

MiCAR under the microscope

Part 3: The issuance of stablecoins under MiCAR:
Scope and requirements



MiCAR under the microscope – Part 3

The huge expansion of crypto-assets over recent years and the popularity of their underlying technology (distributed ledger technology (DLT) or blockchain) have come with their share of challenges, including a significant level of market volatility hampering the large scale adoption of crypto-assets as means of payment in financial transactions and/or storage of value.

Stablecoins constitute a class of crypto-assets that aim to maintain a steady value, addressing the issues raised by volatility in the crypto-industry. However, stablecoins have a real potential to heavily disrupt the current ways value is stored and exchanged on a global scale.

This bulletin follows on from our previous paper dedicated to the **Regulation on Markets in Crypto-assets (MiCAR) (MiCAR under the microscope – Part 2: Are you in or out of scope?)** and delves into the EU's response to regulating stablecoins, more specifically, the MiCAR framework applicable to asset-referenced tokens (**ARTs**) and electronic money tokens or e-money tokens (**EMTs**).

What are stablecoins and what is special about them?

Stablecoins are a type of cryptocurrency which aim to address the high volatility of other (non stable) cryptocurrencies, such as Bitcoin, Ether, etc. The high volatility of cryptocurrencies has been perceived by DLT users and by the wider financial industry as an impediment to their widespread use to settle transactions in the global economy, where the trust and stability of the value of exchange is of the essence. For cryptocurrencies to make a breakthrough in the international finance community, one of the contemplated solutions was to stabilise the fluctuations in the value of a cryptocurrency. To achieve this, two approaches can be used when designing a stablecoin:

- Designing a “backed (or pegged)” stablecoin, whose value is tied (or pegged) to other asset classes (such as fiat currencies, precious metals, other cryptocurrencies or other investments) therefore granting it a stable and steady value, tied to the value of the relevant underlying assets; or
- Designing an “algorithmic” stablecoin, which uses algorithms to control the stablecoin's supply by automatically increasing or decreasing the amount of stablecoins in circulation to stabilise the price.

From the first stablecoins issued in 2014 (BitUSD and NuBits), numerous other well-known names followed, such as Tether USDT, Circle USD Coin (USDC), Binance Dollar (BUSD) or more recently PayPal USD (PYUSD), to the point that some **industry blogs** estimate the number of stablecoins currently in circulation is over 200. This demonstrates the sheer competition but also potential disruption in this space, given the features a stablecoin is supposed to have: security and efficiency of DLT platforms, and the stability in value of such a cryptocurrency.

In light of the high potential to become an actual alternative to the current forms of money we use (at least in a digitalised environment), stablecoins are also the source of some concern for advanced world economies (and their financial industry). The possible issues large scale disruption could trigger without proper regulation, in a field so far tightly controlled and centralised at State level, is indeed likely to exacerbate sensitivities. What is probably the best example of these concerns was Meta's stablecoin project labelled as “Libra” (later rebranded as Diem) which was meant to be the first stablecoin with the potential of reaching a global scale. The project received significant backlash from regulators across the globe (which ultimately led to its cancellation and sale), who expressed their concerns about the risks that Diem would pose to global financial and payments systems in the absence of an adequate regulatory framework. Amongst the key regulatory concerns were the challenges relating to the fight against money laundering and terrorist financing, as well as the issues of becoming a widespread means of payment, as stated by the European Central Bank (ECB) itself (and potentially replacing fiat currencies in retail transfers).

EU's response: a new ART and EMT regime under MiCAR

Against the above background, it is easy to appreciate why the EU legislator sought to specifically regulate and supervise the issuance of stablecoins under MiCAR.

While MiCAR does not specifically define the term “stablecoin”, it introduces the notions of ARTs and EMTs, which in the eyes of the EU legislator, are the two potential forms a stablecoin may take (without otherwise qualifying as something that would be out of scope of MiCAR, such as a financial instrument) in light of the current types of stablecoins issued so far. This position is well summarised in Recital 41 of MiCAR, providing that:

“Where a crypto-asset falls within the definition of an **asset-referenced token** or **e-money token**, Title III or IV of this Regulation should apply, irrespective of how the issuer intends to design the crypto-asset, including the **mechanism for**

maintaining a stable value of the crypto-asset. The same applies to so-called **algorithmic ‘stablecoins’** that aim to maintain a stable value in relation to an official currency, or in relation to one or several assets, via **protocols, that provide for the increase or decrease in the supply of such crypto-assets** in response to changes in demand.”

Let's then have a closer look at what ARTs (Title III of MiCAR) and EMTs (Title IV of MiCAR) are and the regime they are subject to.

What are ARTs and EMTs and their main use cases?

Definitions and key distinction

On the one hand, an ART is defined in Article 3(6) of MiCAR as “a type of crypto-asset that **is not an electronic money token** and that purports to **maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies**”. An EMT, on the other hand, is defined in Article 3(7) of MiCAR as “a type of crypto-asset that purports to **maintain a stable value by referencing the value of one official currency**”.

While sharing many of the same features, the key difference between ARTs and EMTs lies in the type of reference assets they are pegged to. While EMTs may be pegged only to a single official currency, ARTs may be pegged to several types of assets, including official currencies, baskets of goods, commodities, other crypto-assets, a combination of such assets or even possibly financial instruments.

Use cases for EMTs / ARTs

An EMT's main use cases are clearly spelled out in MiCAR's recitals, particularly in Recital 18 of MiCAR which indicates that “the function of [an EMT] is very similar to the function of electronic money as defined in Directive 2009/110/EC [EMD2]. Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are likely to be used for making payments”, as well as in Recital 64 of MiCAR providing that an EMT's “main purpose [...] is to be used as a means of payment [...]”.

MiCAR is less clear as to the functionalities of ARTs. Nevertheless, these tokens may be used as a means of exchange (i.e. payment), a means for storing value and/or as a means of access to a good or service (which is also the main function of utility tokens). It should be noted that their primary use case should remain as a means of exchange, according to Recital 58 of MiCAR which indicates that the prohibition to grant interest with regards to ARTs (explained below) aims at “[reducing] the risk that [ARTs] are used as a store of value [...]” (and therefore that issuers should not substitute State currencies and banks in that regard).



Comparative regime of ARTs and EMTs under MiCAR

The regulatory regime and treatment of ARTs and EMTs are substantially aligned under MiCAR. There are, however, certain differences, stemming mostly from their nature (particularly from the fact that EMTs are assimilated to e-money, whereas ARTs represent a new form of instrument introduced in the EU legal and regulatory framework) and different risk levels (ARTs are considered riskier, due to the broader base of assets on which they can be pegged). For example:

- Unlike EMTs, ARTs are subject to issuance reporting and restrictions, in order to prevent them from becoming widely adopted as a means of payment and settlement of transaction (Recital 61 MiCAR and Articles 22 and 23 MiCAR);

- With certain exceptions, EMTs are subject (by way of cross-references under MiCAR) to the Second Electronic Money Directive (EMD2) regulatory requirements, which are overall less strict than the corresponding requirements set out in MiCAR for ARTs; and
- Issuances of ARTs are subject to specific requirements regarding the reserve of assets, which are overall stricter than the EMD2 safeguarding requirements that are applicable to EMTs. Only “significant” EMTs are subject to similar reserve of assets requirements.

Sensitive issues/points to note in the use of ARTs/EMTs

Whilst MiCAR aims to set out a comprehensive regime for ARTs and EMTs, a number of sensitive points remain, potentially leading to challenges for future issuances of stablecoins, such as:

- The broader crypto-asset regulatory framework: MiCAR is complemented by other ongoing EU legislative initiatives, such as the European Commission’s proposed anti-money laundering and countering the financing of terrorism (**AML/CTF**)¹ legislative package (intended to replace the current Fourth Anti-Money Laundering Directive, as amended) and the EU’s proposed payment services package (PSD3/PSR1).² The blurred interplay between MiCAR requirements and those in the AML/CTF and the **PSD3/PSR1** packages may lead to challenges both for subject entities as well as supervisory authorities, such as:
 - Traceability and due diligence requirements: due to the very nature of stablecoins (which are crypto-assets), the traceability of parties and due diligence monitoring of transfers on the secondary market may prove difficult (and in some cases impossible) for their issuers to achieve in practice. This may lead to challenges in ensuring compliance by both issuers and crypto-asset service providers (**CASPs**) with AML/CTF requirements (including the applicability of the recast Transfer of Funds Regulation (Regulation (EU) 2023/1113) which now covers transfers of crypto-assets); and

- EMTs are considered as e-money under EMD2 and as such qualify as “funds” for the purposes of EMD2 and the Second Payment Services Directive, a position which is clarified in the proposed PSD3/PSR1 package. It is unclear how certain requirements (such as strong customer authentication or liability requirements) under the PSD3/PSR1 framework will apply to EMTs.
- The consistency between MiCAR requirements and other existing requirements: breaches of MiCAR requirements related to ARTs and EMTs may risk contaminating the other banking and/or e-money businesses of issuers (credit institutions and electronic money institutions). The isolation of the crypto-business from the already existing regulated activities may need to be carefully considered by issuers.
- The competition of other innovations such as CBDCs: with the advent of the ECB’s digital Euro, it is unclear whether private stablecoin projects will achieve scaling and gain significant market share or whether they will rather remain more closed-loop solutions.³

¹ Published on 20 July 2021. The recast Transfer of Funds Regulation (Regulation (EU) 2023/1113) was published in the Official Journal on the 9 June 2023. The other acts comprising the package (particularly the draft AML Regulation, the draft AML Directive and the draft Regulation setting up the EU AML Agency) are still under discussion at EU institutional level.

² Published on 28 June 2023.

³ In its current proposal, the ECB’s digital Euro would be accessible to both retail users as well as companies. Nevertheless, the envisaged main use case targets retail transactions (see ECB’s publication dated 18 October 2023. https://www.ecb.europa.eu/paym/digital_euro/investigation/profuse/shared/files/dedocs/ecb.dedocs231018.en.pdf)

Requirements applicable to ARTs and EMTs

MiCAR caters for a relatively comprehensive and complex regime for the issuance of ARTs. To a large extent, the same considerations will be relevant for EMTs, with certain exceptions, due to the fact that EMTs are a particular form of e-money and will continue to be governed, where relevant, by EMD2. The following table aims to summarise these requirements in a short and easy-to-grasp format.

As of today, this regime is being developed through the consultation and drafting of regulatory technical standards and implementing technical standards at the level of the European Banking Authority (EBA)⁴ to specify, among others, the authorisation regime, change of control requirements and complaints handling, and more detailed rules will continue to take shape before the EU is ready to see the first stablecoin issued under MiCAR.

The industry is following these developments closely and it will most likely be a race for the first approval of either an ART or EMT under MiCAR to take a decisive lead in this competitive space.

⁴ A number of consultation papers have been published by the EBA, including, on complaints handling procedures for issuers of ARTs, on information for authorisation as issuers of ARTs, on information for assessment of a proposed acquisition of qualifying holdings in issuers of ARTs etc. A list of consultation papers can be found here: <https://www.eba.europa.eu/markets-crypto-assets>.

Summary of ART and EMT issuance regimes

Key requirements	ART	EMT
Authorisation requirements for the issuance of ARTs and EMTs		
Which entities may issue ARTs/EMTs?	Whereas EMTs will be issued only by credit institutions (CIs) or electronic money institutions (EMIs) (Article 48 MiCAR), ARTs may be issued by CIs as well as entities holding a specific authorisation under MiCAR as issuers of ARTs (ART Issuers) (Article 16 MiCAR)	
Exemptions	<p>(Legal basis: Article 16 MiCAR)</p> <p>Authorisation requirements do not apply where the value of the ART issued never exceeds certain thresholds over a period of 12 months or the ART is offered only to qualified investors:</p> <p>Nonetheless, even where the above exemption applies, issuers still need to publish a white paper for the exempted ART.</p>	<p>(Legal basis: Articles 48(4) and (5) MiCAR)</p> <p>Certain EMD2 exemptions apply (namely where the issued EMT does not exceed a certain threshold, the so-called “limited network exemption” or the “telecommunication, digital or IT device exemption”).</p> <p>Nonetheless, even where the above exemptions apply, issuers still need to publish a white paper for the exempted EMT.</p>
Authorisation process for ART Issuers (i.e. entities that are not CIs)	<p>(Legal basis: Articles 16, 18, 20 and 21 MiCAR)</p> <p>MiCAR introduces a new regulatory authorisation regime for ART Issuers⁵, subject to the submission of an authorisation file containing all the elements listed in Article 18 of MiCAR. These include, inter alia, a white paper on the ART to be issued as well as a legal opinion that the ART does not qualify as:</p> <ul style="list-style-type: none"> – a qualifying as instruments or products excluded from the scope of MiCAR under Article 2(4); or – an EMT (in which case the EMT authorisation conditions should be followed). 	N/A

⁵ The main stages of the authorisation process are:

- **Submission to NCAs of the application**
Applicant ART Issuers must submit their authorisation file to the competent authorities (NCA) in their home Member State. NCAs will acknowledge receipt within two working days following receipt of the application file.
- **Assessment by NCAs of completeness of the application**
NCAs have 25 working days following the receipt of the application to assess its completeness. Where information is missing, NCAs will notify the applicant ART Issuer and set a deadline for it to provide the missing information.
- **Assessment by NCAs of the complete application**
NCAs have 60 working days following the receipt of the complete application to assess whether the applicant ART Issuer complies with MiCAR’s requirements. Within those 60 working days, NCAs may request additional information on the application, including on the white paper. Requests for additional information trigger a suspension of the assessment period, which shall not exceed 20 working days. At the end of the assessment period, NCAs shall take a draft decision granting or refusing the authorisation as ART Issuer.
- **NCAs draft decision**
NCAs shall submit their draft decision to the EBA, ESMA, the ECB and, with regards to ART Issuers established in Member States that are not in the Eurozone, to the central bank in the respective jurisdiction (the Non- Eurozone CB).
- **EBA and ESMA non-binding opinion**
EBA and ESMA shall, at the request of the NCA, within 20 working days of receipt of the draft decision and the application, issue an opinion (and transmit it to the competent NCA) as regards their evaluation of the legal opinion referred to in Article 18 of MiCAR (ART Legal Opinion). This opinion is non-binding.
- **ECB or Non-Eurozone CB non-binding opinion**
ECB or the Non-Eurozone CB (as applicable) shall, at the request of the NCA, within 20 working days of receipt of the draft decision and the application, issue an opinion (and transmit it to the competent NCA) as regards the risks that the ART might pose to financial stability, the smooth operation of payment systems, monetary policy transmission and monetary sovereignty. The opinion is non-binding.
- **Grant or refusal of the authorisation**

Key requirements	ART	EMT
Conditions and steps for the issuance of ART and EMT		
	<p>(Legal basis: Articles 16 and 17 MiCAR)</p> <p>The issuance of ARTs is subject to the prior notification and prior approval by NCAs of specific documentation, depending on the nature of the issuer of ARTs.</p> <p>In any event, an ART white paper should be submitted to the NCAs.</p>	<p>(Legal basis: Articles 48, 51 and 104 MiCAR)</p> <p>Issuers of EMTs shall, 40 working days before the date on which they intend to offer to the public the EMT or seek their admission to trading, notify their NCA of that intention, together with specific information on the EMT and the issuer.</p> <p>This information includes a white paper (although no prior-authorisation of the EMT white paper is required).</p>
White paper	<p>(Legal basis: Articles 19 and 51 MiCAR)</p> <p>The requirements related to the information to be included in the white paper are substantially aligned for ARTs and for EMTs, with a few minor differences.⁶</p> <p>Issuers shall amend the white papers when modifications to the underlying ART or the EMT are made.</p>	
Prohibition of granting interest	<p>(Legal basis: Articles 40 and 50 MiCAR)</p> <p>ART issuers and EMT issuers are subject to an identical prohibition to grant interest in relation to the ART and the EMT. For completeness, CASPs are also prohibited from granting interest when providing crypto-asset services related to the ART or the EMT.</p>	

⁶ NCAs shall, within 25 working days of receipt of the EBA, ESMA, ECB or Non-Eurozone CB opinions, take a fully reasoned decision granting or refusing authorisation to the applicant ART Issuer and, within five working days of taking that decision, notify it to the applicant ART Issuer.
As such, for both ARTs and EMTs, the white paper should contain, inter alia:

- information about the issuer and the offer to the public of the ART/EMT or its admission to trading;
- information on the rights and obligations attached to the ART/EMT;
- information on the underlying technology;
- information on the risk;
- information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the ART/EMT;
- with regards to ARTs only, information on the reserve of assets;
- warning messages (tailored to the specificities of the ART and EMT) regarding the nature and risks related to the ART EMT; and
- where applicable, the identity of the person other than the issuer that offers the token to the public or seeks the ART's EMT's admission to trading.

Key requirements	ART	EMT
Recovery and redemption		
Recovery and redemption plans	(Legal basis: Articles 46, 47 and 55 MiCAR) MiCAR contains requirements applicable to both ARTs and EMTs regarding the recovery and redemption measures that issuers must put in place. Such requirements are substantially aligned for ARTs and EMTs and consist, in essence, of obligations for the Issuers of ARTs/EMTs to draw up and maintain recovery plans and redemption plans for the issued ART/EMT ⁷ .	
Post-issuance requirements		
Post issuance reporting	(Legal basis: Article 22 MiCAR) For each ART issue with a value higher than EUR 100m, the issuer shall report on a quarterly basis to the NCA specific information related to the ART and the transactions carried out with it ⁸ . NCAs may require issuers to comply with these obligations in respect of ARTs issued with a value lower than EUR 100m.	(Legal basis: Article 58 MiCAR) Article 22 applies to EMTs denominated in a currency that is not an official currency of a Member State. (Note also that EMTs are subject to periodic and annual reporting requirements with regards to the e-money issued under EMD2. It is unclear whether identical reporting requirements will apply to EMTs (as these qualify as e-money).)
Issuance restrictions	(Legal basis: Article 23 MiCAR) Where the estimated quarterly average number and average aggregate value of transactions per day associated to its uses as a means of exchange within a single currency area is higher than 1 million transactions and EUR 200m, respectively, the issuer shall: <ul style="list-style-type: none"> – stop issuing that ART; and – within 40 working days, submit a plan to the NCA to ensure that the estimated quarterly average number of transactions per day is kept below 1 million transactions and EUR 2m. Where several issuers issue the same ART, the above criteria shall be assessed by the NCA on an aggregated basis.	(Legal basis: Article 58 MiCAR) Article 23 applies to EMTs denominated in a currency that is not an official currency of a Member State.

⁷ Recovery measures

Issuers of ARTs/EMTs are required to draw up and maintain recovery plans that should include:

- measures to be taken by the issuer to restore compliance with the requirements applicable to the reserve of assets (or as applicable safeguarding) in cases where the issuer fails to comply with those requirements;
- the preservation of the issuer's services, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations; and
- appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

Recovery plans must be notified to the NCAs within the timeframes set out in Articles 46 (for ART issuers) and 55 (for EMT issuers) of MiCAR.

Redemption measures

Issuers of ARTs/EMTs are required to draw up and maintain operational plans supporting the orderly redemption of each ART/EMT. The operational plans must:

- demonstrate the ability of the issuer to carry out the redemption of the outstanding ART/EMT issued without causing undue economic harm to its holders or to the stability of the markets of the reserve assets; and
 - include contractual arrangements, procedures and systems, including the designation of a temporary administrator.
- Operational plans must be notified to the NCAs within the timeframes set out in Articles 46 (for ART issuers) and 55 (for EMT issuers) of MiCAR

⁸ Such information includes:

- the numbers of holders;
- the value of the asset referenced token issued and the size of the reserve of assets;
- the average number and average aggregate value of transactions per day during the relevant quarter; and
- an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to its uses as a means of exchange within a single currency area.

Key requirements	ART	EMT
Change of control	(Legal basis: Article 41 MiCAR) Acquisitions or disposals of qualifying holdings in ART Issuers are subject to NCA prior notification.	(Legal basis: Article 48(3) MiCAR) The change of control requirements under EMD2 apply mutatis mutandis to EMT issues.
Conduct, liability, governance and prudential requirements		
Conduct requirements	(Legal basis: Article 27 MiCAR) Issuers of ARTs are subject to specific conduct requirements (including to act honestly, fairly and professionally and in the best interest of the holders of ARTs).	N/A (Note also that EMTs are subject to certain conduct requirements under EMD2 and PSD2)
Liability regime	(Legal basis: Articles 26 and 52 MiCAR) The issuers, the members of its administrative, management or supervisory body are liable to a holder for any loss incurred due to a white paper containing information that is not complete, fair or clear, or that is misleading.	
Governance requirements	(Legal basis: Article 34 MiCAR) Issuers of ARTs are subject to specific governance requirements, including, inter alia, the obligation to have in place robust governance arrangements, adequate internal control mechanisms as well as appropriate policies and procedures ensuring compliance with MiCAR requirements. Furthermore, members of the management body of ART issuers are subject to fit-and-proper assessment.	(Legal basis: Article 48(3) MiCAR) The governance requirements under EMD2 apply mutatis mutandis to EMTs.
Investment of funds received from investors	(Legal basis: Articles 36 – 38 MiCAR) Issuers of ARTs shall constitute, and at all times maintain, a reserve of assets, segregated from the issuer's estate as well as from the reserve of assets of other ARTs. Specific requirements apply with regards to the custody and investment of reserved assets, including, inter alia, the obligation for the reserve assets to be held in custody with a CI in accounts opened in the CI's books.	(Legal basis: Articles 54 and 58(1) MiCAR) Funds received in exchange of EMTs issued shall be safeguarded in accordance with EMD2 safeguarding rules, while also ensuring that: – at least 30% of the funds received are always deposited in separate accounts in CIs; and – the remaining funds received are invested in secure, low risk assets that qualify as highly liquid financial instruments with minimal market risk, credit risk and concentration risk and are denominated in the same official currency as the one referenced by the EMT. Importantly, in accordance with Article 58(1) of MiCAR, the safeguarding requirements under EMD2 do not apply to issuers of “significant” EMTs. Instead, with regards to such “significant EMTs”, issuers will need to comply with the reserve of assets regime provided in Articles 36-38 of MiCAR.

	ART	EMT
Own funds requirement	<p>(Legal basis: Article 35 MiCAR)</p> <p>Issuers of ARTs/EMTs shall have own funds equal to an amount of at least the highest of the following:</p> <ul style="list-style-type: none"> – EUR 350 000 – 2% of the average amount of the reserve of ARTs – a quarter of the fixed overheads of the preceding years. <p>Higher own funds requirements may be imposed by NCAs in certain circumstances.</p>	<p>(Legal basis: Articles 48(3) and 58(1) MiCAR)</p> <p>The own funds requirements under EMD2 apply mutatis mutandis to EMTs.</p> <p>Importantly, in accordance with Article 58(2) of MiCAR, the own funds requirements under EMD2 do not apply to issuers of “significant” EMTs. Instead, with regards to such “significant EMTs”, issuers will need to comply with the regime provided in Article 35 of MiCAR.</p>

Subject to specific criteria, ARTs and EMTs may qualify as “significant”, triggering certain regulatory consequences (from a supervisory and prudential regime).

⁹ The criteria set out in Article 43(1) are:

- the number of holders of the ART/EMT is larger than 10m;
- the value of the ART/EMT issued, its market capitalisation or the size of the reserve of assets of the issuer is higher than EUR 5m;
- the average number and average aggregate value of transactions in that ART/EMT per day during the relevant period, is higher than 2.5m transactions and EUR 500m respectively;
- the issuer is a provider of core platform services designated as a gatekeeper in accordance with Regulation (EU) 2022/1925;
- the significance of the activities of the issuer on an international scale, including the use of the ART/EMT for payments and remittances;
- the interconnectedness of the ART/EMT or its issuers with the financial system;
- the fact that the same issuer issues at least one additional ART/EMT and provides at least one crypto-asset service.

¹⁰ The notification and assessment process is comprised of the following steps:

- Notification by NCAs to EBA, ECB and other central banks (as appropriate)
- NCAs shall report to EBA and the ECB information relevant for the assessment of the fulfilment of the classification criteria. With regards to issuers established in Member States outside of the Eurozone, NCAs shall also report to the central bank of that Member State.

– EBA’s draft decision

EBA will prepare a draft decision on the classification of the ART/EMT as “significant” and notify it to the issuer, the NCAs, the ECB and, where applicable, to non-Eurozone central banks.

Issuers, NCAs, the ECB and, where applicable, to non-Eurozone central banks have 20 working days to provide comments to the EBA on the draft decision.

– EBA’s final decision

EBA shall take its final decision on the classification of ART/EMT as significant within 60 working days of the date of notification of the draft notification.

– Ongoing assessment of “significant” status

EBA shall annually reassess the classification as “significant” of ART/EMT. Where a token no longer fulfils the classification criteria, the EBA shall prepare a draft decision and notify it to the issuer, the NCAs, the ECB and, where applicable, to non-Eurozone central banks. A decisional process similar to the above will be followed.

The regimes applicable to “significant” ARTs and “significant” EMTs are substantially similar under MiCAR, as illustrated in the table below.

	Significant ART	Significant EMT
Conditions for classification as “significant”	<p>Legal basis: Articles 43 and 56 MiCAR)</p> <p>ARTs or EMTs will qualify as “significant” where at least three of the criteria set out in Article 43(1) of MiCAR (related to the number of holders of ARTs/ EMTs, the value of the ART/EMT issued or the daily average aggregated value of transactions with ARTs/EMTs) are met ⁹.</p>	
Classification procedure	<p>Legal basis: Articles 43 and 56 MiCAR)</p> <p>Where the criteria set out in Article 43(1) of MiCAR are satisfied, the NCA will initiate an assessment process involving the issuers, the EBA and the ECB, at the end of which the EBA will issue a final decision on whether the ART/ EMT should qualify as “significant” or not.¹⁰</p>	
Consequences of classification as “significant”	<p>Legal basis: Articles 43 and 56 MiCAR)</p> <p>Supervisory responsibilities with respect to the issuer of that significant ART shall be transferred from the issuer’s NCA to the EBA, within 20 working days of the date of notification of the final decision.</p>	
Voluntary classification	<p>(Legal basis: Articles 44 and 57 MiCAR)</p> <p>Issuers of ARTs/EMTs may request the voluntary classification of their ART as “significant”. The issuer must demonstrate, through a detailed programme of operations, that the ART/EMT is likely to fulfil at least three of the classification criteria.</p> <p>An assessment process by the EBA similar to the above will be followed.</p>	
Specific additional obligations for “significant” ARTs and “significant” EMTs issuers	<p>Legal basis: Article 45 of MiCAR)</p> <p>MiCAR provides additional requirements applicable only to issuers of “significant” ARTs, including, inter alia, requirements to implement a remuneration policy or to mitigate liquidity risks.</p>	<p>Legal basis: Article 58 MiCAR)</p> <p>Issuers of “significant” EMTs are subject to specific requirements set out in Article 58 of MiCAR, the most important of which concern the applicability of the reserve of assets and own funds regime provided for ARTs (as detailed above).</p> <p>Furthermore, the NCA may request issuers of EMTs that are not “significant”, to nevertheless comply with the two requirements mentioned above, where necessary to address specific risks (e.g. liquidity, operational or non-compliance risks).</p>

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