the business area sales or marketing are also not part of the qualitative criteria under Article 5 of Commission Delegated Regulation (EU) 2021/923 or Article 3 of Commission Delegated Regulation (EU) 2021/2154).</p> <p>Article 4, paragraph 2, point d): The respondent strongly suggests removing paragraph 2) point d). In addition, the respondent is not sure why data protection officers are coming into scope of being identified as Risk Takers under MiCAR at all. In practice, the data protection officers typically are not decision makers and do not exert material influence within a firm. In addition, the data protection functions are not mentioned in other RTS that address the identification of Risk Takers (for reference, please see Article 5 of Commission Delegated Regulation (EU) 2021/923 and Article 3 of Commission Delegated Regulation (EU) 2021/2154). The abbreviation “ICT”, which is currently used under point e) (i), (ii) and (iii), should be defined in the MiCAR RTS or it should be pointed out where the term “ICT” is defined. Same applies for the term</p>	<p>The criterion “sales and marketing” and “data protection officer” have been removed.</p> <p>The RTS do aim to identify all staff that has a material impact on the risk profile of the firm, this includes not only the category of staff that are risk takers, but also the staff that is controlling and overseeing risk taking. As such the data protection officer has a key function in ensuring compliance with data protection requirements and the prevention of such compliance breaches. However, it has been removed as such a function is more for firms, e.g. credit institutions, CASPs or investment firms that hold clients’ personal data.</p> <p>Abbreviations have been replaced by the full text. The terms “white paper” and “reserve of assets” are specified within MiCAR.</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Question 5. Are the provisions within Article 5 appropriate and sufficiently clear?</p>	<p>“reserve assets” under point e) (v) and the term “white papers” under point e) (xiii).</p>	<p>The availability of instruments depends on the legal form of the issuer. Every firm has equity and could issue equity linked instruments. Issuers may also use the tokens they issue for the pay out of variable remuneration.</p> <p>It has been added that where issuers are authorised under other legislation requiring the pay out of variable remuneration in instruments, they can use instruments they have to use under the corresponding legislation.</p> <p>The requirement for issuers of significant ARTs to adopt, implement and maintain a remuneration policy that promotes the sound and effective risk management of such issuers and that does not create incentives to relax risk standards is set out under MiCAR for the EU market and creating also cross sectoral harmonisation in the EU financial sector.</p>	RTS amended
General	<p>One respondent considers that Article 5 does not take into account the specific nature, scope and size of native digital asset firms. Those firms do not have traditional structures which would enable variable remuneration to be paid in shares, share-linked instruments or equivalent ownership interests.</p> <p>Also, the same respondent considers that these overly conservative provisions would have a potential negative competitive impact for significant ARTs and EMTs issuers in the EU in comparison with other major jurisdictions which are developing crypto legislation (e.g., UK, USA, Hong Kong, Singapore).</p>	<p>There is no obligation under MiCAR or the RTS to pay out variable remuneration. Issuers have at all times to comply with their own funds’ requirements. Any award of variable remuneration should not put compliance with such requirements in danger. This is not needed to be put in RTS but follows directly from</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>MiCAR. Issuers should ensure that variable remuneration is performance related and also compatible with own funds requirements via using appropriate performance criteria and risk alignment as required under the RTS.</p> <p>Please also refer to the draft RTS to specify the procedure and timeframe to adjust own funds requirements for issuers of significant asset-referenced tokens or of e-money tokens subject to the requirements under MiCAR</p>	
	<p>One respondent suggests that the EBA considers a more practical approach as regards variable remuneration, as in its view, the requirements to define variable remuneration consist of too many elements which make the practical implementation of variable remuneration excessively complicated and the key element of variable remuneration i.e., an incentive to achieve the best results aligned with strategy and goals is missing.</p>	<p>The RTS are based on the common understanding of what is variable or fixed remuneration. A definition of remuneration has been added.</p>	<p>RTS amended</p>
	<p>One respondent considers that the variable remuneration is appropriate insofar it is agreed upon between the employer and employee and is against imposing restrictions as provided in Article 5.</p>	<p>The requirements in Article 5 are in line with MiCAR and ensure a remuneration policy that promotes the sound and effective risk management of such issuers and that does not create incentives to relax risk standards.</p>	<p>No change</p>
	<p>One respondent suggests carrying out a comprehensive re-evaluation of the requirements of variable remuneration, and at minimum, omission of points i), k), l) and requests further clarification on the interpretation of variable remuneration as</p>	<p>The requirements on variable remuneration take into account the remuneration requirements existing for investment firm under IFD to ensure cross sectoral consistency.</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	variable salary, focusing on the interest of the employees.	A definition of remuneration has been added. All remuneration that is not fixed is considered to be variable, see also the EBA GL on sound remuneration under IFD.	
Paragraph (1) (a)	One respondent considers that this paragraph may contradict Article 3(1)(d), which specifically states that “the staff in control functions are remunerated per the achievement of the objectives linked to their functions and independently of the performance of the business areas they control”. Whereas Article 3(1)(d) only considers the achievement of staff, Article 5(1)(a) extends this requirement and links it to the overall performance of the issuer of ARTs itself.	The variable remuneration of control functions focuses on fulfilling control objectives and independently of the performance of the business areas they control, as outlined in the text of the RTS. It is of course necessary to take into account the overall performance of the issuer, which may in an adverse scenario prevent that variable remuneration is awarded.	No change
Paragraph (1) (g)	One respondent suggests including in point (g) the provision of a ratio of 1:1 between the variable component and the fixed component of the remuneration of the most relevant personnel and that this limit can be raised to a ratio not exceeding 200% (a ratio of 2:1) only temporarily and following motivated evaluations, as provided for by the CRD3.	MiCAR does not mandate a specific ratio between fixed and variable remuneration. This is the responsibility of individual issuers to set an appropriate ratio between the two components. It needs to be considered that the fixed needs to be high enough to allow for a reduction of the variable remuneration to zero without violating European and national regulation, including labour laws, gender neutral remuneration principles and laws on minimum wages.	No change
Paragraph (1) (i)	One respondent suggests allowing other forms of payments or benefits, both financial and non-financial.	The RTS have been amended to include definition of remuneration.	RTS amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	One respondent considers that percentages in para. 1 (i) (and also in para. (k)) are significantly prohibitive in relation to the size of the market and nature of the risk.	The RTS apply to issuers of significant ARTs not to all issuers and is consistent with the IFD framework applicable to investment firms remuneration policies.	No change
Paragraph (1) (k)	One respondent suggests that the minimum deferral period of at least 40% of the variable remuneration of at least 3-5 years is reduced to 2-5 years.	A period of at least 3-5 years is used for consistency with IFD regulatory framework for remuneration.	No change
	Two respondents suggest clarifying what constitutes a “particularly high amount” in this paragraph to avoid uncertainty.	Payment levels differ between Member States. As the requirement is applied to variable remuneration. It belongs to the issuer to determine what is a particularly high amount taking into account the pay level in the Member State and other appropriate criteria, unless such thresholds are provided under national law.	No change
Paragraph (1) (n)	One respondent finds Article 5(1)(n) challenging as it ensures that the variable remuneration is awarded and vests only if it is sustainable according to the financial situation of the issuer as a whole and justified based on the performance of the issuer, of the business unit and of the staff member concerned. Variable remuneration forms a part of an expected salary and cannot depend on the financial situation of the company. This clause could cause a breach of basic employment regulation and undermine an employee's right to their salary.	Variable remuneration varies based on certain pre-defined performance metrics or criteria that is provided in the RTS including on the performance of the individual, the business unit he/she operates and the performance of the issuer. A sufficient amount of fixed remuneration must be awarded to ensure compliance with labour laws etc. It must be possible to reduce variable remuneration down to zero by malus or claw back. Issuers need to comply with own funds requirements at all times to remain authorised.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Question 6. Is the possibility of paying a part of variable remuneration in significant asset-referenced tokens issued by the issuer appropriate also considering the still limited market experience on these instruments?</p>	<p>Given that there will be firms which are subject to the remuneration requirements under MiCAR and other sectoral EU remuneration requirements which differ from MiCAR (AIFMD, CRD, UCITS V), one respondent strongly suggests that the remuneration requirements under MiCAR should take a back seat for firms that are already subject to other sectoral remuneration requirements under AIFMD, CRD and/or UCITS V. This would allow to reduce the burden for firms complying with two different sets of requirements, that are not aligned and, in some aspects, even contradictory, and it would avoid more complex remuneration systems with individuals who would be subject to both the remuneration requirements of MiCAR and AIFMD/CRD/UCITS V.</p>	<p>MiCAR determines the scope of application of remuneration requirements to be set within these RTS.</p> <p>The requirements in the RTS are construed in a way that allows their application in parallel to other requirements without causing material burden. E.g. institutions issuing significant ARTs would need to comply with the specific requirements regarding the identification of staff in parallel to the requirements under CRD. This does not cause any conflict between different regulations.</p>	No change
	<p>Most of the respondents consider the possibility to pay out variable remuneration in tokens appropriate, good or correct. The following additional considerations have been made:</p>	The option has been kept	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<ul style="list-style-type: none"> - Paying a part of variable remuneration in significant ARTs issued by the issuer of ARTs is as appropriate as paying part of the variable remuneration with corporate shares issued by the issuer of ARTs. - This possibility can contribute to reducing operational risks, could facilitate more effective liquidity management, be instrumental to the growth and legitimacy of significant ARTs in Europe and mitigate the risks associated with such ARTs appropriately. - This possibility would also incentivise remunerated staff to ensure the sustainability of the product. - Significant asset-referenced tokens might be exposed to market trends outside the control of staff. Hence, such payment should not be the only way to remunerate the staff. - The management body of the issuer of ARTs should ensure that the market for the ART is deep and wide enough to allow for a closing of the created position without losing the 1:1 backing requirement. - Some of the cryptoassets have been in the market for almost 10 years. - The market experience on these instruments is still limited, and the risks may still need to be fully understood or predicted. Therefore, more 		

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>flexible variable remuneration should be allowed.</p> <ul style="list-style-type: none">- Issuer of ARTs are regulated and bound to comply with a framework that helps mitigate the risks associated with such ARTs appropriately.		

