III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK
of 19 February 2021
on a proposal for a regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937
(CON/2021/4)
(2021/C 152/01)

Introduction and legal basis


The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulation contains provisions falling within the ECB’s fields of competence. These include, in particular, the conduct of monetary policy, the promotion of the smooth operation of payment systems, the prudential supervision of credit institutions and the contribution to the smooth conduct of policies pursued by competent authorities relating to the stability of the financial market system pursuant to Article 127(2), first and fourth indents, and Articles 127(5), 127(6) and 282(1) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

1.1. The ECB welcomes the initiative of the European Commission to establish a harmonised framework at European Union level for crypto-assets and related activities and services, which forms part of the digital finance package (1) adopted by the Commission on 24 September 2020. The ECB also welcomes the aim of the proposed regulation of addressing the different levels of risk posed by each type of crypto-asset, balanced with the need to support innovation. Furthermore, the ECB believes that a Union harmonised framework is critical to prevent fragmentation within the single market. Having said that, there are some aspects of the proposed regulation relating to the responsibilities of the ECB, the Eurosystem and the European System of Central Banks (ESCB) concerning the conduct of monetary policy, the smooth operation of payment systems, the prudential supervision of credit institutions and financial stability where further adjustments are warranted.

1.2. Under the proposed regulation, crypto-assets, in particular the two sub-categories of asset-referenced tokens and e-money tokens, have a clear monetary substitution dimension, having regard to the three functions of money as a medium of exchange, store of value and unit of account. The definition of ‘asset-referenced token’ refers to the store of value function (‘…purports to maintain a stable value…’) (2), while the definition of ‘e-money token’ refers to both the medium of exchange and store of value functions (‘…the main purpose of which is to be used as a means of

(1) COM(2020) 593 final.
(2) The digital finance package includes a digital finance strategy and legislative proposals, to ensure a competitive Union financial sector that gives consumers access to innovative financial products, while ensuring consumer protection and financial stability.
(3) See point (3) of Article 3(1) of the proposed regulation.
exchange and that purports to maintain a stable value...') (\textsuperscript{a}). The proposed regulation emphasises the medium of exchange function of e-money tokens, noting that these are ‘intended primarily as a means of payment aimed at stabilising their value by referencing only one fiat currency’, and that ‘like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments’ (\textsuperscript{b}) This understanding is reinforced by the fact that financial instruments, as defined in Directive 2014/65/EU of the European Parliament and of the Council (hereinafter the ‘MiFID II’) (\textsuperscript{c}), are excluded from the scope of application of the proposed regulation. In the light of the above, the ECB understands that the terms asset-referenced tokens and e-money tokens are defined in the proposed regulation, in whole or in part, as money substitutes.

1.3. The ECB welcomes the general exclusion from the proposed regulation’s scope of application of the ECB and national central banks of the Member States when acting in their capacity as monetary authority (\textsuperscript{d}), together with an exclusion from the scope of any crypto-assets that may eventually be issued by central banks acting in their monetary authority capacity and any services related to crypto-assets that central banks may eventually provide (\textsuperscript{e}). The ECB notes that the proposed regulation also contains references to the terms ‘Union currency’ and ‘central bank of issue’ (\textsuperscript{f}) and, if read in conjunction with another component of the digital finance package which also contains those two terms, i.e. the draft Regulation on a pilot regime for market infrastructures based on ledger technology (\textsuperscript{g}), a clear distinction in the Union legislative proposals between crypto-assets and central bank money emerges (\textsuperscript{h}). In order to avoid any potential confusion with regard to the legal nature and characteristics of crypto-assets (if and where) issued by central banks vis-à-vis central bank money, the proposed regulation could also usefully confirm that the proposed regulation would not apply to the issuance by central banks of central bank money based on distributed ledger technology (DLT) or in digital form as a complement to existing forms of central bank money, which the ECB can authorise in line with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’).

1.4. Finally, with regard to the definition of ‘crypto-asset’ introduced by the proposed regulation, the ECB notes that the proposed regulation contains a wide, catch-all definition (\textsuperscript{i}). However, in order to avoid diverging interpretations at national level on what may or may not constitute a crypto-asset under the proposed regulation, to help support the provision of crypto-asset services on a cross-border basis and to establish a truly harmonised set of rules for crypto assets, the scope of application of the proposed regulation should be further clarified. In particular, more clarity is needed with respect to the distinction between crypto-assets that may be characterised as financial instruments (falling under the scope of the MiFID II) and those which would fall under the scope of the proposed regulation.

2. Monetary policy and payment system aspects

2.1. Monetary policy and related monetary aspects

2.1.1. Unlike the case of crypto-assets exclusively used either as a means of payment or as a store of value, the monetary policy transmission implications of crypto-assets that fulfil both of these functions could be significant. In this respect, the ECB notes the prohibition on payment of interest on crypto-assets stipulated in the proposed regulation (\textsuperscript{a}) in line with the regulation of other instruments mainly used as a means of payment, such as

\textsuperscript{a} See point (4) of Article 3(1) of the proposed regulation.
\textsuperscript{b} See Article 2(3)(a) of the proposed regulation.
\textsuperscript{d} See Article 2(3)(a) of the proposed regulation.
\textsuperscript{e} See Article 9 of the proposed regulation.
\textsuperscript{g} See Article 112(5) of the proposed regulation, respectively.
\textsuperscript{h} Proposal of the European Parliament and of the Council for a regulation on a pilot regime for market infrastructures based on distributed ledger technology (COM/2020/594 final). See recitals 16 and 24, together with Articles 4(3) and 5(5).
\textsuperscript{i} Specifically, in Article 4(3) of the proposal of the European Parliament and of the Council for a regulation on a pilot regime for market infrastructures based on distributed ledger technology, reference is made to ‘central bank money’, ‘commercial bank money’, ‘commercial bank money in a token-based form’ and ‘e-money tokens’.
\textsuperscript{j} The definition of ‘crypto-asset’ in the proposed regulation is both technology-specific and broad. This approach diverges from a characterisation of crypto-assets which is technology neutral and precise. See ECB’s staff Occasional Paper No 223/2019 ‘Crypto-Assets: Implications for financial stability, monetary policy, and payments and market infrastructures’ available on the ECB’s website at www.ecb.europa.eu.
\textsuperscript{k} See Articles 36 and 45 of the proposed regulation.
e-money. In this context, this prohibition might make the relative attractiveness of e-money tokens and asset reference tokens from the perspective of the holder dependent on the interest rate environment. The possibility cannot be entirely excluded that this could potentially create inflows and outflows when the interest rate environment changes significantly, which could have implications for financial stability and monetary policy transmission.

2.1.2. Crypto-assets with a stable nominal value, which serve as a means of payment and a store of value, could affect the stability and cost of credit institutions’ deposit funding, which could pose challenges for the ability of credit institutions to fulfil their economic intermediation role. As the financial system in the euro area is predominantly based on credit institutions, abrupt shifts in the strength of the balance sheet of credit institutions can adversely affect the stability of credit institutions and their lending capacity and, with it, the transmission of monetary policy, although changes to the financial system resulting from innovation and competition are per se not undesirable. In a scenario of significant substitution of deposits with crypto-assets, credit institutions may need to explore alternative sources of funding, such as money market and central bank funding, with effects on bank funding costs, money market benchmark rates, and the size of the balance sheet of central banks.

2.1.3. Finally, in a scenario involving the widespread use of asset-referenced and e-money tokens, there could be an increase in demand for safe assets, with a possible impact on asset price formation, collateral valuation, money market functioning and the conduct of monetary policy. This may ultimately lead to collateral scarcity for open market operations. Moreover, a widespread use of asset-referenced tokens for payment purposes may challenge the role of euro payments, and even undermine the public provision of the unit-of-account function of money.

2.1.4. Besides the monetary policy considerations referred to above, under the proposed regulation asset-referenced and e-money tokens would have different features, including, with regard to their main function, the composition of the reserve assets and holders’ rights. In this respect, there is a risk that because of their concrete use, coupled with the systemic importance they may acquire, asset-referenced and e-money tokens would de facto equate to payment instruments, regardless of their main purported function or use under the proposed regulation. If this were to be the case, asset-referenced and e-money tokens should be subject to similar requirements in order to prevent the risk of regulatory arbitrage between the respective regimes. In particular, because asset-referenced tokens’ design features and use make them suitable for use as a means of payment, it would be appropriate, at a minimum, to require issuers to grant redemption rights to the holders of asset-referenced tokens either on the issuer or the reserve assets. In addition, it could be considered to create an ad hoc category of ‘payment tokens’ which would subject asset-referenced tokens to an identical set of requirements as those applicable to issuers of e-money tokens. In addition, it would be appropriate for the case of significant asset-referenced tokens that become widely used for payments in the Union to subject issuers of significant asset-referenced tokens to the same authorisation requirements as those applicable to issuers of e-money tokens, where the European Banking Authority (EBA) deems it appropriate according to the classification criteria to be further set out in the regulatory technical standards.

Moreover, the proposed regulation provides that a competent authority may refuse authorisation to an issuer of asset-referenced tokens, inter alia, where the issuer’s business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty (\(^\text{(*)}\)). In this respect, where an asset-reference arrangement is tantamount to a payment system or scheme, the assessment of the potential threat to the conduct of monetary policy, and to the smooth operation of payment systems, should fall within the exclusive competence of the ECB (or the national central bank of issue of the relevant Union currency). In the case of the euro, this is because a potential threat may negatively affect the performance of the basic tasks to be carried out through the Eurosystem under the Treaty, in particular the conduct of the monetary policy of the Union and the promotion of the smooth operation of payment systems. These risks could ultimately impact upon the pursuit of the Eurosystem’s primary objective of maintaining price stability pursuant to the Treaty. Given the critical aspects on which the ECB’s assessment is sought in the course of the authorisation process for issuers of asset-referenced tokens, the ECB’s intervention should not be limited to the issuance of a non-binding opinion in these areas of exclusive competence of the ECB. By the same logic, where asset-referenced tokens can have an impact on the conduct of monetary policy or the smooth operation of payment systems in Member States whose currency is not the euro, the central banks of

\(^{(*)}\) See Article 19(2)(c) of the proposed regulation.
these Member States, which under the Treaty retain their powers in the field of monetary policy according to national law, should also be able to issue a binding opinion. In view of the foregoing, the ECB suggests that the proposed regulation is amended accordingly. In addition, the ECB believes that further consideration should be given to the appropriateness of the current legislative framework under Directive 2009/110/EC of the European Parliament and of the Council (hereinafter the ‘E-money Directive’) (\(\text{\textsuperscript{15}}\)). In particular, the advent of significant e-money tokens warrants an involvement of the ECB (or the relevant central bank of a Member State whose currency is not the euro) in a similar fashion to that advocated with regard to the authorisation of asset-referenced token issuers. The issuance of e-money tokens, especially where classified as significant, requires a careful assessment as regards the monetary policy implications and the smooth operation of payment systems.

Moreover, the power of the competent authority to refuse authorisation where the business model of an issuer of asset-referenced tokens poses a serious threat to financial stability, monetary policy transmission or monetary sovereignty assumes that the competent authority is able to accurately foresee such risks at the stage of authorisation, which may not be possible as the scale of the risks depends on the scale of the use of the token. In this respect, the proposed regulation does not seem to provide an equivalent tool allowing the competent authority to react if an asset-referenced token becomes a threat to financial stability, monetary policy transmission or monetary sovereignty during its life. Therefore, the ECB suggests that the competent authorities should also be empowered to take any appropriate measures to ensure the proper conduct of monetary policy and the promotion of the smooth operation of payment systems, and should be required to act in accordance with the ECB’s and the relevant central banks’ opinions on these particular aspects. Additional mechanisms to incentivise issuers to limit the scale of issuance, including stress-testing requirements with possible capital add-ons, should be included in the proposed regulation (see paragraph 3.2.3 below).

2.1.5. In addition, the proposed regulation contains several references to the term ‘fiat currencies that are legal tenders’. In accordance with the Treaties and Union monetary law, the euro is the single currency of the euro area, i.e., of those Member States which have adopted the euro as their currency. So far as concerns the Member States which have not adopted the euro as their currency, the Treaties consistently refer to the currencies of those Member States. Nowhere do the Treaties refer to the euro or the Member States’ currencies as ‘fiat’ currencies. Furthermore, the euro banknotes and coins issued by the ECB and the NCBs enjoy legal tender status. These banknotes and coins are denominated in euro, and as such are denominations of the single currency. Against this backdrop, it is not appropriate to make reference in a Union legal text to ‘fiat currencies which are legal tender’. Rather, the proposed regulation should refer instead to ‘official currencies’, of which legal tenders are expressions (\(\text{\textsuperscript{16}}\)).

2.1.6. Furthermore, the proposed regulation contains provisions with regard to the safekeeping arrangements to be put in place by crypto-asset service providers (\(\text{\textsuperscript{17}}\)). In particular, it is provided that clients’ funds shall be promptly placed with a central bank or a credit institution. While the provisions on safekeeping are welcome, access to central bank accounts for credit institutions in the context of Eurosystem monetary policy operations, or for the settlement of transactions by ancillary systems in the context of TARGET2 operations, is based on the eligibility criteria and conditions under the applicable ECB Guidelines (\(\text{\textsuperscript{18}}\)). As a result, crypto-asset service providers must either be eligible Eurosystem counterparties, or operate through a correspondent bank with an account at the relevant Eurosystem central bank. Similar arrangements may apply in other ESCB central banks. In view of the foregoing, the proposed regulation should refer to the safekeeping arrangements with a central bank by specifying that these arrangements would be established only where the relevant eligibility criteria and conditions for opening an account are met.


(\(\text{\textsuperscript{17}}\)) See Article 6(3)(3) of the proposed regulation.

2.2. Payment system aspects

2.2.1. Closely linked to its basic monetary policy tasks, the Treaty and the Statute of the ESCB provide for the Eurosystem to conduct oversight of clearing and payment systems as part of its mandate. Pursuant to the fourth indent of Article 127(2) of the Treaty, as mirrored in Article 3(1) of the Statute, one of the basic tasks to be carried out through the ESCB is 'to promote the smooth operation of payment systems'. In the performance of this basic task, the ECB and the national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payments systems within the Union and with other countries (\textsuperscript{23}). Pursuant to its oversight role, the ECB adopted Regulation (EU) No 795/2014 of the European Central Bank (ECB/2014/28) (hereinafter the 'SIPS Regulation') (\textsuperscript{24}). The SIPS Regulation implements the principles for financial market infrastructures issued by the Committee on Payment and Settlement Systems (CPSS) and the International Organisation of Securities Commissions (IOSCO) (\textsuperscript{25}) (hereinafter the 'CPSS-IOSCO principles'), which are legally binding and cover both large-value and retail payment systems of systemic importance, operated either by a Eurosystem central bank or a private entity. The Eurosystem oversight policy framework (\textsuperscript{26}) identifies payment instruments as an 'integral part of payment systems' and thus includes these within the scope of its oversight. The oversight framework for payment instruments is currently under review (\textsuperscript{27}). Under that framework, a payment instrument (e.g. a card, credit transfer, direct debit, e-money transfer and digital payment token (\textsuperscript{28})) is defined as a personalised device (or a set of devices) and/or set of procedures agreed between the payment service user and the payment service provider used in order to initiate a transfer of value (\textsuperscript{29}). To date, the role of primary overseer for the Eurosystem is assigned by reference to the national anchor of the payment scheme and the legal incorporation of its governance authority. For pan-European credit transfer schemes and direct debit schemes within the Single Euro Payments Area, as well as some of the international card payment schemes, the ECB has the primary oversight role. Payment service providers, including credit institutions, payment institutions and electronic money institutions, are also subject to the PSD2. The Eurosystem oversight frameworks complement the microprudential supervision of payment service providers, including credit institutions, payment institutions and electronic money institutions, with aspects that are relevant from a payment system, payment scheme or payment arrangement perspective.

2.2.2. In the light of the above, the function of asset-referenced and e-money token arrangements that cater for the execution of transfer orders may qualify as tantamount to that of a 'payment system' for the purposes of Eurosystem oversight. Asset-referenced and e-money token arrangements may qualify as tantamount to that of a 'payment system' where they have all the typical elements of a payment system: (a) a formal arrangement; (b) at least three direct participants (not counting possible settlement banks, central counterparties, clearing houses or indirect participants); (c) processes and procedures, under the system rules, common for all categories of participants; (d) the execution of transfer orders takes place within the system and includes initiating settlement and/or discharging an obligation (e.g. netting) and the execution of transfer orders, therefore, has a legal effect on the participants' obligations; and (e) transfer orders are executed between the participants. Specifically, the SIPS Regulation defines a payment system as 'a formal arrangement between three or more participants, [...] with common rules and standardised arrangements for the execution of transfer orders between the participants' (\textsuperscript{30}).

\textsuperscript{23} See Article 22 of the Statute of the ESCB.


\textsuperscript{25} Available on the Bank for International Settlements' website at www.bis.org.

\textsuperscript{26} Eurosystem oversight policy framework, Revised version (July 2016) available on the ECB's website at www.ecb.europa.eu.

\textsuperscript{27} See the revised and consolidated Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (PISA framework) available on the ECB's website at www.ecb.europa.eu.

\textsuperscript{28} A digital payment token is a digital representation of value backed by claims or assets recorded elsewhere and enabling the transfer of value between end users. Depending on the underlying design, digital payment tokens can foresee a transfer of value without necessarily involving a central third party and/or using payment accounts.

\textsuperscript{29} The act, initiated by the payer or on the payer's behalf or by the payee, of transferring funds or digital payment tokens, or placing or withdrawing cash on/from a user account, irrespective of any underlying obligations between the payer and the payee. The transfer can involve a single or multiple payment service providers. The definition of 'transfer of value' under the PISA framework departs from what is defined as a transfer of 'funds' under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35) (hereinafter the 'PSD2'). A 'transfer of value' in the context of a 'payment instrument' as defined in the PSD2 can only refer to a transfer of 'funds'. Under PSD2, 'funds' do not include digital payment tokens unless the tokens can be classified as electronic money (or more hypothetically as scriptural money).

\textsuperscript{30} See Article 2, point (1) of the SIPS Regulation.
Within this definition, transfer orders and participants are defined in broad terms that allow accommodation of ‘any instruction which results in the assumption or discharge of a payment obligation’ under Directive 98/26/EC of the European Parliament and of the Council (31) and any ‘entity that is identified or recognised by a payment system and, either directly or indirectly, is allowed to send transfer orders to that system and is capable of receiving transfer orders from it’, respectively (32). To the extent that asset-referenced and e-money token arrangements qualify as ‘payment systems’, the Eurosystem payment system oversight framework based on the CPSS-IOSCO principles would apply to them.

2.2.3. Similarly, the function of asset-referenced and e-money token arrangements that set standardised and common rules for the execution of payment transactions between end users could qualify as a ‘payment scheme’. From an oversight standpoint, where asset-referenced tokens and e-money tokens include euro in their reserve assets, or are denominated in euro, the crypto-asset service provider that is responsible for the overall functioning of the payment scheme might be subject to the revised and consolidated Eurosystem oversight framework for payment instruments and schemes. This framework would be applicable to any electronic payment instruments that enable end users to send and receive value, and hence would apply irrespective of the qualification of the asset as funds under the PSD2 (33).

2.2.4. The ESCB’s oversight role would also be critical with respect to significant asset-referenced and e-money token arrangements because of their potential impairing effects on the central bank of issue’s ability to implement its monetary policy objectives, as previously mentioned. For the reasons referred to above, the ESCB’s competences under the Treaty and the Eurosystem’s competences under the SIPS Regulation should be clearly spelled out in the recitals and in the main body of the proposed regulation. Moreover, the ECB and, where applicable, the relevant NCBs whose currency is not the euro should participate in the process for the classification of significant asset-referenced tokens and e-money tokens, and the ECB should be consulted on the delegated act that would further detail the criteria to be used for classification purposes. Also, the proposed regulation should refer more prominently to the potential interplay with the PSD2 that under the current text appears to be rather limited (34).

An example of the potential interplay between the proposed regulation and the PSD2 would be where a service provider is contracting with a payee to accept crypto-assets other than e-money tokens. In such a case it would need to be clarified whether such providers would need to meet the same requirements on consumer protection, security and operational resilience as regulated payment service providers. Ultimately, it would need to be clarified whether such activities can be tantamount to the ‘acquiring of payment transactions’, as defined under PSD2 (35).

---

3. Specific observations on financial stability and prudential supervisory aspects

3.1. Financial stability aspects

3.1.1. Supervisory arrangements for issuers of significant e-money tokens

The proposed regulation establishes a dual supervisory arrangement for issuers of significant e-money tokens, jointly supervised by the responsible national competent authority (NCA) and the EBA. Under this arrangement, the EBA would be exclusively responsible for ensuring compliance with specific requirements (36) by significant e-money token issuers, while the relevant NCA would supervise compliance with all other requirements laid down in the proposed regulation.

(31) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, (OJ L 166, 11.6.1998, p. 45). See first indent, point (i) of Article 2 where transfer order is defined as: ‘any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system […]’.

(32) See Article 2, point (18) of the SIPS Regulation.

(33) See Article 63(4) of the proposed regulation.

(34) See Article 4, point (44) of the PSD2.

(35) See Article 52 of the proposed regulation.
3.1.3. Dual supervision is subject to significant shortcomings, and both significant e-money, as well as asset-referenced, tokens would be better supervised at the European level. There does not seem to be any economic reason to justify different supervisory arrangements between significant asset-referenced tokens (subject to a harmonised EBA supervision) and significant e-money tokens (subject to dual supervision by the EBA together with the NCA). Dual supervision may blur responsibilities and add complexity to the arrangements. It may also lead to duplicative or even conflicting supervisory tasks, for example where NCAs supervise issuers of significant asset-referenced or e-money tokens providing other crypto-assets services. The ECB believes that significant asset-referenced and e-money tokens would be better supervised at the European level, as this would ensure a comprehensive overview of risks and coordination of supervisory actions and, at the same time, avoid regulatory arbitrage.

3.1.4. The proposed dual supervisory arrangement would be implemented in addition to the existing supervisory frameworks. Specifically, when the issuer of the significant e-money tokens is a credit institution, dual supervision would give rise to further complications, given that the issuer may be a significant credit institution supervised by the ECB on the basis of Council Regulation (EU) No 1024/2013 (33) (hereinafter the 'SSM Regulation'). The proposed regulation would subject the issuer to three different supervisory authorities: (i) the relevant NCA, (ii) the EBA and (iii) the ECB. In this respect, the NCA's experience and expertise in the supervision of e-money token issuers and service providers could be usefully leveraged as part of their membership of the decision making body of the EBA, and via the joint supervisory teams in the case of significant credit institutions as well as in the supervisory college to be established for each significant e-money token (34).

3.1.5. Finally, where the issuer of significant stablecoins is a significant credit institution, the supervisory responsibilities and tasks of the EBA and ECB should also be clarified to avoid potential duplications and conflicts. Specifically, the EBA's obligation to enforce the issuer's compliance with the requirements laid down in the proposed regulation should not encroach upon the supervision of prudential requirements enforced by the ECB in its banking supervisory role.

3.2. Requirements for own funds and the investment of reserve assets

3.2.1. The establishment of prudential requirements for issuers of asset-referenced and e-money tokens is welcome, given that, for the reasons touched on earlier in this opinion, those tokens could pose risks to the conduct of monetary policy and to the smooth operation of payment systems. The proposed safeguards to protect the safety of the tokens' reserve assets, should the issuer decide to invest part of the reserve, are also welcome.

3.2.2. The prudential and liquidity requirements imposed on issuers of stablecoins should be proportionate to the risks that those tokens could pose to financial stability. The additional requirements laid down in the proposed regulation for significant stablecoin issuers are therefore welcome. Having said that, these additional requirements may not be sufficient to address growing risks where stablecoins become widely used as a means of payment or a store of value in multiple jurisdictions across the Union. In addition, stablecoin issuers that are not credit institutions would not have access to the central banks’ lender of last resort function. In the light of the above, the ECB has the following remarks to make.

3.2.3. First, the proposed regulation allows the NCA to adjust, upwards or downwards, the own funds requirement of 2% of the average amount of the reserve assets up to 20% for (less significant) stablecoin issuers. In the case of significant issuers, no adjustment is allowed for the supervisor from the 3% requirement. Additional pillar-2 type powers should be accorded to the supervisor, especially for significant issuers, given their higher risks to financial stability. Specifically, significant stablecoin issuers should be required to conduct, on a regular basis, stress testing that takes into account severe but plausible financial (e.g. interest rate shocks) and non-financial (e.g. operational risk) stress scenarios. Where an issuer of these tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, the stress tests should cover all of these services and activities in a comprehensive


(34) See Article 101(1) of the proposed regulation.
3.2.4. Second, issuers of both asset-referenced and e-money tokens may be equally exposed to the risk of ‘runs’, with possible contagion risks to the rest of the financial system and attendant risks to financial stability. It is therefore important that such issuers are subjected to harmonised requirements concerning the investment of the reserve assets, in order to ensure a level playing field and follow the ‘same business, same risk, same rule’ principle between asset-referenced and e-money tokens. Rigorous liquidity requirements for stablecoin issuers, significant issuers in particular, are also critical to enable them to withstand liquidity strains and minimise the risks to financial stability. Specifically, stablecoin arrangements and their reserve assets have similarities to money market funds. In this respect, Regulation (EU) 2017/1131 of the European Parliament and of the Council (9) requires money market funds to hold significant liquidity reserves for the case of abrupt outflow shocks. Stablecoin issuers should comply with liquidity requirements which are at least as conservative as those imposed on constant net asset value money market funds, to be developed in regulatory technical standards. Such conservative investment requirements, to be developed in the regulatory technical standards, could increase the capacity of the reserve assets of stablecoins to withstand severe outflow scenarios. Moreover, significant stablecoin issuers should be required to conduct liquidity stress testing on a regular basis, and depending on the outcome of such tests, the supervisor should have the power to strengthen liquidity risk requirements.

3.2.5. Finally, the proposed regulation does not impose any restrictions to prevent a possible concentration of custodians or investment of the reserve assets. The lack of limits to possible concentration could undermine the safety of the reserve assets and subject them to idiosyncratic risks of particular custodians and debt issuers. The proposed regulation should provide for the introduction of safeguards to prevent such concentration, to be developed in regulatory technical standards.

3.3. Prudential supervisory aspects

3.3.1. The ECB and the relevant NCA are the competent authorities exercising prudential supervisory powers under Regulation (EU) No 575/2013 of the European Parliament and of the Council (10) (also referred to as the ‘CRR’) and Directive 2013/36/EU of the European Parliament and of the Council (11) (also referred to as the ‘CRD’), jointly establishing the CRR/CRD framework. In addition, the SSM Regulation confers specific tasks on the ECB concerning the prudential supervision of credit institutions within the euro area and makes the ECB responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM) within which specific prudential supervisory responsibilities are distributed between the ECB and the participating NCAs. In particular, the ECB carries out the task of authorising and withdrawing the authorisations of all credit institutions (12). For significant credit institutions the ECB also has the task, among others, to ensure compliance with the relevant Union law that imposes prudential requirements on credit institutions, including the requirement to have in place robust governance arrangements, such as sound risk management processes and internal control mechanisms (13). To this end, the ECB is given all supervisory powers to intervene in the activity of credit institutions that are necessary for the exercise of its functions.

---

(12) See Article 4(1)(a), Article 6(4) and Article 14 of the SSM Regulation.
(13) See Article 4(1)(e) and Article 6(4) of the SSM Regulation.
3.3.2. Under the proposed regulation, Member States are required to designate the NCAs responsible for carrying out the functions and duties provided for in the proposed regulation (*). Furthermore, the proposed regulation contains a generic reference to the need for the NCAs to coordinate with the authorities responsible for the supervision or oversight of activities other than those carried out by crypto-asset issuers and providers under the proposed regulation (**). As a matter of fact, the supervisory powers attributed to the NCAs under the proposed regulation (***), may also have prudential implications for credit institutions, such as in the case of requiring additional disclosure or requiring the freezing or sequestration of assets. In such cases, the call for collaboration with other authorities may not be sufficient (**).

3.3.3. In view of the foregoing, it is of the utmost importance to establish a clear coordination mechanism, including clearly defined processes and timelines regarding notification aspects, between the relevant NCAs and the ECB in its role as prudential supervisor for significant credit institutions when they intend to issue crypto-assets and/or provide crypto-asset related services. A clear coordination mechanism would ensure that the respective competences of the NCAs and the ECB can be performed in a timely, effective and consistent manner. It would also ensure compliance with the proposed regulation by crypto-asset issuers and providers. The proposed regulation should refer to an obligation of the NCAs to notify the ECB in cases where a significant credit institution issues a white paper, intends to provide one of the crypto-assets services or is in breach of the proposed regulation.

3.3.4. In addition, where significant credit institutions issue significant asset referenced tokens and e-money tokens, the dual supervisory arrangement between the relevant NCA and the EBA would apply. In this context, it is necessary to further explain what the EBA’s supervision would entail in practice. Furthermore, this dual supervisory arrangement would also need to take into account the ECB’s supervisory role as far as significant credit institutions are concerned, with clearer coordination mechanisms, including a clear notification framework, and inclusion of the ECB in its role as prudential supervisor in the college. Finally, the proposed regulation should refer explicitly and consistently to the prudential supervisory authorities for both significant asset-referenced tokens and e-money tokens (**).

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 19 February 2021.

The President of the ECB
Christine LAGARDE

(*) See Article 81 of the proposed regulation.
(**) See Articles 85 and 110 of the proposed regulation.
(***). See Article 82 of the proposed regulation.
(****) See Article 82(4)(b) of the proposed regulation.
(****) See Articles 99(2)(i) and 101(2)(b) of the proposed regulation.