EBA/GL/2024/13

09/10/2024

Final Report on

Guidelines on redemption plans under Articles 47 and 55 of Regulation (EU) 2023/1114

Contents

1. Executive Summary

A redemption plan has to be developed by each issuer of an asset-referenced token (ART) or of an e-money token (EMT) to ensure the orderly redemption of the tokens when the competent authority assesses that the issuer is 'unable or likely to be unable to fulfil its obligations'.

In respect of the redemption plan, Article 47(5) of Regulation (EU) 2023/1114[1] ('MiCAR') mandates the European Banking Authority (EBA) to issue guidelines specifying:

(a) the content of the redemption plan which has to be implemented following a competent authority's decision assessing that the issuer is 'unable or likely to be unable to fulfil its obligations' and its periodicity for review; and

(b) the triggers for implementation of the redemption plan.

By virtue of the cross-reference in Article 55 of MiCAR relating to issuers of EMTs, Title III, Chapter 6, of MiCAR (on recovery and redemption plans for issuers of ARTs) shall also apply *mutatis mutandis* to such issuers. Therefore, in order to support the said *mutatis mutandis* application in accordance with Article 55 of MiCAR, these Guidelines shall apply to all issuers of ARTs and to all issuers of EMTs. However, considering that Article 47 of MiCAR articulates the redemption plan on the reserve of assets to be liquidated in order to meet the permanent redemption rights of the token holders, the Guidelines clarify that the sections and provisions relating to the reserve of assets do not apply to credit institutions issuing EMTs and to e-money institutions (EMIs) issuing non-significant EMTs, given that, in accordance with Article 58(1) of MiCAR, such issuers are not subject to the requirement to hold a reserve of assets. This is without prejudice to the fact that those provisions of the Guidelines referring to the reserve of assets will be applicable to EMIs issuing non-significant EMTs if required by the competent authority to hold a reserve of assets (Article 58(2) of MiCAR).

The Guidelines lay down guidance for the issuers when drawing up the redemption plan and for competent authorities when assessing such a plan. In terms of content, the Guidelines are articulated in four sections and sub-sections.

The first section relates to the principle of proportionality and lays down the elements to be taken into account to ensure an appropriate level of detail of the content of the redemption plan and an adequate periodicity for its review or update.

[1] 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) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

The second section, on General principles, concerns the specification of the main features and objectives of the redemption plan as referred to in Article 47 of MiCAR. It clarifies aspects for the achievement of the equitable treatment of all token holders, including the suspension of individual redemption claims, *pari passu* ranking, the destination of the proceeds of the liquidation of the reserve of assets to meet the redemption rights, the coverage of the related liquidation costs only after the amount for the redemption claims has been set aside, and the importance of the liquidation strategy aiming at the maximisation of the proceeds of the reserve of assets. Elements and parameters to be considered in order to ensure the timely implementation of the plan are also laid down.

The third section relates to the Content of the redemption plan and focuses on governance requirements, relating, for instance, to the processes applicable for the development, update and execution of the redemption plan and to the identification of the responsible persons. Specific attention is then directed to the identification of the critical activities within the issuer or provided by third parties that are necessary for the implementation of the plan. A sub-section is devoted to the description of the process for the redemption of the token holders, and to the communication plan that has to include a draft public notice to inform stakeholders and notably token holders, as soon as the redemption plan is activated, of the timeline for its implementation. Such timeline should include the content and the filing of the redemption claim by token holders, the distribution plan, and the notices to be addressed to the third-party providers of the critical activities.

The Guidelines also cover aspects of pooled issuance (i.e. the same token is issued by multiple issuers), indicating the need for a common plan agreed upon by all issuers.

The last section concerns the part of the mandate relating to the Triggers of the redemption plan. In addition to three situations where MiCAR considers that the issuer is 'unable or likely to be unable to fulfil its obligations' (such as insolvency or resolution – where applicable – or withdrawal of authorisation), the Guidelines specify elements to be taken into account by the competent authority to assess that the issuer is unable or likely to be unable to fulfil its obligations. Such aspects exclusively relate to requirements applicable to ART or EMT issuers under Title III or Title IV of MiCAR.

Specific guidance is laid down regarding the interaction of the redemption planning under MiCAR with resolution plans under Directive 2014/59/EU applicable to credit institutions and other entities, and with Regulation (EU) 2021/23 on resolution of central counterparties.

The Guidelines aim to ensure appropriate coordination between the prudential and resolution authority and the MiCAR competent authority by providing that the competent authority should not adopt a decision to implement the redemption plan without prior consultation and coordination with the relevant prudential and resolution authorities, in the case of commencement of crisis prevention measures or crisis management measures. Such a process aims, on the one hand, to ensure the effectiveness of the early intervention measures and, on the other hand, to allow the resolution authority to include the ART or EMT within the scope of the resolution action where possible.

Next steps

The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply from [two months after the date of publication on the EBA's website of the Guidelines in all EU official languages].

2. Background and rationale

Regulation (EU) 2023/1114 (MiCAR) envisages that any holder of asset-referenced tokens (ARTs) and e-money tokens (EMTs) shall have a redemption right at all times, including in stress scenarios, towards the issuer and, when the issuer is no longer able to meet its obligations, the reserve of assets (Article 39(1) of MiCAR). In such cases, Article 47 of MiCAR empowers the competent authority to trigger the implementation of the redemption plan that each issuer has to develop in going concern to ensure the orderly redemption of the tokens.

The redemption plan has to lay down the necessary and adequate processes, mechanisms and IT solutions to ensure that the redemption of the tokens may be implemented in an orderly and timely manner, ensuring the equitable treatment of all token holders, without causing them undue economic harm and without affecting the stability of the markets of the reserve assets (Article 47(2) of MiCAR).

Consistently with Article 39 of MICAR, Article 47 of MiCAR (on the redemption plan) relies on the proceeds of the liquidation of the 'remaining reserve of assets' to meet the token holders' redemption claims. The reserve of assets is defined as 'the basket of reserve assets securing the claim against the issuer' (Article 3(1), point (32), of MiCAR). Considering the critical role assigned to the reserve of assets as a stabilisation mechanism and guarantee for the token holders, the reserve of assets has to be segregated from the other assets of the issuer, has to be held in custody by custodians and has to be composed of and invested in low-risk assets. The reserve of assets is regulated in detail by Articles 36, 37 and 38 of MiCAR as further specified by the secondary regulation developed by the EBA.

MiCAR subjects to the requirement to hold a reserve of assets the issuers of ARTs, be they authorised under Article 21 of MiCAR or credit institutions, and e-money institutions (EMIs) issuing significant EMTs. According to Article 58(1) of MiCAR, credit institutions issuing EMTs (significant or not) and EMIs issuing non-significant EMTs are not subject to the requirement to hold a reserve of assets for the issued EMTs. It is to be noted that competent authorities may require EMIs issuing non-significant EMTs to comply with the requirement to have a reserve of assets, based on Article 58(2) of MiCAR.

Article 47(5) of MiCAR mandates the EBA to issue guidelines (GL) to specify: a) the content of the redemption plan and the periodicity of its review, and b) the triggers for the implementation of such a plan. Furthermore, Article 55 of MiCAR envisages that 'Title III, Chapter 6 shall apply *mutatis mutandis* to issuers of e-money tokens'. In the light of this cross-reference which also covers Article 47 of MiCAR, the GL shall also be applied by issuers of EMTs.

However, leveraging on the expression '*mutatis mutandis*' of Article 55 of MiCAR, the scope of application of the GL should be different for issuers of ARTs and for issuers of EMTs depending on whether the latter are subject to the requirement to hold a reserve of assets or not. In practice, whilst all issuers are required to draw up and maintain an operational plan to support the orderly redemption of each token in accordance with MiCAR and following the guidance laid down in these GL, some sub-

sections of these GL dealing with the reserve of assets apply to issuers of EMTs which are not required to comply with that requirement *mutatis mutandis* and consistently with the applicable sectoral legislation.

These GL are addressed to issuers of ARTs and EMTs and to competent authorities as defined in Article 3(1), point (35), of MiCAR. The latter are required to assess the redemption plan and are empowered to require amendments based on Article 47(3) of MiCAR.

The redemption plan aims to organise the equitable redemption of all tokens in an orderly and timely manner with the proceeds from the sale of the remaining reserve assets, without causing undue economic harm to the token holders or to the stability of the markets of the reserve assets.

The GL pay attention to ensuring consistency between the content of the redemption plan and other MiCAR requirements. In particular, having regard to the fact that aspects of the redemption rights of the token holders are defined by the issuer in the crypto-asset white paper[2], the GL require that the redemption plan has to be consistent with the white paper.

The GL specify some principles and objectives of the redemption plan set out in Article 47 of MiCAR, leveraging on general principles of insolvency law and of investor protection. For instance, reference is made among other things to the suspension of the individual claims and to the *pari passu* ranking of token holders (unless otherwise established), to the objective of the maximisation of the proceeds from the liquidation of the reserve of assets, and to the use of the proceeds of the reserve of assets to cover the costs linked to the liquidation process only after the redemption claims have been met. This entails that issuers should maintain an adequate level of the reserve of assets, including the over-collateralisation requirement, in accordance with Article 36(4) of Regulation (EU) 2023/1114[3] as further specified in the delegated act referred to, or as per the request of the competent authority or on a voluntary basis, and should undertake to comply with other relevant prudential requirements in going-concern to meet such potential costs.

Consistently with risk-based regulation, the GL indicate that the principle of proportionality has to be taken into account to determine the level of detail of the content of the redemption plan and its frequency for review and update.

The GL provide guidance to the issuer to set up clear and operational arrangements and processes on the development, update and execution of the redemption plan. In that respect, they also indicate that, when in accordance with applicable law it is envisaged that a temporary administrator will be appointed for the implementation of the plan, the redemption plan has to duly embed this element in its content and related organisation.

The mapping of critical activities that are necessary to the implementation of the redemption plan is crucial for its orderly execution. The GL therefore require that the plan should identify such critical activities, be they within the issuer or provided by third parties, and provide an overview of the internal

[2] See for ARTs: Annex II, part D, points (9), (15) and (16); and for EMTs: Annex III, part D, points (1), (3) and (5).

[3] As required by Article 6 of the EBA RTS further specifying the liquidity requirements of the reserve of assets under Article 36(4) of Regulation (EU) 2023/1114.

or of the contractual arrangements (as the case may be) including the key persons responsible for them. With specific regard to the contractual arrangements with third parties, the redemption plan should confirm that they ensure continuity of performance if the redemption plan is triggered and that their content is consistent with the objectives of the redemption plan. Third-party providers may be the custodians of the reserve of assets, financial intermediaries used for the liquidation of the reserve of assets, crypto-asset service provider(s) or other financial institutions with a payment licence.

Having regard to money laundering and/or terrorism financing (ML/TF) risks, it is worth recalling that, whilst credit institutions and EMIs are 'obliged entities' under Directive 2015/849/EU – the Anti-Money Laundering Directive (AMLD)[4] – and are therefore bound by the obligations and the customer due diligence measures set out therein, issuers of ARTs authorised under Article 21 of MiCAR are not *per se* 'obliged entities' under that Directive. Still, MiCAR aims to prevent such entities from being used for money laundering purposes, and considers grounds for the refusal or for withdrawal of the authorisation the ML/TF risks posed by the issuer's activities to the issuer itself or to the sector. In order to avoid that the redemption process, including the transfer of funds, may benefit persons or entities involved in criminal activities, the GL require that relevant checks are performed and, where the issuer is not subject to ML/TF obligations, such activities have to be performed by an intermediary which is an obliged entity under AMLD.

The GL draw attention to the importance of an orderly and operational redemption process by listing its main phases and steps to be covered by the redemption plan, and to the need for the plan to include a communication plan articulated in accordance with the guidance set out in the GL.

In this respect the GL underscore the fact that only persons that are entitled to the redemption may have their claim satisfied and lay down the necessary information to assess such entitlement. Along the same lines, the GL direct attention to the need for the issuer to permanently remove the redeemed tokens from circulation.

The GL also consider the specific case of an issuance of the same token by multiple issuers, having regard to the fact that such a hypothesis would likely have cross-border aspects, thus requiring a uniform and coordinated approach by the issuers and their respective competent authorities. In particular, the GL lay down guidance on the need for common content of the redemption plan agreed upon by all issuers participating in the issuance, and draw attention to the importance of competent authorities coordinating and cooperating among themselves, including in the event of the plan being triggered, in order to avoid separate implementation.

Having regard to the interaction with other procedures, the GL indicate that the redemption plan is distinct from the resolution plan developed by the resolution authority. In respect of the specification of the triggers, the GL lay down elements to be considered by the competent authority when assessing whether the issuer is unable or likely to be unable to fulfil its obligations. The GL specify that such elements exclusively relate to requirements applicable to ART or EMT issuers under Title III or Title IV

[4] Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73-117).

of MiCAR. Regarding credit institutions and the other entities subject to Directive 2014/59/EU or central counterparties subject to Regulation (EU) 2021/23, the GL clarify the interaction between the adoption of crisis prevention or crisis management or resolution measures by the prudential or resolution authorities and the activation of the redemption plan by the competent authority. In particular, the GL clarify that the competent authority should not trigger the redemption plan prior to consultation and coordination with the relevant prudential and resolution authorities, in the case of commencement of crisis prevention measures or crisis management measures. By so doing, the GL aim, on the one hand, not to affect the effectiveness of the early intervention measures and, on the other hand, to allow for the possibility of including the ARTs or EMTs within the scope of the resolution action where the applicable conditions are met. Such a solution, where feasible, would maintain the continuation of the business and avoid destruction of value.

3. Guidelines

EBA/GL/2024/13

09/10/2024

Guidelines

on redemption plans under Articles 47 and 55 of Regulation (EU) 2023/1114

1. Compliance and reporting obligations

Status of these Guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[5]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 3(1), point (35), of Regulation (EU) 2023/1114[6] to whom the Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes).

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2024/13'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.

4. Notifications will be published on the EBA website, in line with Article 16(3).

[5] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).
[6] 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) 2019/1937 (OJ L 150, 9.6.2023, ELI: http://data.europa.eu/eli/reg/2023/1114/oj).

2. Subject matter, scope and definitions

Subject matter

5. These Guidelines specify (a) the content of the redemption plan, (b) the periodicity for review and update of such a plan, and (c) the triggers for implementation of the redemption plan that issuers of asset-referenced tokens and issuers of e-money tokens have to draw up and maintain operational according to Articles 47 and 55 of Regulation (EU) 2023/1114.

Scope of application

6. These Guidelines apply to issuers of asset-referenced tokens and e-money tokens (as defined in points 6 and 7 of Article 3(1) of Regulation (EU) 2023/1114).

7. For issuers of e-money tokens that are not subject to the requirement to hold a reserve of assets (because they are either credit institutions or e-money institutions issuing non-significant tokens whose relevant competent authority has not imposed it in accordance with Article 58(2) of Regulation (EU) 2023/1114) the sections 'Allocation of the reserve of assets to meet the token holders' redemption claims' and 'Liquidation of the reserve of assets', both under 4.2., do not apply except for those paragraphs for which there is an express indication to apply them *mutatis mutandis*, likewise for any other paragraph or section in the Guidelines assuming the issuer is subject to said requirement.

Addressees

8. These Guidelines are addressed to competent authorities as defined in Article 3(1), point (35), of Regulation (EU) 2023/1114.

9. These Guidelines are also addressed to issuers, as defined in Article 3(1), point (10), of Regulation (EU) 2023/1114, of:

    i) asset-referenced tokens defined in Article 3(1), point (6), of that Regulation (issuers of asset-referenced tokens – ARTs); or

    ii) electronic money tokens defined in Article 3(1), point (7), of that Regulation (issuers of e-money tokens – EMTs).

Definitions

10. Unless otherwise specified, terms used and defined in Regulation (EU) 2023/1114 have the same meaning in the Guidelines.

3. Implementation

Date of application

11. These Guidelines apply from [two months after publication of the translations of the Guidelines into all official languages].

4. Redemption plans

4.1 Proportionality considerations

12. For the sake of proportionality, to determine the level of detail of the content and the frequency of the periodical review of the redemption plan the issuers and the competent authority should take into account the following criteria:

    i. classification of the ARTs or EMTs as significant in accordance with Articles 43 and 44, and 56 and 57 of Regulation (EU) 2023/1114;

    ii. for issuers of an ART and for issuers of an EMT which are subject to the requirement to hold a reserve of assets under Regulation (EU) 2023/1114, the size, volatility, composition, concentration and nature of the reserve assets and of the ART or EMT itself;

    iii. multiple outstanding issuances of ARTs or EMTs by the same issuer;

    iv. issuance of the same ART or EMT by multiple issuers;

    v. the complexity and risk profile of the issuer's business model, taking into account any other financial or non-financial activity.

13. Redemption plans developed by issuers of a significant ART or EMT, or by multiple issuers in the case of pooled issuance of an ART or an EMT, or by issuers with multiple outstanding issuances or with complex business models and an increased risk profile, as determined, justified and notified by competent authorities, should:

    i. have an increased level of detail and comprehensiveness to demonstrate their credibility, feasibility and timely implementation; and

    ii. be revised and updated at least on an annual basis.

14. Issuers that do not meet the criteria set out in paragraph 13 should revise and update the redemption plan whenever a change materially impacts the content of the redemption plan. This is without prejudice to the possibility of the competent authority to require institutions to update their redemption plans more frequently.

4.2 General principles and objectives of the redemption plan

15. Where the issuer has more than one outstanding issuance of ARTs or EMTs, the redemption plan of each ART or EMT token should appropriately address the interconnectedness between outstanding ARTs and/or EMTs.

16. The redemption plan, drafted in accordance with these Guidelines, could contain personal data about directors, third parties or key function holders. In compliance with the principle of data minimisation enshrined in Article 5(1), letter (c), of Regulation (EU) 2016/679[7], such personal data should be those deemed necessary and sufficient. When drawing up redemption plans and/or when assessing the redemption plan, issuers and competent authorities, respectively, should comply with the relevant provisions of Regulation (EU) 2016/679. Furthermore, in pursuance of data protection principles, such personal data should be kept for no longer than necessary.

Equitable treatment and no undue economic harm

17. Issuers should draw up the redemption plan by laying down the actions and process with a view to ensuring an equitable treatment of all token holders, and the protection of the right of redemption attached to the token as described in the crypto-asset white paper in accordance with Annex II and Annex III of Regulation (EU) 2023/1114, respectively for an ART and for an EMT.

18. For this purpose, the redemption plan should lay down the actions and related processes to ensure among other things the respect of the envisaged time and method for satisfying the right of redemption in accordance with Regulation (EU) 2023/1114 and the white paper.

19. Unless otherwise disclosed in the crypto-asset white paper or envisaged in the applicable national law, the redemption plan should assume that all token holders with the same redeemable token are treated equally and rank *pari passu*.

20. In order to ensure equitable treatment of all token holders as stated in the crypto-asset white paper, the issuer should include in the redemption plan how the individual redemption of claims will be suspended upon the adoption of the competent authority's decision triggering the implementation of the redemption plan for the orderly and collective redemption of the tokens. For this purpose, the issuer should have regard to the provisions in the crypto-asset white paper and to the applicable law, including Article 46, paragraphs (3) and (4), of Regulation (EU) 2023/1114 and national insolvency law.

Allocation of the reserve of assets to meet the token holders' redemption claims

21. Issuers of ARTs and of EMTs subject to the requirement to hold a reserve of assets should develop the redemption plan on the assumption that the remaining reserve of assets underpinning the relevant ART or EMT will be used for the benefit of all token holders' redemption claims when the issuer is assessed by the competent authority as being unable or likely to be unable to fulfil its obligations towards such holders. This should be without prejudice to the right of the token holders that the portion of their claim (if any) left unsatisfied by the liquidation of the remaining

[7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

reserve of assets, should be met by the issuer in accordance with the applicable law, including the applicable insolvency law.

22. Taking into account that token holders have a right of redemption at all times and that the redemption plan may not impose undue economic harm on token holders, the redemption plan should indicate how the costs for the implementation of the redemption plan – such as for the appointment of consultants or intermediaries, or in connection with the liquidation of the reserve of assets – will be covered.

23. In order to ensure the effectiveness of the right of redemption and that undue economic harm does not affect the token holders, the issuer should make sure in the redemption plan that the costs for the liquidation of the reserve of assets or otherwise linked to the implementation of the redemption plan may only be allocated to the proceeds of the liquidation of the reserve of assets after the amount for meeting the relevant token holders' redemption claims is set aside.

24. Issuers should also clarify in the redemption plan how such costs do not amount, even indirectly, to redemption fees, which pursuant to Articles 39(3) or 49(6) of Regulation (EU) 2023/1114 may not be imposed on the token holders, without prejudice to Article 46(1)(a) of Regulation (EU) 2023/1114.

25. Costs indicated in the redemption plan should be identified via transparent processes, be reasonable and duly justified.

26. Paragraphs 22-25 should apply *mutatis mutandis* to issuers which are not subject to the obligation to hold a reserve of assets, to the extent consistent with the applicable sectoral legislation.

Liquidation of the reserve of assets

27. In order to meet the token holders' claims in an equitable manner and to avoid undue economic harm, issuers of ARTs or of EMTs subject to the requirement to hold a reserve of assets should develop the redemption plan with the aim of ensuring the maximisation of the proceeds from the liquidation of the remaining reserve of assets within a reasonable timeframe.

28. For this purpose, the issuer should develop redemption scenarios under ordinary and stressed market conditions and lay down liquidation strategies taking into account the composition of the reserve of assets.

29. Having regard to the requirement that the execution of the redemption plan has not to affect the stability of the market of the reserve of assets, such scenarios and strategies should take into account the materiality of the reserve of assets in the underlying market for such assets.

30. When developing such scenarios, issuers subject to the requirement to hold a reserve of assets should take into account the liquidity management policy and procedures of issuers as set out in Article 45(3) of Regulation (EU) 2023/1114 and as specified in accordance with Article 45(7)(b) of

Regulation (EU) 2023/1114 and the EBA Guidelines on common reference parameters of the stress test scenarios, mandated under Article 45(8) of Regulation (EU) 2023/1114[8].

31. Redemption scenarios should reflect redemption in going concern, in the case of normal insolvency proceedings under national law or in the case of the application of the resolution strategy the issuer would be subject to (if applicable).

32. For the purpose of developing liquidation strategies, issuers may consider that transactions such as repurchase agreements and security financing transactions may be implemented, if they are instrumental to maximising the proceeds, speeding up the process and limiting the impact on the market where the assets are negotiated.

33. Paragraphs 31 and 32 should apply *mutatis mutandis* to issuers which are not subject to the obligation to hold a reserve of assets, to the extent consistent with the applicable sectoral legislation.

Implementation in a timely manner

34. Issuers should ensure that the redemption plan lays down in a pragmatic and operational manner the actions to be taken immediately and in any case without undue delay by the issuer upon the competent authority's adoption of the decision triggering the implementation of the plan under Article 47(1) of Regulation (EU) 2023/1114.

35. The redemption plan should also include comprehensive and organised planning of the phases and related actions necessary to the full implementation of the plan and demonstrate that they achieve the orderly redemption of all the token holders and the consistency of such actions with the crypto-asset white paper. Furthermore, the redemption plan should be drawn up in a comprehensive, self-explanatory and easy-to-understand manner, including for third parties.

36. The phases for the orderly implementation of the plan should include:

i. immediate follow-up actions to the decision of the competent authority to trigger the redemption plan, including the activation of the internal processes or of the contractual arrangements for the maintenance in operation of the critical activities;

ii. publication of the communication notice informing the token holders about the process and the timeline to submit their redemption claim and the related content;

iii. to the extent that it is not included in point (i) above, implementation of the liquidation strategies for the reserve of assets as articulated in the 'Liquidation of the reserve of assets' section above;

iv. assessment of the redemption claims;

[8] EBA/GL/2024/08. Available here: Final report on GL on liquidity stress testing under Article 45(8) of MiCAR (europa.eu).

v. development of a distribution plan, namely the plan to meet all the submitted and positively assessed redemption claims, using the total amount of the proceeds from the liquidation of the reserve of assets for the issuers subject to the requirement to hold a reserve of assets or, for issuers not subject to the requirement to hold a reserve of assets, using the funds available to meet the redemption claims;

vi. arrangements and the timeline for the settlement of the positively assessed redemption claims.

37. The redemption plan should indicate each phase and step where the obligations to fight financial crime have to be fulfilled for purposes of the implementation of the redemption plan and in particular of the execution of the redemption process as described in the section below.

38. In order to meet the requirement that the redemption plan be implemented in a timely manner, the issuer should take into account:

i. the need to ensure adequate preparedness to support the adoption by the issuer of pragmatic and operational action immediately and in any case without undue delay upon the competent authority's decision to trigger the implementation of the plan under Article 47(1) of Regulation (EU) 2023/1114;

ii. the reasonable time to implement the liquidation strategies described in the section on the 'Liquidation of the reserve of assets';

iii. the reasonable time allocated to the token holders to file their redemption claim as specified in paragraphs 53-56 below;

iv. the time necessary to verify and settle the redemption claim;

v. the time necessary to complete the distribution plan having regard to its complexity, including the number of redemption claims that have been submitted.

39. The issuer should indicate in the redemption plan the envisaged arrangements to ensure the safe custody of the proceeds from the liquidation of the reserve of assets pending the settlement of the redemption claims.

4.3 Content of the redemption plan

Governance principles

40. The issuer should make sure that the redemption plan contains a clear and detailed description of the governance arrangements and processes covering its development, review and update as well as its execution. In particular, the redemption plan should:

i. indicate the member(s) of the management body or any person(s) within the organisational structure of the issuer responsible for the development, update and implementation of the redemption plan;

ii. describe how the redemption plan is integrated into the internal control framework as referred to in the EBA Guidelines on the minimum content of the governance arrangements for issuers of ARTs[9] or other relevant regulation applicable to issuers of EMTs;

iii. describe the processes for the update or review of the plan in the case of material changes affecting the business or financial profile of the issuer or of the token(s) issued;

iv. identify the critical activities to be kept operational for the implementation of the plan, and identify the person(s) responsible, either on the issuer side or within the third-party provider, in accordance with paragraphs 42-51;

v. lay down the process for the adoption of the action of each phase to ensure the timely execution of the redemption plan upon the competent authority's decision in accordance with Article 47(1) of Regulation (EU) 2023/1114; and

vi. identify the contact person(s) who are in charge of communication with the token holders, with the competent authority(ies) and with the counterparties and/or with the public, and include those persons' up-to-date contact details within the organisation of the issuer.

41. The redemption plan should duly reflect the impact of the designation of a temporary administrator when foreseen by the applicable law as per Article 47(2) of Regulation (EU) 2023/1114, including the consequence that the management body may not be in charge in full or in part of the implementation of the redemption plan.

Critical activities and contractual arrangements

42. The redemption plan should include a mapping of the critical activities that are necessary for the orderly implementation of the plan. Having regard to the issuer's structural organisation, these may include internal functions of the issuers or functions provided by third parties. Based on the mapping, the redemption plan should lay down the list of such parties and outline the contractual terms in place.

43. Such mapping of the critical activities should include, where relevant, the issuer's risk management function, the trading desk, the treasury or finance function, the relevant ICT functions and systems, the anti-money laundering (AML) function (where existing, depending on the type of issuer), the relationship with the custodian of the reserve of assets (where existing), the interaction with financial intermediaries (where necessary) to access secondary and repo

[9] EBA/GL/2024/06. Available here: https://www.eba.europa.eu/sites/default/files/2024-06/611ef3d4-4d67-467f-bf0d-4c2b1dd0ef5e/Final%20report%20on%20draft%20Guidelines%20on%20internal%20governance%20of%20issuers%20of%20ARTs.pdf.

markets for the liquidation of reserve assets, and the relationship with crypto-asset service providers (where needed) for the identification of token holders and the collection of outstanding tokens, or with payment service providers (where needed) to make payments to the token holders assessed as entitled to the redemption claim or for other related activities.

44. Issuers of ARTs which are not obliged entities under Directive 2015/849/EU[10] should always explain in the redemption plan how they will involve intermediaries subject to that Directive so that these intermediaries:

    a) perform anti-money laundering and combating the financing of terrorism (AML/CFT) checks, including customer due diligence checks on the token holders that have submitted a redemption claim; and

    b) comply with their obligations under Regulation (EU) 2023/1113 (Transfer of Funds Regulation)[11] (see paragraphs 55 and 56 of these Guidelines) with respect to the transfer.

45. With regard to the critical activities within the issuer's organisation, the issuer should include in the redemption plan an overview of the relevant internal arrangements and processes concerning their functioning and operational continuity, including the key person(s) with up-to-date emergency contact details.

46. With regard to the critical activities provided by third parties, the redemption plan should include a list of all such third-party providers, the key contact persons within the issuer and the third party in charge of the contract with up-to-date emergency contact details.

47. The redemption plan should also provide an overview of the content of the contractual arrangements, and illustrate their adequacy, including avoidance of conflicts of interests, for the achievement of the timely and equitable operationalisation of the redemption plan. The issuer should also confirm that such contracts ensure continuity of performance if the redemption plan is activated.

48. With specific regard to the custodians of the reserve of assets and to the financial intermediaries (if any) tasked with the execution of the orders provided by the issuer for the liquidation of the reserve of assets, the contractual terms outlined in the redemption plan should duly reflect the objective that the proceeds from the liquidation of the reserve of assets are maximised for token holders, that best execution for the benefit of the token holders is ensured, and that undue economic harm to token holders is avoided.

[10] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
[11] Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (OJ L 150, 9.6.2023, p. 1).

49. The list of third-party providers of critical activities and the contractual terms should be kept up to date by the issuer. Where relevant, contracts with the most significant third-party providers, including with the custodians, may be included as annexes to the redemption plan.

50. The overview of the contractual arrangements in place with third-party providers of critical activities should not prevent the issuer, if need be, from entering into contractual arrangements with any other required intermediaries at the moment of the activation of the redemption plan if this would contribute to a more effective implementation of the plan.

51. For that purpose, the redemption plan should at least clearly and operationally illustrate the selection process of the intermediaries, include a summary of proposed key contractual terms (such as tasks, timing or costs), and include a provisional term sheet as an annex to the redemption plan with a list of potential contractual partners with whom the issuer has engaged in some discussions/negotiations, as well as the selection criteria.

Process for the orderly redemption of token holders' claims

52. The issuer should make sure that the redemption plan lays down an orderly process for the redemption of the token holders' claims and that this is expressed and communicated in clear, accessible and comprehensible language in line with the guidance on the communication plan in the relevant section.

53. Such a process should be articulated in an operational manner and ensure that the token holders' redemption claims are paid in a timely manner, consistently with the requirements laid down in Article 47 of Regulation (EU) 2023/1114 and with the content of the crypto-asset white paper.

54. For this purpose, the redemption plan should describe the processes, the measures to identify and address money laundering and terrorism financing (ML/TF) risks applied by the issuer, and technical facilities adopted or envisaged to be in place to process:

    i. the identification of token holders and their entitlement to the redemption of the tokens;

    ii. the collection and permanent removal from circulation of redeemed tokens; and

    iii. the subsequent payout or delivery of assets to the token holders.

55. The description of the process should include reference to the compliance with applicable AML/CFT obligations. In particular, the redemption plan should:

    a) in respect of point (i) in paragraph 54 above, refer to the execution of the customer due diligence measures applicable in accordance with Directive 2015/849/EU to the token holders submitting the redemption claim;

b) in respect of point (iii) in paragraph 54 above, refer to the checks on the information accompanying the transfer of funds in accordance with Regulation (EU) 2023/1113, where applicable.

Competent authorities should exercise powers and perform tasks in relation to redemption as specified in these Guidelines in effective collaboration and exchange of information with authorities competent for the prevention of money laundering and combating of terrorist financing in accordance with Article 94(5) of that Regulation.

56. The redemption plan should clearly indicate the requirements and the minimum content of the redemption claim to be filed by the token holders, which should include:

a) the identity and contact details of the individual holders (name, address, e-mail and/or phone number), indicating that any personal data would be treated in line with Regulation (EU) 2016/679;

b) the evidence that the person that files the claim is the token holder and is therefore entitled to the redemption right for which the redemption claim is filed and the necessary warranties (if any) from the token holder´s side in accordance with the crypto-asset white paper;

c) the information necessary to identify, assess and manage any risk of money laundering and terrorist financing including for the execution of the customer due diligence on token holders at redemption in accordance with Directive 2015/849/EU;

d) the number of the relevant tokens held (including fractional holdings) and the public blockchain addresses covered by the wallet where the tokens are held (where applicable); and

e) the indication of the token holder's bank or payment account for the transfer of the funds in repayment of the redemption claim, or similar data required to deliver the assets for the redemption (where applicable). Such bank or payment accounts should preferably be held with EU credit or payment institutions and in any case should not be held in high-risk third countries for purposes of ML/TF risk as referred to in Article 9 of Directive 2015/849/EU.

57. The information listed above and included in the redemption claim should also permit the issuer to assess token holders' entitlement to redemption, which is preliminary to permitting the collection and permanent removal of the redeemed tokens from circulation. For this purpose, the redemption plan should specify how the mechanism of delivery of the token against the payment will be implemented. Notably it should indicate how each redeemed token will be collected and subsequently taken out of circulation (or 'burnt') by the issuer and will no longer be able to be recirculated, exchanged, transferred or sold by any party.

58. The redemption plan should also clarify the relevant sources of information, and the envisaged actions and process that will be implemented or relied upon to reconcile the number of tokens claimed for redemption with the number of outstanding tokens.

59. The redemption plan should include all relevant steps, actions and processes to develop the distribution plan to repay the token holders that have submitted a redemption claim that has been positively assessed.

Communication plan

60. The redemption plan should include a communication plan to be activated without delay upon the adoption of the competent authority's decision to trigger the implementation of the redemption plan in accordance with Article 47(1) of Regulation (EU) 2023/1114.

61. The communication plan should include at least the following:

    a) the draft public notice to be communicated to the public; and

    b) the draft communication notices with the third-party providers of critical activities to be contacted immediately upon the activation of the redemption plan. Where communication notices have been agreed upon in the relevant contracts, they should be annexed to the redemption plan.

    The issuer should ensure consistency of the communication plan for redemption of the token holders with other existing communication plans.

62. The draft public notice should be developed in order to inform the token holders of the activation of the redemption plan upon the competent authority's decision with a view to redeeming the tokens in an orderly, timely and equitable manner without imposing undue economic harm and in accordance with the terms set out in the crypto-asset white paper.

63. With a view to reaching the general public and the maximum number of token holders, the redemption plan should indicate the media channels where the notice should be published. In doing so, the issuer should privilege those normally used by the issuer to communicate to the public and to the market and to advertise its products and services.

64. The draft public notice should describe in clear and non-technical language the main steps of the redemption process and the actions that token holders are expected to undertake within the indicated timeframe to have their token redeemed.

65. For these purposes the draft public notice should include at least:

    a) the exact date and time when the redemption plan has been activated based on a decision of the competent authority;

    b) the minimum content of the redemption claim as set out in paragraph 56 of these Guidelines;

    c) the timeframe, as of the publication of such a notice, within which the token holders are required to file their redemption claim with the issuer or (where applicable) the third-party service providers, in accordance with what is indicated in the white paper; and

d) the modality, technical support and location where the token holders should file their redemption claim, e.g. the exact portal of the issuer or – where applicable – of a third party. The solution(s) adopted should not discriminate against token holders, e.g. because of their place of residence.

Issuance of the same ART or EMT by multiple issuers

66. When an ART is issued by multiple issuers, or when a significant EMT is issued by multiple issuers other than credit institutions, Regulation (EU) 2023/1114 provides that a single reserve of assets has to be set up to ensure a proper stabilisation mechanism of the token.

67. In the light of this, the redemption plan should be articulated in two sections: the first common to all issuers and agreed upon by all issuers, the second specific to each issuer.

68. Issuers should coordinate to develop and agree on the common section of the redemption plan, which should contain at least the following parts:

i. the general principles and objectives governing the redemption plan as stated in the 'General principles and objectives of the redemption plan' section of these Guidelines;

ii. the 'Critical activities and contractual arrangements' section of these Guidelines with a view to identifying the critical activities under the control of which issuer should be operational for the effective implementation of the common redemption plan;

iii. the 'Process for the orderly redemption of token holders' claims' section;

iv. the 'Communication plan' section;

v. the effective coordination between the issuers for the development, review and update of the redemption plan;

vi. the effective coordination between the issuers for the orderly implementation of the plan upon its activation by decision of the competent authority; and

vii. the commitment of all issuers to fully and faithfully comply with the terms of the redemption plan commonly agreed upon.

69. To ensure proper coordination, the issuers in the redemption plan should appoint one of them as coordinator without prejudice to the respective accountability of each issuer. The latter could be selected having regard to the comparative experience of the different issuers in the business and the level of maturity of their internal organisation, to the role in the interaction with the custodians and other third-party providers or intermediaries, and to the materiality of their participation in the issuance. Coordination tasks could include the development, review and update of the redemption plan, the implementation of the section on the communication plan, and the coordination of the management and execution of the redemption plan.

70. The second section of the redemption plan should be specifically tailored to the internal organisation of each issuer. In particular, issuers should lay down appropriate measures aimed at ensuring the application of:

    i. the 'Governance principles' section of these Guidelines; and

    ii. the 'Critical activities and contractual arrangements' section, having regard to the critical activities within the issuer's organisation or provided by third parties that need to be operational for the effective implementation of the redemption plan.

71. Competent authorities of each issuer participating in the issuance should in timely fashion consult each other and cooperate on the assessment of the redemption plan submitted by the issuers.

72. Competent authorities should consult each other and cooperate to assess whether any grounds for triggering the redemption plan are met. Competent authorities should avoid activating the redemption plan whenever the adverse effects on the outstanding ART or EMT deriving from the inability or likely inability of one issuer to fulfil its obligations are remedied without delay by one or more other issuers, in a manner that avoids a negative impact on the confidence of the token holders, on the rights of the token holders or on the stability of the markets.

Interaction of the redemption plan with other proceedings

73. The issuer should take into account that, whilst the recovery plan, developed in accordance with Article 46 of Regulation (EU) 2023/1114, and the redemption plan are two separate documents addressing two different phases and situations of the issuer's potential crisis, they should be consistent in particular as regards internal governance and risk management arrangements, processes and identification of IT systems and critical activities.

74. When the issuer is a credit institution or an entity within the scope of application of Directive 2014/59/EU[12] or is a central counterparty subject to Regulation (EU) 2021/23[13], the issuer should develop the redemption plan consistently with its resolution plan and resolvability requirements. To this end, the issuer should take into account the entity's resolution strategy, the identified critical functions and service level arrangements that are instrumental to the entity's operational continuity, and should endeavour to ensure smooth operation of the resolution strategy and of the redemption plan at the same time.

[12] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

[13] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

75. In the event that the actions, contractual arrangements, procedures and systems envisaged by the issuer in the redemption plan would be likely to have any adverse impact on the entity's resolvability, the issuer should bring them to the attention of the resolution authority in a note as an annex to the redemption plan. This is without prejudice to the resolution authority's review of the redemption plan having regard to the entity's resolvability and to its power to address recommendations to the competent authority in accordance with Article 47(4) of Regulation (EU) 2023/1114.

76. Considering that the resolution plan is developed by the resolution authority and that the redemption plan is developed by the issuer, the two plans will be separate documents.

4.4 Periodicity of the review and update

77. In order to ensure that redemption plans are maintained operational and effective at all times, issuers should regularly review and update such plans, including in cases of material changes affecting the issuer or its business environment as further described in paragraph 79, and submit the revised redemption plan to the competent authority for its assessment. Any change to the recovery plan should lead to a prompt and timely review of the redemption plan to assess whether it remains consistent with the new version of the recovery plan.

78. The frequency of the review should take into account the principle of proportionality as articulated in paragraph 12 and the guidance on the frequency of the review of the redemption plan as per paragraphs 13 and 14.

79. The redemption plan should also be promptly reviewed and updated by the issuer upon the occurrence of material changes, in particular relating to:

i. the issuer's business model or organisational structure;

ii. the nature of the token, including rights and obligations attached to the token;

iii. market conditions affecting the issuer or the reserve of assets or the use of the token;

iv. emergence of any unknown vulnerability, especially in relation to ICT risk or cyber attack, which would result in ineffectiveness of the plan; and

v. legal, regulatory or supervisory aspects.

4.5 Triggers

80. In accordance with Article 47(1) of Regulation (EU) 2023/1114, the implementation of the redemption plan is triggered by the competent authority's decision that the issuer is 'unable or likely to be unable to fulfil its obligations'.

81. In addition to the situations expressly mentioned in Article 47(1) of Regulation (EU) 2023/1114, namely the issuer's (i) insolvency, (ii) resolution (where applicable) or (iii) withdrawal of authorisation, these Guidelines further specify the elements for the competent authority's assessment as to whether the issuer is 'unable or likely to be unable to fulfil its obligations' under Regulation (EU) 2023/1114.

82. In the case of commencement of crisis prevention measures or crisis management measures as defined in Article 2(1), points (101) and (102), of Directive 2014/59/EU or a resolution action as defined in Article 2, point (11), of Regulation (EU) 2021/23, the competent authority should not trigger the redemption plan without prior consultation and coordination with the relevant prudential or resolution competent authorities under Directive 2013/36/EU [14], Directive 2014/59/EU or Regulation (EU) 2021/23 if the issuer is subject to these Directives and this Regulation.

83. For purposes of assessing whether the issuer is 'unable or likely to be unable to fulfil its obligations' under Regulation (EU) 2023/1114, the competent authority should have regard, *inter alia*, to the aspects listed in points (i) to (iii) of paragraph 84, exclusively relating to the requirements set out in Title III or Title IV, as applicable, of Regulation (EU) 2023/1114 and within the scope of supervision of the competent authority.

84. The aspects that the competent authority should *inter alia* have regard to when assessing whether the issuer is 'unable or likely to be unable to fulfil its obligations' under Regulation (EU) 2023/1114 are the following:

    i. capital position of the issuer: infringement of the requirements under Article 35(1) to (5) and Article 45(5) of Regulation (EU) 2023/1114;

    ii. liquidity position of the issuer under applicable requirements set out in Regulation (EU) 2023/1114 and/or of the reserve of assets:

        - infringement of the liquidity requirements, or, if subject to a requirement to hold a reserve of assets, of the requirements relating to the level and composition of the reserve of assets set out in Chapters 3 and 5 of Title III of Regulation (EU) 2023/1114, including any specification in accordance with Articles 36(4), 38(5) and 45(7)(b) of that Regulation, once the relevant delegated regulations apply, in a way that would justify the withdrawal of the issuer's authorisation by the competent authority;

        - being unable to pay debts and liabilities as they fall due; and

        - having the reserve of assets lower than liabilities;

[14] Directive of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

iii. with respect to issuers of ARTs authorised in accordance with Article 21 of Regulation (EU) 2023/1114, other requirements for continuing authorisation:

- in relation to governance arrangements: accumulation of material weaknesses or deficiencies in key areas of the governance arrangements or internal control functions, including risk management and ICT risk management, which alone or together have a material negative prudential impact on the issuer and/or its operational resilience; or any other elements considered relevant by the competent authority;

- material deficiencies which in combination can have a material negative prudential impact on the issuer, such as major reputational depreciation arising from a lack of transparency in the conduct of business and operations or incomplete/inaccurate disclosure of information.

85. When assessing the issuer's inability or likely inability in the near future to comply with the applicable requirements as determined also by the factors above, the competent authority should base its determination also on elements including among other things:

i. significant adverse developments in the macroeconomic environment that are likely to threaten the issuer's position as regards own funds, liquidity requirement and/or assets backing the redemption rights of the token holders, including relevant developments in interest rates, market freeze or economic growth; such developments should significantly adversely affect the issuer's business model, the outlook for its profitability, its liquidity position, its viability and its reserve of assets;

ii. significant deterioration of market perception of an issuer, for instance due to obstacles to prompt access to the assets backing the redemption rights of token holders, such as deterioration in the solvency profile of the credit institution holding the issuer's deposits or providing custodial services, or negative volatility of the highly liquid financial instruments in the reserve of assets or the high-quality liquid assets composing the liquidity coverage ratio (LCR) requirement;

iii. significant deterioration of the market conditions, likely leading to a run on the ART or EMT by the token holders, due to, among other things, any large and/or persistent negative divergence between the market value of the token and the market value of the assets referenced, idiosyncratic shock relating to specific assets referred to by the ART or EMT, increasing and high instability of the crypto market, interconnectedness between the financial system and the crypto activities in issuers that might act as a contagion channel for the crisis (idiosyncratic or market wide), or loss of confidence of the token holders.

86. The factors and elements listed in these Guidelines, respectively in paragraphs 84 and 85, should be carefully analysed on a comprehensive basis and justified. The determination that an issuer is unable or likely to be unable to fulfil its obligations should remain subject to an expert judgement

and should not be automatically derived from any of the elements described herein. This is especially true as regards the interpretation of the elements which may be affected by factors not directly related to the situation of the issuer.

87. When determining the issuer's inability or likely inability in the near future to fulfil its obligations under Regulation (EU) 2023/1114, the competent authority should base its decision, *inter alia*, on the assessment of the elements described in this section and taking into account, where relevant, the failure of the prior activation of recovery options envisaged in the recovery plan developed by the issuer in accordance with Article 46 of Regulation (EU) 2023/1114 or the failure of the recovery options to remedy the distressed situation. Nevertheless, the prior activation of the recovery plan should not be a necessary condition for the activation of the redemption plan.

88. In most cases it is expected that several factors, rather than merely one, set out in this section would inform the competent authority's determination that an issuer is unable or likely to be unable to fulfil its obligations. Nevertheless, there might be situations where meeting just one condition, depending on its severity and prudential impact, would be sufficient to support the competent authority's decision to trigger the redemption plan.

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (EBA Regulation), guidelines developed by the EBA shall be accompanied by an Impact Assessment (IA) which analyses 'the potential related costs and benefits'. This section presents the IA of the main policy options included in this Consultation Paper (CP) on the Guidelines (GL) on redemption plans under Articles 47 and 55 of Regulation (EU) 2023/1114.

This IA is high-level and qualitative in nature.

Regulation (EU) 2023/1114 sets out a new legal framework for issuers of ARTs and EMTs requiring them to draw up and maintain a redemption plan to support the orderly redemption of each token if they are considered by an NCA's decision as 'unable or likely to be unable' to fulfil their obligations under this regulation. This redemption plan aims to ensure an equitable and orderly redemption of all entitled token holders in a timely manner.

Regarding the content of the redemption plan, Regulation (EU) 2023/1114 sets out only general principles in the interests of the ART holders or of the crypto-asset markets and requires the inclusion of contractual arrangements, procedures and systems to ensure the equitable and timely treatment of all holders and to ensure the continuity of any critical activities that are necessary for the orderly redemption (Article 47(2) of Regulation (EU) 2023/1114). The same applies, *mutatis mutandis*, to issuers of EMTs (Article 55 of Regulation (EU) 2023/1114).

Regulation (EU) 2023/1114 also mentions three non-exhaustive triggers when the issuer could be characterised as 'unable or likely to be unable' to fulfil its obligations under that regulation without further specification. Regulation (EU) 2023/1114 requires the redemption plan to be assessed by the NCA when notified by the issuer and, if applicable, transmitted by the NCA to the resolution authority and prudential authority of the issuer. The NCA may decide to trigger the plan if it considers the issuer is 'unable or likely to be unable' to fulfil its MiCAR obligations.

A. Problem identification

While ARTs and EMTs can bring opportunities in terms of innovative digital services, they also bring risks, which may materialise if a large number of holders of tokens require the redemption of the tokens against the reference value. Such an event could lead to a run on the ARTs and EMTs, draining the issuer's reserves, to fire sales of assets in the reserve or of assets backing the redemption rights of the token holders, and to the de-pegging of the value of the token from its reference assets.

Against this background, having a redemption plan is crucial to ensure an orderly approach to redemption and to ensure an equitable and orderly redemption of all entitled token holders in a timely manner.

In addition, since no previous regime exists in this area, harmonisation is required to avoid diverging approaches and different practices by issuers and competent authorities across EU Member States hindering the level playing field and leading to regulatory arbitrage. Lack of harmonisation of the content and the triggers might create divergent practices that may lead to diverging approaches in the assessments by the competent authorities and to regulatory arbitrage.

B. Policy objectives

The general objective of the GL submitted in this Consultation Paper is to specify the content of the redemption plan and its periodicity for review, as well as the triggers for implementation of the redemption plan. The GL also aim to ensure consistency of information provided by the ART issuers and EMT issuers to permit a proper harmonised framework across the EU regarding the implementation of the redemption plan. Another policy objective is to preserve the stability of the market and in this regard a crypto run needs to be avoided when the redemption plan from one of the issuers of the token is activated.

C. Baseline scenario

The baseline scenario is the situation where Regulation (EU) 2023/1114 only provides for a general obligation for issuers to draft redemption plans, without any further specification. The costs and benefits of the underlying Regulation are not assessed within this impact assessment.

Redemption plans are a rather new element for ART and EMT issuers, which means the issuers lack experience in this specific area. This also means that, without further guidelines, the issuers may interpret differently the requirements from Regulation (EU) 2023/1114, which would lead to diverging approaches to the content, review process and triggers of the respective plans.

From the supervisory perspective, the competent authorities would assess whether an issuer is ‘unable or likely to be unable to fulfil its obligations’ with respect to different criteria and triggers to activate the plan. In the absence of further guidelines these criteria and triggers may vary from one Member State to another.

D. Options considered and preferred options

This section presents the main policy options discussed and the decisions made during the drafting of the GL. Advantages and disadvantages of the policy options and the preferred options resulting from this analysis are assessed below.

Policy issue 1: Redemption costs

The EBA considered three policy options as to who will bear the costs relating to the redemption process and how, having regard to the fact that Regulation (EU) 2023/1114 prohibits redemption fees (Articles 39(3) and 49(6) of Regulation (EU) 2023/1114).

Option 1a. Allow for the redemption-related costs to be borne either by the issuer or by the token holders, and require the issuer to explain in the redemption plan how such costs will be covered.

Option 1b. Require the redemption-related costs to be borne by the proceeds from the liquidation of the reserve of assets after the amounts necessary to meet the token holders' claims has been set aside, and require the issuer to explain in the redemption plan how such costs will be covered.

Option 1c. Require the redemption-related costs to be allocated immediately to the reserve of assets before any payment of the token holders, and require the issuer to explain in the redemption plan how such costs will be covered.

According to Regulation (EU) 2023/1114, the redemption plan should demonstrate the ability of the issuer of ARTs or the issuer of EMTs to carry out the redemption of the outstanding ART or EMT without causing undue economic harm to its holders. Additionally, the Regulation notes that the issuers of ARTs should always act 'in the best interest of the holders of asset-referenced tokens'. The issuers should therefore cover any cost related to the liquidation of the tokens.

Options 1a and 1c allow for the liquidation costs to be borne by the token holders. Liquidation costs borne by token holders are similar to redemption fees, although they may be more variable. Such an approach goes against Articles 39(3) and 49(6) of Regulation (EU) 2023/1114 which prohibit redemption fees, and also against the principle of acting in the best interest of token holders.

Conversely, option 1b requires that the redemption-related costs are to be covered from the reserve of assets only after the amount necessary to meet the token holders' claims has been set aside. This approach ensures that the main principles of Regulation (EU) 2023/1114 are fulfilled, and it will also provide an incentive to the issuer to limit the redemption costs. Therefore, **option 1b was preferred**.

Policy issue 2: Timeframe

Regarding the timeframe to be set up by the redemption plan, two policy options have been considered by the EBA.

Option 2a. Set up general guidance on the timeline regarding the different phases of the redemption planning process and ensure such a timeline is reasonable and proportionate.

Option 2b. Set up guidance on the timeline with a precise and fixed deadline for each phase of the redemption planning process, in addition to a reasonable and proportionate timeline.

Regulation (EU) 2023/1114 requires the redemption plan to ensure that token holders are paid in a timely manner. Given the lack of prior experience and considering the complexity of the process, as well as the number of token holders and the associated claims, a precise timeline for the completion of the orderly implementation of the redemption plan, as proposed in option 2b, may not be feasible.

In that sense, option 2a proposed a more high-level approach, whereby the Guidelines will provide a description of the various phases with parameters to be considered by the issuer to ensure that the implementation of the redemption plan is done in a timely manner. At the same time, the Guidelines will include the specific actions to be taken following the CA's decision to activate the redemption plan and before the actual redemption. Therefore, **option 2a was preferred**.

Policy issue 3: Pooled issuance

In cases where the same ART or EMT is issued by multiple issuers which are subject to the requirement to have a reserve of assets (or pooled issuance), the EBA considered two policy options on how the issuers should develop the redemption plan.

Option 3a. Issuers should develop one single redemption plan common to all issuers and agreed upon by all issuers.

Option 3b. Issuers should develop one single redemption plan with two sections: the first common to all issuers and agreed upon by all issuers, the second specific to each issuer.

ART or EMT issuance may happen from multiple issuers. Option 3a indicates a single redemption plan across all different issuers of the same token. Under this option the token holders can benefit from a unique plan which provides clarity on the redemption process irrespective of the issuer of their token and, in this way, equal treatment of the holders of the same token is ensured. However, as the issuers of the token may have different business models, a different corporate structure, etc., creating a single redemption plan may be difficult or not feasible, particularly in areas of governance and compliance. This in turn may prohibit the issuers from adopting a single redemption plan.

Option 3b envisages each issuer of the same token to follow a redemption plan with a section that is common across all the different issuers and a section which can be customised according to the business model of each entity. Like the previous option, this option ensures that the essential sections of the redemption plan that provide assurance to the token holders about the consistency and fairness of redemption of the token irrespective of the issuer are common for all issuers. At the same time, this option gives more flexibility to the issuers as they will be able to customise the other sections of the redemption plan in line with their specific business model and entity type.

While both options 3a and 3b ensure that multiple issuers of the same ART or EMT need to develop a single redemption plan that has common sections which are essential for the consistency and fairness of the redemption of the tokens irrespective of the issuer, only option 3b gives flexibility to the issuers to take into account their specific business model when setting up the redemption plan. Therefore, **option 3b is preferred.**

E. Cost-benefit analysis

In general, the Guidelines will primarily benefit the stakeholders more than they would cost them. A more detailed evaluation of costs and benefits is provided in Table 1.

Table 1. Costs and benefits of the Guidelines

Stakeholders	Costs	Benefits
ART/EMT holders	No costs	The token holders are benefiting from the process of reaching minimum liquidation charges as well as efficiency in the liquidation of the collateral in order to securely obtain their funds back. The token holders will be equipped with a transparent process which will guarantee a reasonable liquidation process which is regularly reviewed and up to date. Enhanced clarity regarding the completion time for holders to receive a refund in the event of an ART/EMT default event. Token holders will receive a standard repayment plan regardless of the issuer type. This strategy can further shield them against unjust treatment in an extreme event of increased demand for redemption of ARTs/EMTs.
ART/EMT issuers	Costs related to preparing and complying with the redemption plans. In the case of pooled issuance, costs related to coordination among issuers to develop and comply with the common	Increased security and appeal of the tokens for the prospective token holders, due to enhanced transparency in the case of redemption.

	sections in the redemption plan. Issuers may need to bear liquidation costs.	
Third parties	Coordination with the issuers of ARTs/EMTs and (pre) negotiation of contractual arrangements required by the redemption plan.	Transparency with regard to the procedures in the event that third parties are called upon to step in in the case of redemption of the ARTs/EMTs.
Competent authorities	Resources related to the review and approval of the redemption plans as well as assessment of ART/EMT issuers' inability to fulfil their obligations.	Consumer protection and ensuring equitable treatment of holders of the same tokens. Ensures the harmonisation of the content of the redemption plan and the triggers, therefore encouraging harmonised practices and approaches in the assessments by the competent authorities. Increased financial stability.

4.2 Overview of questions for consultation

Question no. 1 for public consultation:

Do you consider that the scope of the GL on redemption plans is sufficiently clear and takes into account the differences regarding the obligation to hold a reserve of assets set out in Regulation (EU) 2023/1114 applicable to the different types of ART or EMT issuers?

Question no. 2 for public consultation:

Do you consider that the GL on redemption plans are sufficiently clear and comprehensive and that they cover all aspects of the mandate?

Question no. 3 for public consultation

Do you consider that the redemption process as described herein provides adequate operational guidance to token holders about the actions and steps relating to the redemption claim?

Question no. 4 for public consultation:

Do you consider that the information to be contained in the draft public notice is adequate and covers the necessary information to be conveyed to the token holders and for a sound redemption process?

Question no. 5 for public consultation:

5.1 Do you consider that the aspects to be assessed by the competent authority for purposes of assessing whether the issuer is unable or likely to be unable to fulfil its obligations under Regulation (EU) 2023/1114 envisaged in the Guidelines appropriately complement those set out in Article 47(1) of Regulation (EU) 2023/1114?

5.2 Do you agree that, in the case of credit institutions and the other entities subject to Directive 2014/59/EU or of central counterparties subject to Regulation (EU) 2021/23, the competent authority should not trigger the redemption plan without prior consultation and coordination with the relevant prudential or resolution competent authorities under that Directive or Regulation, in the case of commencement of crisis prevention measures or crisis management measures under such sectoral acts?

4.3 Feedback on the public consultation

Summary of key issues and the EBA's response

The public consultation ran between 8 March and 10 June 2024, and a public hearing was held virtually on 22 May.

Following the public consultation, seven stakeholders submitted comments; one of these opted to keep confidential the submitted responses, which have therefore not been made public on the EBA website.

Generally, comments welcomed the approach taken in the Guidelines and appreciated the guidance provided on the main steps for the implementation of redemption plans by issuers of ARTs and issuers of EMTs.

First of all, drafting changes have been made to take on board the comment requesting clarification of the scope of application of the paragraphs in the sections 'Allocation of the reserve of assets to meet the token holders' redemption claims' and 'Liquidation of the reserve of assets' and to provide guidance to those issuers of EMTs which are required to have a reserve of assets. Hence, the relevant paragraphs have been amended to indicate that they may apply *'mutatis mutandis* to issuers which are not subject to the obligation to hold a reserve of assets, to the extent consistent with the applicable sectoral legislation'. Nevertheless, while one respondent raised a concern that issuers of EMTs which are not under the obligation to hold a reserve of assets are not covered by deposit guarantee schemes under Directive 2014/49/EU, the EBA notes that this requirement goes beyond the scope of the Guidelines.

Some comments suggested having more flexibility for the liquidation scenarios, especially in relation to the management of the reserve of assets (where applicable), and raised concerns about the risk exposure. After the assessment of such comments, the EBA decided not to amend the Guidelines, considering that they leave sufficient discretion and do not require an immediate sale of the reserve of assets. Rather, they stipulate that issuers have to prepare liquidation strategies taking into account the composition of the reserve of assets and that such liquidation strategies have to be consistent with the redemption scenarios – under ordinary and stressed market conditions – designed by issuers in the redemption plan.

Other comments challenged the requirement that AML non-obliged entities should involve intermediaries that are obliged entities under Directive 2015/849/EU (AMLD) for the performance of some activities requiring AML/CFT clearance. The EBA notes that issuers of ARTs authorised under Article 21 of MiCAR are not per se 'obliged entities' under AMLD; however, MiCAR considers the risk of exposing the issuer to ML/TF risks is grounds for refusal or withdrawal of the authorisation, therefore the issuer has to adopt the necessary measures to avoid such effects.

Regarding the need to fix a specific time limit for the different steps in the execution of the redemption plan, the EBA stresses that a precise timeline for the completion of the redemption

process may not be feasible due to the lack of prior experience and considering the complexity of the redemption process, as well as the number of token holders and the associated claims.

Regarding the fate of the unredeemed tokens, the EBA notes that these issues go beyond the scope of the Guidelines that focus on the orderly redemption, whereas it can be expected that unredeemed tokens will be an exception. Furthermore, the Guidelines lay down requirements on the issuer to proactively reach out to token holders and make them aware of the implementation of the redemption plan. Additionally, the EBA notes that matters regarding unredeemed claims raise legal issues which are usually covered by national law (e.g. the statute of limitation) and that they cannot be resolved in Guidelines.

Regarding section 4.4 on Triggers, a minor drafting change has been made in paragraph 84 on the specification of the triggers. In particular, the trigger relating to the fact that 'assets are lower than liabilities' has been adjusted to 'reserve of assets is lower than liabilities' and moved to the triggers relating to liquidity. Also, in view of comments received in relation to triggers, the EBA reminds that the Guidelines stipulate that the trigger factors should be carefully analysed on a comprehensive basis and justified by the competent authority and that the competent authority's decision to declare an issuer unable or likely to be unable to fulfil its MiCAR obligations should not automatically derive from any of the trigger factors and especially factors not directly related to the situation of the issuer.

Finally, in relation to the prior consultation and coordination between the MiCAR competent authority and the relevant prudential or resolution competent authorities under the BRRD or Regulation (EU) 2021/23 where issuers are credit institutions or other entities subject to the BRRD or central counterparties subject to that Regulation, comments welcomed the provision, underscoring the importance of sound coordination between those authorities to secure the implementation of the redemption plan. One stakeholder suggested that such coordination should be extended to issuers of ARTs and EMTs which are not covered by the BRRD or by Regulation (EU) 2021/23 (e.g. e-money institutions). The EBA notes that, for entities covered by the Union acts referred to, this cooperation and consultation with the prudential or resolution authorities is expressly referred to in Article 47(1) and (4) of MiCAR. The EBA also notes that MiCAR does not envisage any specific coordination with the supervisory authorities for those issuers of ARTs and of EMTs which are not covered by the BRRD or by Regulation (EU) 2021/23 and that no equivalent resolution authorities are envisaged in such cases. Rather, MiCAR generally lays down cooperation with other authorities (Article 98). However, this latter provision falls outside the scope of the mandate, therefore no drafting change has been made.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2024/09			
***Question 1*. Do you consider that the scope of the GL on redemption plans is sufficiently clear and takes into account the differences regarding the obligation to hold a reserve of assets set out in Regulation (EU) 2023/1114 applicable to the different types of ART or EMT issuers?**			
Scope of application	One stakeholder noted that the scope of the Guidelines is not clear and should be more flexible in relation to the various existing business models. Another stakeholder suggested making more precise to what extent Directive 2009/110/EC should be applicable to issuers of non-significant EMTs which are not under an obligation to hold a reserve of assets.	The Guidelines are issued under Regulation (EU) 2023/1114 (MiCAR) and apply to all issuers of ARTs and to all issuers of EMTs, with a proportionate approach taking into consideration the business model of the issuer. In accordance with Articles 47 and 58 of MiCAR, the Guidelines distinguish issuers which are under the obligations to hold a reserve of assets (ART issuers and e-money institutions ('EMIs') issuing significant EMTs) and the other issuers which are not under such obligations (i.e. credit institutions issuing EMTs and EMIs issuing non-significant EMTs, if not required by the competent authority).	No change
Application of the provisions in relation to the requirement to hold a reserve of assets	Two stakeholders noted that the reason for the distinction between ART/EMT issuers under the obligation to have a reserve of assets and the others should be clarified, especially by specifying which specific sub-sections and paragraphs dealing with the reserve of assets do not apply to those issuers not under the obligation to have a reserve of assets (apart from the sections 'Allocation of the reserve	The EBA acknowledges that the drafting of the paragraphs in the sections referred to (i.e. 'Allocation of the reserve of assets to meet the token holders' redemption claims' and 'Liquidation of the reserve of assets') should be clarified to better represent the scope of application of the Guidelines.	**Drafting amended to better reflect the scope of application of the paragraphs in the sections referred to.**

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	of assets to meet the token holders' redemption claims' and 'Liquidation of the reserve of assets'). Another stakeholder expressed the concern that the sections on 'Allocation of the reserve of assets to meet the token holders' redemption claims' and 'Liquidation of the reserve of assets' provide guidance only to issuers under the obligation to have a reserve of assets, whereas no guidance is provided in those sections for CIs and EMIs issuing non-significant EMTs which are not under such obligation in terms of behaviours.		
Scope of application – guarantee schemes (Directive 2014/49/EU)	One respondent raised a concern that EMT issuers that are not under the obligation to hold a reserve of assets (i.e. credit institutions and EMIs issuing non-significant EMTs, if not required by the competent authority) are not covered by deposit guarantee schemes under Directive 2014/49/EU. Hence, this respondent required that it be set out which provisions of the current Guidelines apply to the redemption plans of credit institutions and that additional specific requirements that are applicable be specified to ensure equivalent protection of token holders and to compensate for the absence of deposit protection and of a reserve of assets.	The modalities to ensure protection of token holders of EMT issuers that are not under the obligation to hold a reserve of assets are not laid down in MiCAR; these aspects therefore go beyond the scope of the Guidelines.	No change
***Question 2*. Do you consider that the GL on redemption plans are sufficiently clear and comprehensive and that they cover all aspects of the mandate?**			
Grace period to comply with the Guidelines	One stakeholder suggested that the introduction of a grace period may be more proportionate for compliance, as the two-month implementation period following translation into all official	Article 47(3) of MiCAR requires issuers of ARTs to notify the redemption plan to the competent authority within six months of the date of authorisation pursuant to Article 21 or of the date of	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	languages is considered a tight deadline to comply with.	approval of the crypto-asset white paper pursuant to Article 17. For EMT issuers, the same notification requirement applies within six months of the date of the offer to the public or admission to trading (Article 55(3)).	
Equitable treatment and no undue economic harm	One stakeholder suggested that the redemption process should be tailored to the white paper of each issuer to take into account the diversity of business models existing in the crypto-assets market. In particular, the respondent challenged what defined a 'seemingly umbrella approach' with respect to the redemption process.	Paragraph 17 of the Guidelines expressly requires consistency between the redemption plan and the white paper, in particular having regard to the right of redemption attached to the token as described in the crypto-asset white paper in accordance with Annex II and Annex III of Regulation (EU) 2023/1114, respectively for an ART and for an EMT. The Guidelines adopt a proportionate approach for the development and execution of the redemption plan (para. 12-14) and require the issuer to develop the redemption plan by laying down the actions and process with a view to ensuring an equitable treatment of all token holders.	No change
Liquidation strategies	Two respondents suggested clarifying how MiCAR reserve requirements apply in different liquidation scenarios and strategies for ART/EMT issuers to have more flexibility to choose the best liquidation strategy and avoid investing in low-return bank deposits. They noted that mandating the general and full liquidation of the reserve of assets would result in banking deposits being exposed to credit risk arising from banking counterparties. One respondent noted that those requirements should not increase the costs and risks for ART/EMT	The EBA notes that the Guidelines provide flexibility as to the design of the liquidation strategies. They do not require an immediate sale of the reserve of assets, rather they stipulate that issuers have to prepare liquidation strategies taking into account the composition of the reserve of assets and that such liquidation strategies have to be consistent with the redemption scenarios - under ordinary and stressed market conditions - designed by issuers in the redemption plan (para. 27-29).	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	issuers and still permit the timely implementation of the redemption plan, while the other suggested establishing a liquidation strategy that allows issuers to meet incoming redemption requests at all times, while optimising the risk exposure of the reserve of assets for outstanding redemption claims. One respondent also suggested specifying some conditions, where applicable, for a temporary waiver of the concentration limits set in the EBA draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of MiCAR[15].	Also the EBA notes that the calibration of the reserve requirements strategies goes beyond the EBA mandate for these Guidelines, which only concerns the specification of the content of the redemption plan, the periodicity for review and the triggers for its implementation. Similarly for a potential waiver of the concentration limits.	
Over-collateralisation	One respondent asked for clarification that provisions from para. 21 to 25 do not have to be interpreted as a request for holding an excess of reserve of assets in addition to the over-collateralisation requirement already set under Article 6 of the draft RTS further specifying the liquidity requirements of the reserve of assets under MiCAR[16].	The Guidelines on redemption plans do not recommend holding any additional assets on top of the reserve of assets requirements as specified in the applicable law and regulation, to cover the redemption plan-related costs. The EBA reminds that Article 39 of MiCAR provides that tokens holders have a right of redemption at all times against the issuers and in respect of the reserve	No change

[15] EBA/RTS/2024/11 - Final Report on the draft Regulatory Technical Standards to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of Regulation (EU) 2023/1114 (pending adoption as Regulation).

[16] EBA/RTS/2024/10 - Final Report on the draft Regulatory Technical Standards to further specify the liquidity requirements of the reserve of assets under Article 36(4) of Regulation (EU) 2023/1114 (pending adoption as Regulation).

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		of assets when the issuers are not able to meet their obligations.	
AML/CFT requirements for non-obliged entities: scope of application	One respondent challenged the fact that the Guidelines require non-obliged entities to involve an intermediary which is an obliged entity under Directive 2015/849/EU (AMLD). Another respondent suggested that such an obligation to involve such an intermediary should also apply to issuers of EMTs while CASPs should perform the AML/CFT requirements for their retail customers and token holders.	The EBA notes that issuers of ARTs authorised under Article 21 of MiCAR are not per se 'obliged entities' under AMLD but that ML/TF risks are assessed as part of conditions for granting and withdrawing the authorisation, hence they need to be identified and managed by the issuer. This is why the Guidelines provide that issuers which are not obliged entities should involve an intermediary that is an obliged entity under AMLD to perform AML/CFT checks.	No change
AML/CFT requirements: content of the redemption plan and involvement of an intermediary	One respondent suggested that the requirement under which the redemption plan should describe the processes and the measures to identify and address ML/TF risks should be applied not only by the issuer, but also by its intermediaries or third-party providers of critical activities. Hence, issuers should be able to delegate the responsibility to identify and assess ML/TF risks to intermediaries or third-party providers as issuers might have no direct contact with the secondary crypto-assets market.	See above. Even if an intermediary is involved, the ultimate responsibility for the identification and performance of the AML/CFT checks remains with the issuer.	No change
Pooled issuance: EU/non-EU issuance	One stakeholder noted that, in the case of a pooled issuance of a token by both EU and non-EU entities, the effects of applying EU rules to non-EU activities should be avoided and global issuers should be encouraged to adhere to MiCAR.	The EBA notes that the point raised is not addressed by MiCAR and goes beyond the scope of the GL.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	The stakeholder suggested providing clear guidance on how an EU competent authority can trigger a redemption plan for a pooled issuance (including with non-EU entities): in order to prevent extraterritorial impact, the redemption plan should only apply to EU-based issuer(s) and only address the liabilities of EU token holders within a reasonable timeframe, and then organise the transfer of any residual liabilities to the non-EU issuer(s).		
***Question 3*. Do you consider that the redemption process as described herein provides adequate operational guidance to token holders about the actions and steps relating to the redemption claim?**			
Redemption process: time limits, redemption claims	Two stakeholders suggested that certain points of the redemption process could be detailed to avoid 'forum shopping' due to the application of national law, especially regarding the delay to submit a redemption claim or to carry on the redemption process. Their main concern is to mitigate the risk of undue economic losses for token holders or, even, market instability.	The EBA notes that Article 47(2) of Regulation (EU) 2023/1114 requires the redemption plan to ensure that token holders are redeemed in a timely manner. It is under the competent authority to assess whether the redemption plan duly fulfils this objective according to the guidance set out in these Guidelines (para. 34-38).	No change
Redemption process: proportionate approach and implementation	Two stakeholders suggested providing for more precise guidance on the redemption process especially considering the fact that some issuers are non-regulated firms (for the time being) or small market participants. The stakeholders also required guidance regarding the case in which an issuer, despite the drawing up	ART issuers need to be authorised under MICAR or are credit institutions complying with Article 17 (Article 16(1)) while EMT issuers are authorised as a credit institution or an e-money institution (Article 48(1)). When the issuer is under the obligation to hold a reserve of assets, the Guidelines indicate that the portion of a token holder's claim (if any) left unsatisfied by the liquidation of the remaining	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	of a proper redemption plan, fails to satisfy all the token holders at one time.	reserve of assets should be met by the issuer in accordance with the applicable law, including the applicable insolvency law (para. 21).	
Redemption process: delivery vs payment mechanism	One respondent noted that CASPs should also be liable for specifying how the mechanism of delivery of the token against the payment will be implemented in the redemption process, and its removal from circulation, especially when the issuer operates in a primary and secondary market structure.	The EBA notes that the development of a redemption plan is under the responsibility of each ART/EMT issuer in accordance with Article 47 of MiCAR and the Guidelines clarify how the implementation should be achieved. Conversely, CASPs are outside the scope of the mandate. If an issuer decides to outsource part of the redemption process, the responsibility for compliance with the requirements of the redemption plan remains with the issuer.	No change
Communication plan: templates	One stakeholder underscores the importance of the communication plan and of sharing standard approaches for communication.	The EBA agrees that communication plans are crucial and also acknowledges the importance of sharing market experience. However, the development of templates is not covered by the scope of the EBA mandate.	No change
Redemption claims: consequences of failure to submit a redemption claim during the allocated time or of a negative assessment	Two respondents noted that the Guidelines only allow the redemption of ARTs/EMTs that correspond to claims that have been duly submitted and assessed by the issuer. These respondents required the Guidelines to address the case of token holders who missed to file their claim in the allocated period or of a negative assessment by the issuer. Furthermore, these respondents requested the Guidelines to clarify the policies and procedures	The EBA notes that the matter goes beyond the scope of the Guidelines that focus on orderly redemption and that the issue falls within the competence of national laws. Furthermore, the Guidelines lay down requirements on the issuer to proactively reach out to token holders and to ensure that they are aware of the implementation of the redemption plan. Similarly, the consequences of a negative assessment of a filed redemption claim and the case of	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	that the issuer has to follow in the case of unredeemed tokens.	unredeemed tokens are outside the scope of these Guidelines and are covered by national laws.	
Redemption costs: tokens backed by physical gold	One stakeholder raised a concern that the Guidelines do not consider the specific costs and challenges of tokens backed 1:1 by physical gold. It suggested that issuers of such tokens should be able to charge a delivery fee, not a redemption fee, and that they should have the option to redeem in cash instead of gold in the case of insolvency, while melting and recasting gold bars would be impractical and expensive for fractional ownership tokens. The focus is to provide to the issuers more flexibility regarding the redemption conditions to be set up in the redemption plan.	The EBA notes that as per Article 39 of MiCAR: 'Holders of asset-referenced tokens shall have a right of redemption at all times against the issuers of the asset-referenced tokens, and in respect of the reserve assets when issuers are not able to meet their obligations as referred to in Chapter 6 of this Title' (para. 1). Article 39 of MiCAR also prohibits redemption fees for the redemption of ARTs (para. 3). Furthermore, Article 47(2) of MiCAR requires the issuer to ensure in its redemption plan a proper redemption of the tokens without causing undue economic harm to the token holders and that token holders are paid in a timely manner with the proceeds from the sale of the remaining reserve assets. The Guidelines provide that the redemption-related costs should be covered only after the amount necessary to meet the token holders' claims has been set aside, and liquidation strategies decided by the issuer in the redemption plan should take into account the composition of the reserve of assets.	No change
Redemption costs: other costs	One stakeholder would welcome the opportunity to further discuss with competent authorities and the EBA the contractual costs with third parties as well as pooled costs of issuance in accordance with the Guidelines.	The EBA takes note of the importance of a supervisory dialogue, which is expected to take place in the context of the assessment by the competent authority of the redemption plan according to Article 47(3) of MiCAR.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Any challenges that may arise in the preparation of the implementation of the redemption plan should also be discussed.		
***Question 4*. Do you consider that the information to be contained in the draft public notice is adequate and covers the necessary information to be conveyed to the token holders and for a sound redemption process?**			
Information in the draft public notice	Three respondents deemed the information contained in the draft public notice adequate. Moreover, two other respondents did not comment. Two respondents suggested, that while the Guidelines provide clarity on most of the issues related to the redemption plans and their execution, further clarifications should be provided.	The EBA considers on the basis of the comments received, including during the public hearing, that there is an adequate balance between the need for detail and granting issuers sufficient flexibility. Therefore, it does not deem appropriate it to expand the content of the Guidelines.	No change
Information in the communication plan	One respondent requested that the communication plan should clearly state that the permanent redemption right under Article 39(1) of MiCAR is waived upon activation of the redemption plan.	The EBA observes that the redemption plan aims to ensure the orderly redemption of all token holders, ensuring equitable treatment for them. Para. 20 of the Guidelines requires the issuer to include in the redemption plan how the individual redemption of claims will be suspended upon the adoption of the competent authority's decision triggering the implementation of the redemption plan for the orderly and collective redemption of the tokens. For this purpose, the issuer should have regard for the provisions in the crypto-asset white paper and for the applicable law, including Article 46, paragraphs (3) and (4), of Regulation (EU) 2023/1114 and national insolvency law.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
***Question 5.1*. Do you consider that the aspects to be assessed by the competent authority for purposes of assessing whether the issuer is unable or likely to be unable to fulfil its obligations under Regulation (EU) 2023/1114 envisaged in the Guidelines appropriately complement those set out in Article 47(1) of Regulation (EU) 2023/1114?**			
Triggers: if out of the issuer's control	One respondent claimed that the deterioration of the solvency profile of the bank where deposits of the issuer are held should not be assigned the same importance as other trigger events, for the competent authority's decision to activate the redemption plan. The same respondent observed that the deterioration of banking counterparties is outside the control of the issuer. Another respondent mentioned that, for trigger events outside the control of the issuer, a different approach could be used, which would allow the issuer to present the authority with a strategy to mitigate the risk before activating the redemption plan. Another suggestion made by the same respondent is that the EBA could provide guidance on the process that competent authorities should follow in order to reach a decision on whether or not to activate the redemption plan. Three respondents raised the point that triggers related to third parties which cannot be controlled by the issuer are not sufficiently described and therefore this may create the risk of an uneven playing field, which is why a more harmonised EU approach could be followed to avoid inconsistencies.	The EBA observes that issuers of ARTs and EMTs (where applicable) are bound by the EBA RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of MiCAR to monitor the creditworthiness of the credit institutions they place deposits with. Such RTS envisage, without prejudice to the withdrawal of the authorisation in accordance with Article 24 of Regulation (EU) 2023/1114, that, in cases of deviations from the requirements set out therein, a plan to remedy that situation and avoid any potential unintended consequence is promptly submitted to the competent authority. Furthermore, issuers of ARTs and EMTs are requested by the EBA Guidelines on recovery plans under Articles 46 and 55 of Regulation (EU) 2023/1114 to assess the need for taking actions when there is a deterioration of the credit risk profile of the credit institutions they deal with. Where appropriate, issuers should provide the competent authority with a plan to mitigate risks, thus avoiding the need to activate a redemption plan. It should also be taken into account that in general it is expected that, before a competent authority orders the activation of the redemption plan, it has already taken measures related to a recovery plan.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		Moreover, as stated under para. 85 of these Guidelines on redemption plans, the competent authority, when determining the issuer's inability or likely inability to fulfil its obligations, should take into account the failure of the prior activation of the recovery options envisaged in the recovery plan or the failure of recovery options to remedy the distressed situations.	
Triggers: list	One respondent claimed that the list of trigger factors is too broad and could lead to legal uncertainty; therefore, the respondent would welcome clarity on the prioritisation and severity of each of the proposed triggers.	The EBA considers that differences in issuers' business models, referenced assets and scale of operations require a broad range of triggers to identify different drivers of risks. In accordance with Article 47(5) of MiCAR, the Guidelines stipulate that the trigger factors should be carefully analysed on a comprehensive basis and justified by the competent authority. The EBA also points out that the EU principle of due process is applicable to whichever decision competent authorities take.	No change
***Question 5.2*. Do you agree that, in the case of credit institutions and the other entities subject to Directive 2014/59/EU or of central counterparties subject to Regulation (EU) 2021/23, the competent authority should not trigger the redemption plan without prior consultation and coordination with the relevant prudential or resolution competent authorities under that Directive or Regulation, in the case of commencement of crisis prevention measures or crisis management measures under such sectoral acts?**			
Consultation and coordination measures: extension to issuers which are not covered by the BRRD or Regulation (EU) 2021/23	One stakeholder underlined that the principle of having sound coordination based on prior consultation between competent authorities supervising credit institutions and central counterparties and relevant prudential and resolution authorities is a crucial factor underlying	The EBA recognises the potential for benefit of the suggested extension. Nevertheless, the EBA notes that, for entities covered by the BRRD or by Regulation (EU) 2021/23, this cooperation and consultation with the prudential or resolution authorities is expressly referred to in Article 47(1) and	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the decision to commence crisis management measures. In line with the proportionality objectives, the stakeholder suggests that the same principle should be extended to issuers of ARTs and issuers of EMTs which are not covered by the BRRD or by Regulation (EU) 2021/23. This proposal is aimed at implementing the same level of coordination for these issuers (including via intra-authority consultation prior to a decision) or any other authorised institutions (e.g. e-money institutions under the Payment Services Directive) in the case of crisis management and crisis prevention.	(4) of MiCAR, whereas MiCAR does not envisage any specific coordination with the supervisory authorities for those issuers of ARTs and of EMTs which are not covered by the Union acts referred to; hence, there are no equivalent resolution authorities in such cases. Furthermore, MiCAR generally lays down cooperation with other authorities (Article 98).	
Consultation and coordination measures: impact for the market	One stakeholder acknowledged that the provisions, regarding credit institutions and other entities covered by Directive 2014/59/EU or CCPs covered by Regulation (EU) 2021/23, for prior consultation and coordination with the relevant prudential or resolution authorities before triggering the redemption plan in the case of commencement of crisis prevention measures or crisis management measures under such sectoral acts will secure the redemption plans. However, this respondent noted that it has the disadvantage of making redemption plans more cumbersome, particularly the redemption periods for token holders, and could be negative for the market.	The EBA acknowledges that the consultation on the redemption plans is mandated in Article 47 of MiCAR, and consultation and coordination between relevant authorities is standard practice in crisis frameworks to ensure the decision to commence crisis management measures is made on a sound and informed basis.	No change