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EBA/GL/2024/06

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06/06/2024

## Final report on

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EBA Guidelines

on the minimum content of the governance arrangements for  
issuers of asset-referenced tokens

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# 1. Executive summary

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Sound internal governance arrangements are fundamental if issuers of asset reference tokens (ARTs) are to operate well as part of the financial system. Regulation (EU) 2023/1114 sets out governance requirements for issuers of ARTs and, in particular, stress the responsibility of the management body to ensure sound governance arrangements, including a sound risk strategy, risk culture and risk management framework.

To foster the implementation of sound internal governance arrangements, processes and mechanisms within the EU for issuers of ARTs, in line with the requirements introduced by Regulation (EU) 2023/2034, the European Banking Authority (EBA), in cooperation with the European Securities and Market Authority (ESMA) and the European Central Bank, is mandated by Article 34(13) of (EU) 2019/2034 to develop guidelines in this area. The guidelines apply to issuers of ARTs as defined in Article 3(1)(10) of Regulation (EU) 2023/1114.

The guidelines specify the various governance provisions in Regulation (EU) 2023/1114, taking into account the principle of proportionality, by specifying the requirements regarding the tasks, responsibilities and functioning of the management body, and the organisation of issuers of ARTs. The guidelines aim to ensure the sound management of all risks associated with the activities of issuers of ARTs, such as ML-TF risks, operational risks, including fraud, cyber and compliance risks. Furthermore, the provisions aim to provide for appropriate consumer and investor protection. Risks need to be managed across all three lines of defence. While the business needs to manage its risks, the guidelines stress the responsibilities of the second line of defence (the independent risk management and compliance function) and the third line of defence (the internal audit function). The Guidelines specify that all issuers of ARTs should have a permanent and effective compliance function while, in line with the principle of proportionality, not all issuers are required to have a risk management and an internal audit function but are still required to have respective policies and procedures in place. Issuers of ARTs should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of ARTs should establish a business continuity policy that aims to ensure, in the case of an interruption to their systems and procedures, the performance of their core activities related to the asset-referenced tokens.

The Guidelines on internal governance for issuers of ARTs take into account, as far as possible, the framework for investment firms under Directive 2014/65/EU but are tailored to the specific business model of issuers of ARTs and take into account the principle of proportionality.

## **The Next steps**

These Guidelines apply from *[3] months after the date of publication on the EBA's website of the guidelines in all EU official languages.*

## 2. Background and rationale

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1. While crypto assets can bring opportunities in terms of innovative digital services, alternative payment instruments or new funding mechanisms for Union companies, the crypto assets ecosystem is fast evolving and its interconnectedness with the traditional financial system is also increasing, posing risks to crypto-asset activities to financial institutions, consumers, investors and to the financial stability. Trust in the reliability of the financial system is crucial for its proper functioning and a prerequisite if it is to contribute to the economy as a whole. Consequently, effective internal governance arrangements are fundamental if entities individually and the financial system they form are to operate well. Against this backdrop, and to ensure the level playing field across the Union and cross sectoral consistency within the financial sector, there is a clear need to address any gaps that may exist regarding the implementation of sound internal governance arrangements by issuers of ARTs.
2. To ensure the effective management and oversight of issuers of ARTs by the management body, to promote and foster a sound risk culture at issuers of ARTs and to enable competent authorities to supervise and monitor the adequacy of internal governance arrangements, issuers of ARTs should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or to which they might be exposed to.
3. Internal governance includes all standards and principles for setting issuer of ARTs' strategies and risk management framework; how its business is organised; how responsibilities and authority are defined and clearly allocated; how reporting lines are set up and what information they convey; and how the internal control framework is organised and implemented, including sound accounting and administrative procedures. Robust governance arrangements also encompass ensuring operational resilience, including sound information and communication technology systems and business continuity management; sound policies and procedures for the use of third-party entities, including for operating the reserve of assets, the investment of the reserve assets, the custody of the reserve assets and, where applicable, the distribution of the asset-referenced tokens to the public.
4. In the same way, issuers of ARTs should take into account environmental, social and governance (ESG) risk factors within their risk management framework. The consensus mechanisms used for the validation of transactions in crypto-assets have, due to their energy consumption, potentially material adverse impacts on the climate and other environment aspects. In this regard, it should be ensured that any material adverse impact that they might have on the climate, and any other material environment-related adverse impact, are adequately identified and disclosed by issuers of ARTs.

5. ESG factors can also affect the risk profile of issuers of ARTs, its business model and the acceptance of the ARTs. While climate and environmental factors are particularly relevant to the activities and services of issuers of ARTs, other types of ESG factors such as tax transparency, human rights, employment conditions are also relevant factors.
6. Combating money laundering and terrorist financing is also essential for maintaining the stability and integrity of the financial system. Uncovering the involvement of an issuer of ARTs in money laundering and terrorist financing might have an impact on the viability and trust of the financial system. In this context, the guidelines clarify that identifying, managing and mitigating ML/TF risks is part of issuers' sound governance arrangements and risk management framework.
7. While credit institutions are 'obliged entities' under Directive 2015/849/EU, (AMLD)<sup>1</sup>, issuers of ART authorised under Article 21 Regulation (EU) 2023/1114 are not per se 'obliged entities' under that Directive. Nevertheless, the ML/TF risks posed by the issuer's activities to the issuer itself or to the sector are considered a ground for the refusal or for withdrawal of the authorisation in accordance with Article 24 1(g) of Regulation (EU) 2023/1114. It is therefore crucial that issuers of ARTs ensure the sound management of ML-TF risks on an ongoing basis as part of the overall internal control framework. Issuers of ARTs have an important role to play in identifying and tackling weaknesses in this area in collaboration with the authorities competent for the prevention and fight against money laundering and terrorist financing.
8. The guidelines are intended to apply to all existing board structures without interfering with the general allocation of competences in accordance with national company law or advocating any particular structure. Accordingly, they should be applied irrespective of the board structure used (unitary or dual board structure or another structure) and across Member States. Without prejudice to applicable company law, in principle, the management body, as defined in Article 3(1)(27) of Regulation (EU) 2023/1114, should be understood as having management (executive) and supervisory (non-executive) functions.
9. The terms 'management body in its management function' and 'management body in its supervisory function' are used throughout these guidelines without referring to any specific governance structure, and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.
10. For the purposes of these guidelines, any reference to the management body in its management function should be understood as also including the members of the executive body or the CEO, even if they have not been proposed or appointed as formal members of an issuer of ARTs' governing body or bodies under national law.

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<sup>1</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on preventing 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)

11. The management body is empowered to set the issuer of ARTs' strategy, objectives and overall direction, and oversees and monitors management decision-making. In its management function, the management body directs the business of the issuer of ARTs. In its supervisory function, the management body oversees and challenges the management function and provides appropriate advice and challenge. The oversight roles include reviewing the performance of the management function and the achievement of objectives, challenging the strategy, and monitoring and scrutinising the systems that ensure the integrity of financial information as well as the soundness and effectiveness of risk management and internal controls.
12. Taking into consideration all the existing governance structures provided for by national laws, competent authorities should ensure the effective and consistent application of the guidelines in their jurisdictions in accordance with the rationale and objectives of the guidelines themselves. For this purpose, competent authorities may clarify the governing bodies and functions to which the tasks and responsibilities set forth in the guidelines pertain, where this is appropriate to ensure the proper application of the guidelines in accordance with the governance structures provided for under national company law.
13. Where a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU is an issuer of ARTs or where the group includes an issuer of ARTs, additional guidelines are provided on the group application of governance policies in a group context. It is fundamental that crypto groups<sup>2</sup>, have all risks under control and a holistic view on all their risks.
14. The guidelines are consistent with the 'three lines of defence' model in identifying the functions within issuers of ARTs responsible for addressing and managing risks. Issuers of ARTs should establish and maintain a permanent and effective compliance function that operates independently from the business it controls and, where appropriate taking into account the application of the proportionality principle, establish and maintain risk management and internal audit functions that operate independently. Where those functions are not established, issuers of ARTs should ensure that the policies and procedures that they have adopted and implemented regarding risk management and internal audit achieve the same objectives.
15. The business lines, as part of the first line of defence, take risks and are directly and permanently responsible for their operational management. For that purpose, business lines should have appropriate processes and controls in place that aim to ensure risks are identified, analysed, measured, monitored, managed and reported, and that the business activities are in compliance with external and internal requirements. Not only business lines, but also other functions or units, e.g. HR, legal or information and communication technology, are responsible for managing their risks and having appropriate controls in place. Other functions or units that

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<sup>2</sup> A group of undertakings of which at least one is an Issuer of ARTs and which consists of a parent undertaking and its subsidiaries as set out in Article 2 (11) if Directive 2013/34/EU or of undertakings that are related to each other as set out in Article 22 of the same Directive.

are mainly exposed to operational and reputational risks must also be considered by the compliance function and risk management function when forming an enterprise-wide holistic view on all risks. All other functions or units should also be subject to monitoring and oversight by the independent risk management function, where established, and by the compliance function as part of a risk-based approach.

16. The independent risk management function, where established, and the independent compliance function form the second line of defence. The risk management function facilitates the implementation of a sound risk management framework throughout the issuer of ARTs and is responsible for further identifying, monitoring, analysing, measuring, managing and reporting risks and forming a holistic view of all risks on an individual and, where applicable, consolidated basis. It challenges and assists in the implementation of risk management measures by the business lines in order to ensure that the processes and controls in place in the first line of defence are properly designed and effective. The compliance function monitors compliance with legal requirements and internal policies, provides advice on compliance issues to the management body and other relevant staff, and establishes policies and processes to manage compliance risks and to ensure compliance. The compliance function and, where established, the risk management function intervene as necessary to ensure the modification of internal control and risk management systems within the first line of defence.
17. The internal audit function, where established as an independent third line of defence, conducts risk-based and general audits and reviews the internal governance arrangements, processes and mechanisms to ascertain that they are sound and effective, implemented and consistently applied. The internal audit function is also in charge of the independent review of the first two lines of defence including other internal functions, units and business lines. Investment firms that do not establish an independent audit function must establish other appropriate audit policies and procedures. In any case, the ultimate responsibility for audits remains with the management body.
18. To ensure their proper functioning, all internal control functions need to perform their tasks independently, have the appropriate financial and human resources and report directly to the management body. Within all three lines of defence, appropriate internal control procedures, mechanisms and processes should be designed, developed, maintained and evaluated under the ultimate responsibility of the management body.
19. The requirements on governance arrangements applicable to issuers of ARTs under Regulation (EU) 2023/1114 are very similar to the requirements under Directive 2013/36/EU (CRD), IFD and MiFID to ensure a cross sectoral consistency. However, a proportionate approach is taken for issuers of ARTs regarding the establishment of committees and control functions. Credit institutions which offer or seek the admission to trading of asset-referenced tokens are also subject to internal governance requirements under CRD. In accordance with Regulation (EU) 2023/1114, credit institutions that are issuers of ARTs should comply with the more specific or stricter requirements in this area, ensuring compliance with both sets of requirements.



20. The guidelines and the principle of proportionality cannot change the minimum requirements included in the Regulation (EU) 2023/1114. All provisions within the guidelines are subject to the principle of proportionality, meaning that they are to be applied in a manner that is appropriate, taking into account in particular the issuer of ARTs' internal organisation and nature, the volume of ARTs that will be offered to the public or admitted to trading, and the complexity of its activities. However, the principle of proportionality does not mean that issuers of ARTs are permitted to not meet certain requirements, i.e. requirements cannot be waived unless MiCAR explicitly allows for such waivers when the underlying conditions are met.
21. The guidelines aim to establish a sound risk culture for issuers of ARTs. Risks should be taken within a well-defined framework in line with the issuers of ARTs' risk strategy. Risks regarding the issuance of ARTs are also to be duly identified, assessed, appropriately managed and monitored. The risk management function and compliance function should be closely involved in the establishment of the applicable framework.
22. Issuers of ARTs should identify sources of operational risk and minimise those risks through the development of appropriate systems, controls, and procedures. The guidelines further specify that issuers of ARTs should have in place a well-documented assessment and management system for operational risk with clear responsibilities assigned for this system. The framework has been developed considering CRD and has been replicated for those issuers in a proportionate manner. In addition, issuers of ART are subject to the DORA requirements and should take the standards developed at international level on operational resilience into account <sup>3</sup>.
23. The guidelines also specify further the arrangements to put in place when relying on third-party entities for operating the reserve of assets, for the investment of the reserve assets, the custody of the reserve assets and, where applicable, the distribution of the asset-referenced tokens to the public; these arrangements should cover the selection, risk assessment, specification of relevant contractual arrangement and monitoring. Issuers of ARTs should also have policies that define the principles, responsibilities, and processes in relation to the use of those third-party entities.
24. Issuers of ARTs should establish a business continuity policy and plans to ensure, in the case of an interruption of their ICT systems and procedures, the preservation of essential data and functions and the maintenance of their activities or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities. While under DORA, the ESAs have been mandated to specify further the components of the ICT business continuity policy through regulatory products, the guidelines however further specify elements on business continuity plans not related to ICT and provide more guidance on operational resilience in line with MiCAR and international standards.

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<sup>3</sup> E.g. BCBS principles on operational resilience, March 2021

## Legal Basis

25. Article 34 of MiCAR requires issuers to have robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, processes and mechanisms.
26. To further harmonise issuers of ARTs' internal governance arrangements, processes and mechanisms within the EU, the EBA, in cooperation with the ESMA and the ECB, is mandated under Article 34(13) of Regulation (EU) 2023/1114 to develop Guidelines on the minimum content of the governance, in particular, with regard to:
- the monitoring tools regarding operational risk;
  - the internal control mechanism for risk management, including with regard to the reliance on third-party entities for operating the reserve of assets, and for the investment of the reserve assets, the custody of the reserve assets and, where applicable, the distribution of the asset-referenced tokens to the public;
  - the business continuity policy and plans on ICT systems and procedures;
  - the audits, including the minimum documentation to be used in the audit.
27. When issuing these guidelines, EBA has taken into account the provisions on governance requirements in other Union legislative acts on financial services, including Directive 2014/65/EU. Where issuers of ARTs are credit institutions, subject to internal governance requirements under Directive 2013/36/EU, they should comply with the requirements thereunder and comply with Title I, Title V Sections 12. , 12.1, 12.2, 12.3 and Title VI and Title VII when issuing ARTs.
28. In addition to such mandate as further specified under Title V, EBA is empowered to issue guidelines addressed to competent authorities or financial market participants, pursuant to Article 16 of its founding Regulations, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law. On this basis, EBA considers also appropriate to issue Guidelines specifying further the framework to have sound internal governance arrangements in accordance with Article 34 of Regulation (EU) 2023/1114 in particular under the Titles I, II, III, IV, VI and VII.
29. The guidelines should be read in conjunction with Regulation (EU) 2022/2254, the Joint EBA-ESMA guidelines on the suitability members of the management body and qualifying holdings for issuers of ARTs, the RTS on the minimum content of the governance arrangements on the remuneration policy for issuers of significant ARTs, the RTS on conflicts of interests for issuers of ARTs and the RTS on the minimum requirements for the design of stress testing programs under Article 36(5)(c) of MiCAR.

## 3. Guidelines

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EBA/GL/2024/06

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06/06/2024

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# Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>4</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities as defined in Article 3(1) point (35)(a) of Regulation (EU) 2023/1114 to whom guidelines apply 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 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g., by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at financial institutions.

## 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 20.11.2024. 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/2024/06'. 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 EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>4</sup> 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).

# Subject matter, scope, and definitions

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## Subject matter

5. These guidelines specify in accordance with Article 34(13) of Regulation (EU) 2023/1114 the minimum content of the governance arrangements for issuers of ARTs in particular regarding the monitoring tools for the risks<sup>5</sup>; the business continuity plans; the internal control mechanism; and the audits, including the minimum documentation to be used in the audits.

## Scope of application

6. These Guidelines apply at authorisation and on an ongoing basis to competent authorities, as defined in Article 3(1) point (35) (a) of Regulation (EU) 2023/1114, and to issuers of ARTs.
7. The guidelines apply to all issuers of ARTs, independently of their existing board structures.
8. Any reference to management body also includes issuers of ARTs that are legal persons managed by a single natural person.
9. Issuers of ARTs should comply and competent authorities should ensure that issuers of ARTs comply with these guidelines, including, where applicable, on a group wide basis.

## Addressees

10. These Guidelines are addressed to competent authorities as defined in Article 3(1), point (35)(a) of Regulation (EU) 2023/1114.
11. These Guidelines are also addressed to issuers of ARTs as defined in Article 3(1), point 10 of Regulation (EU) 2023/1114, of ARTs as defined in Article 3(1), point 6 of that Regulation. Where the issuer of ARTs is a credit institution, it should comply with Title I, Title V Sections 12, 12.1, 12.2, 12.3 and Title VI and Title VII in conjunction with the requirements set out under Directive 2013/36/EU and the EBA guidelines on internal governance<sup>6</sup>.

## Definitions

12. Unless otherwise specified, terms used and defined under Regulation (EU) 2023/1114, Directive 2014/65/EU, the 'EBA guidelines on internal governance arrangements for investment firms

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<sup>5</sup> Any reference to risks in these guidelines should include all risks to which issuers of ARTs are or may be exposed, including money laundering and terrorist financing risks.

<sup>6</sup>[Guidelines on internal governance under Directive 2013/36/EU](#)

under IFD<sup>7</sup> and Regulation (EU) 2022/2554, have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Management body in its management function	means, the management body acting in its role of directing effectively the issuer of ARTs and includes the persons who direct its business.
Management body in its supervisory function	means, where established, the management body acting in its role of overseeing and monitoring management decision-making.
Group	means a group as defined in Article 2 (11) of Directive 2013/34/EU <sup>8</sup> .
Operational risk	means the operational risk as set out in Article 4(1)(52) of Regulation (EU) 575/2013.
Operational resilience	means the ability for an issuer of ARTs to deliver critical or important functions through disruption.

## Implementation

### Date of application

13. These Guidelines apply from 20.12.2024.

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<sup>7</sup> [Guidelines on internal governance under Directive \(EU\) 2019/2034](#)

<sup>8</sup> [Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings](#)

## 4. Guidelines

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### Title I - Application of the proportionality principle

14. Issuers of ARTs and competent authorities should have regard to the principle of proportionality when applying and implementing these guidelines with a view to ensuring that the governance arrangements are consistent with the individual risk profile of the issuer of ARTs and the group, where applicable, commensurate with its size and internal organisation, relevant to its business model, suitable for the nature, scale and complexity of its activities and sufficient to effectively achieve the objectives of the relevant regulatory requirements and provisions.
15. For the purpose of applying the principle of proportionality and to ensure the appropriate implementation of the governance requirements of Regulation (EU) 2023/1114 as further specified by these Guidelines, issuers of ARTs and competent authorities should take into account the following criteria:
- a. the size of the issuer of ARTs in terms of the balance sheet total;
  - b. the legal form of the issuer of ARTs;
  - c. whether the issuer of ARTs is listed or not;
  - d. the classification of the asset-referenced token issued as significant or non-significant pursuant to Articles 43 and 44 and Articles 56 and 57 of Regulation (EU) 2023/1114
  - e. the specifics, volume and number of ARTs issued;
  - f. whether the ARTs issued are admitted to trading;
  - g. the consensus mechanism used to issue and validate the ARTs;
  - h. the nature and complexity of all business activities;
  - i. the type of authorised activities and the services performed;
  - j. whether cross borders activities are provided and the size of the operations in each jurisdiction;
  - k. the size of the reserve of assets;
  - l. the type and complexity of the assets a token is referenced to;
  - m. whether the holders of ART are retail holders or not;

- n. the use of third-party service providers;
  - o. the distribution channels used, including the ones provided by third-party service providers; and
  - p. the existing information and communication technology (ICT) systems, including business continuity measures and the use of ICT third-party entities as referred to in paragraph 5, first subparagraph, point (h), Article 34 of Regulation (EU) 2023/1114.
16. Issuers of ARTs that are managed by a single natural person should have alternative arrangements in place which ensure the sound and prudent management of such issuers and the adequate consideration of governance arrangements including by providing for adequate checks and balances in decision making.

## Title II – Role and composition of the management body

### 1. Role and responsibilities of the management body

17. In accordance with Article 34 of Regulation (EU) 2023/1114, the management body of an issuer of ARTs must define, oversee and is accountable for the implementation of sound governance arrangements that ensure effective and prudent management of the issuer and the interest of holders of ART including the segregation of duties and the identification, prevention and management of conflicts of interest within the issuer of ARTs in accordance with Article 32 of Regulation (EU) 2023/1114.
18. The duties of the management body should be clearly defined, distinguishing, where applicable, between the duties of the management (executive) function and of the supervisory (non-executive) function. The responsibilities and duties of the management body should be described in a written document and duly approved by the management body. All members of the management body should be fully aware of the structure and responsibilities of the management body and, where applicable, of the division of tasks between different functions of the management body.
19. Where applicable, the management body in its supervisory function and its management function should interact effectively. Both functions should provide each other with sufficient information to allow them to perform their respective roles. To have appropriate checks and balances in place, decision-making within the management body should not be dominated by a single member or a small subset of its members.
20. The management body's responsibilities should include at least setting, approving, and overseeing the implementation of:



- a. the overall business strategy and the key policies of the issuer within the applicable legal and regulatory framework, taking into account the issuer's long-term financial interests and solvency and interest of the holders of ARTs.
- b. the policies required under Article 34(5) of Regulation (EU) 2023/1114; such policies should be consistent with the risk appetite and tolerance of the issuer and the characteristics, the needs of the clients of the issuer of ARTs to whom they will be offered and their prospective holders;
- c. the organisation of the issuer for the issuance of ARTs specifying the skills, knowledge and expertise required by staff and the necessary resources;
- d. the overall risk strategy, the issuer's risk appetite and its risk management framework, including adequate policies and procedures, taking into account the macroeconomic environment and the business cycle, and specifying the involvement of the management body in risk management issues;
- e. an adequate and effective internal control framework including a risk management framework and well-functioning internal control mechanisms to ensure compliance with applicable regulatory requirements including with regard to the management of reserve of assets;
- f. a remuneration policy for issuers of significant ARTs that is in line with Article 45(1) of Regulation (EU) 2023/1114<sup>9</sup>;
- g. the policies and procedures to identify, prevent, manage and disclose conflicts of interest, in line with Article 32 of Regulation (EU) 2023/1114<sup>10</sup>;
- h. arrangements that aim to ensure that the individual and collective suitability assessments of the management body are carried out effectively, that the composition of the management body is appropriate, and that the management body performs its functions effectively;
- i. a risk culture in line with Title IV Section 7 which addresses the issuer of ARTs' risk awareness and risk-taking behaviour;

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<sup>9</sup> See the RTS on the minimum content of the governance arrangements on the remuneration policy for issuers of significant ARTs in accordance with Article 45(7)(a) of Regulation (EU) 2023/1114.

<sup>10</sup> See the RTS on conflict of interests under Article 32(5) of Regulation (EU) 2023/1114.

- j. a corporate culture and values in line with Title IV Section 8 which foster responsible and ethical behaviour, including a code of conduct or similar instrument;
  - k. arrangements that aim to ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards.
21. When setting up, approving and overseeing the implementation of the aspects listed in paragraph 20, the management body should ensure that the business model and governance arrangements take into account all risks the issuer of ARTs is or might be exposed to and the risks that they pose or might pose to others and to the environment. For that purpose, issuers of ARTs should also take into account all relevant risk factors, including environmental, social and governance risks factors (ESG) and consider the climate and other environmental impacts caused by the energy consumption of the consensus and validation mechanisms used. Other ESG risk factors that should be considered include legal risks in the area of contractual or labour law, risks relating to potential human rights violations or other ESG risk factors that may affect the country where a third-party service provider is located and its ability to provide the agreed service levels.
22. The management body should oversee the process of disclosure, in particular as mandated by Article 30 of Regulation (EU) 2023/1114, and communications with external stakeholders and competent authorities.
23. All members of the management body should be informed about the overall activity, financial and risk situation of the issuer of ARTs, taking into account the economic environment and business cycle, and also about any decisions taken that have a major impact on the issuance of ARTs or other material business activities.
24. A member of the management body may be responsible for an internal control function as referred to in Title V, provided that the member does not have other mandates that would compromise the member's internal control activities and the independence of the internal control function.
25. The management body should monitor, periodically review and address any weaknesses identified regarding the implementation of processes, strategies and policies relating to the responsibilities listed in this section. The governance framework and its implementation should be reviewed and updated on a periodic basis, taking into account the proportionality principle, as further specified in Title I. A deeper review should be carried out where material changes affect the issuer of ARTs.
26. Where the issuers of ARTs are legal persons managed by a single natural person in accordance with their constitutive rules and national laws, the references in these guidelines to a management body should be construed as applying to the single person that is responsible for implementing alternative arrangements to ensure the sound and prudent management of such an issuer and the adequate consideration of governance arrangements.
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## 2. Management function of the management body

27. The management body in its management function should actively engage in the business of the issuer of ARTs and should take decisions on a sound and well-informed basis.
28. The management body in its management function, should be responsible for the implementation of the strategies and policies set out by the management body and regularly discuss the implementation and appropriateness of these strategies and policies with the management body in its supervisory function. The operational implementation may be carried out by the issuers of ARTs' management body.
29. Members of the management body in its management function should constructively challenge and critically review propositions, explanations and information received by the staff when exercising its judgement and taking decisions.
30. Where applicable, the management body in its management function, should regularly, timely and comprehensively inform and report to the management body in its supervisory function all relevant information necessary to perform their duties, including the risks and other developments affecting the business of the issuer of ARTs, e.g. material decisions on business activities, its organisation and underlying technologies, risks taken and compliance with the risk appetite and strategy, ML-TF risks, ICT incidents and reporting, material operational risk losses, liquidity and reserve of assets and their management.

## 3. Supervisory function of the management body

31. Without prejudice to the responsibilities assigned under the applicable national company law, the management body in its supervisory function should:
  - a. oversee and monitor management decision-making and actions and provide effective oversight of the management body in its management function, including monitoring and scrutinising its individual and collective performance and the setting and implementation of the issuer of ARTs' strategy and objectives;
  - b. constructively challenge and critically review proposals and information provided by members of the management body in its management function, as well as its decisions;
  - c. ensure and periodically assess the effectiveness of the issuers of ARTs' governance framework and take appropriate steps to address any identified deficiencies;
  - d. oversee and monitor that the issuer's strategic objectives, organisational structure and risk strategy, its risk appetite and risk management framework, as well as other policies (e.g. investment policy on the reserve of assets) are implemented consistently;
  - e. monitor that the risk culture of the issuer of ARTs is implemented consistently;

- f. oversee the implementation, the update and the effective application of policies and procedures to identify, prevent, manage and disclose conflicts of interest, in accordance with Article 32 of Regulation (EU) 2023/1114;<sup>11</sup>
- g. oversee the integrity of financial information and reporting, and the internal control framework, including an effective and sound risk management framework;
- h. ensure that the heads of internal control functions are able to act independently and, regardless of the responsibility to report to other internal bodies, business lines or units, can raise concerns and warn the management body in its supervisory function directly, where necessary, when adverse risk developments affect or may affect the issuer of ARTs; and
- i. set and monitor the implementation of the internal audit plan.

## Title III – Governance framework

### 4. Organisational framework and structure

#### 4.1 Organisational framework

- 32. The management body of an issuer of ARTs should ensure a suitable and transparent organisational and operational structure for that issuer of ARTs and should have a written description of it. The structure should promote and demonstrate the effective and prudent management of the issuer of ARTs and the group, where applicable.
- 33. The management body should ensure that the internal control functions have the appropriate financial and human resources as well as powers to effectively perform their role. As a minimum, the compliance function should operate independently, including that there is an appropriate segregation of duties. The reporting lines and the allocation of responsibilities should be clear, well-defined, coherent, enforceable and duly documented. The documentation should be updated as appropriate.
- 34. The structure of the issuer of ARTs should not impede the ability of the management body to oversee and effectively manage its risks or the group, where applicable, is exposed to or the ability of the competent authority to effectively supervise the issuer of ARTs.
- 35. The management body should assess whether and how material changes to the group's structure where applicable (e.g. setting up of new subsidiaries, mergers and acquisitions, selling or winding-up parts of the group, or external developments) impact on the soundness of the ART issuer organisational framework. Where weaknesses are identified, the management body should make any necessary adjustments swiftly.

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<sup>11</sup> See the RTS on conflict of interests under Article 32(5) of Regulation (EU) 2023/1114.

## 4.2 Know your structure

36. The management body should fully know and understand the legal, organisational and operational structure of the issuer of ARTs ('know your structure') and ensure that it is in line with its approved business and risk strategy and risk appetite and covered by its risk management framework.
37. The management body should ensure that the structure of an issuer of ARTs and, where applicable, the structures within a group are clear, efficient and transparent to the staff, shareholders and other stakeholders and to the competent authority.
38. The management body should guide the issuer of ARTs' structure, its evolution and its limitations and should ensure that the structure is justified and efficient and does not involve undue or inappropriate complexity.
39. When setting up such structures, the management body should understand them and their purpose and the particular risks associated with them and ensure that the internal control functions are appropriately involved. Such structures should be approved and maintained only when their purpose has been clearly defined and understood, and when the management body is satisfied that all material risks, including reputational risks, have been identified, that all risks can be managed effectively and appropriately reported, and that effective oversight has been ensured. The more complex the organisational and operational structure, and the greater the risks, the more intensive the oversight of the structure should be.
40. Issuer of ARTs should take into account in their decision-making the results of a risk assessment performed to identify whether such structures could be used for a purpose connected with ML/TF or other financial crime to ensure that the issuer or the sector is not exposed to serious risk of ML/TF. To this end, issuers of ARTs should take into account as a minimum:
  - a. the extent to which the jurisdiction, in which the structure will be set up complies effectively with EU and international standards on tax transparency, anti-money laundering and countering the financing of terrorism;
  - b. the extent to which the structure serves an obvious economic and lawful purpose;
  - c. the extent to which the structure could be used to hide the identity of the ultimate beneficial owner;
  - d. the extent to which the reason that leads to the possible setting-up of a structure gives rise to concern;
  - e. whether the structure might impede appropriate oversight by the ART issuer's management body or the issuer's ability to manage the related risk; and

- f. whether the structure poses obstacles to effective supervision by competent authorities.
41. In any case issuers of ARTs should not set up opaque structures or unnecessary complex structures that have no clear economic rational or legal purpose, or structures that could raise concerns that these might be created for a purpose connected with financial crime.
42. Issuers of ART should document their decisions and be able to justify their decisions to competent authorities.
43. These structures and activities, including their compliance with legislation and professional standards, should be subject to a regular review. Where an internal audit function is established, it should perform the review on a risk-based approach.

## 5. Organisational framework in a group context

44. Where applicable, issuers of ARTs should ensure that governance arrangements, processes and mechanisms are consistent and well-integrated on a group wide basis. To this end, issuers of ARTs should ensure that their subsidiaries subject to Regulation (EU) 2023/1114 should implement similar arrangements, processes and mechanisms to ensure robust governance arrangements on a group wide basis. Competent functions within an issuer of ARTs and its subsidiaries subject to Regulation (EU) 2023/1114 should interact and exchange data and information as appropriate.
45. While policies and documentation may be included in separate documents, issuers of ARTs should consider combining them or referring to them in a single governance framework document.

## 6. Outsourcing<sup>12</sup>

46. The management body should approve and regularly review and update the outsourcing policy of an issuer of ARTs, ensuring that appropriate changes are implemented in a timely manner.
47. The outsourcing policy should consider the impact of the use of the outsourcing on an issuer of ARTs' business and the risks it faces (such as operational risks, including legal, reputational risks, and concentration risks).
48. The policy should include the reporting and monitoring arrangements to be implemented from inception to the end of outsourcing arrangements (including the due diligence process and risk assessment, the management and the monitoring of the arrangement, the termination, contingency plans and exit strategies).

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<sup>12</sup>This section should be read in conjunction with Section 12.3 of these guidelines where applicable. Issuers of ARTs should refer, to the extent applicable, to the EBA guidelines on outsourcing, taking into account the application of the principle of proportionality.

49. The outsourcing of functions cannot result in the delegation of the management body's responsibilities. An issuer of ARTs remains fully responsible and accountable for all outsourced services and activities and management decisions arising from them. Accordingly, the outsourcing policy should make it clear that outsourcing does not relieve the issuer of ARTs of its legal and regulatory obligations.
50. The policy should state that outsourcing arrangements, should not hinder effective on-site or off-site supervision of the issuer of ARTs and should not contravene any supervisory restrictions on services and activities. The policy should also cover intragroup outsourcing arrangements and take into account any specific group circumstances where appropriate.
51. Issuers of ARTs should maintain at all times sufficient substance and not become 'empty shells' or 'letter-box entities'. To this end, they should:
- a. meet all the conditions of their authorisation at all times, including the management body effectively carrying out its responsibilities as set out in Section I of these guidelines;
  - b. retain a clear and transparent organisational framework and structure that enables them to ensure compliance with legal and regulatory requirements as referred to Section 4;
  - c. where operational tasks of internal control functions are outsourced, exercise appropriate oversight and be able to manage the risks that are generated by the outsourcing of critical or important functions; and
  - d. have sufficient resources and capacities to ensure compliance with points (a) to (c).

## Title IV – Risk culture and business conduct

### 7. Risk culture

52. A sound, diligent and consistent risk culture should be a key element of issuers of ARTs effective risk management and should enable these issuers to make sound and informed decisions that are consistent with their risk strategy and risk appetite.
53. Issuers of ARTs should develop an integrated and enterprise wide risk culture, based on a full understanding and holistic view of the risks they are or might be exposed to, including ESG risks, the risks to holders of assets, to markets, operational risks, ML-FT risks, liquidity risks and the risks linked to the investment of the assets of the reserve, the risk to the issuer of ARTs itself and how they are managed, taking into account the issuer of ARTs' risk tolerance, and the conflicts of interest that may arise due to the interconnectedness of players in the crypto ecosystem.

54. Issuers of ARTs should develop a risk culture through policies, communication and staff training regarding the issuer of ARTs' activities, strategy and risk profile, and should adapt communication and staff training to take into account staff's responsibilities regarding risk-taking and risk management.
55. Staff should be fully aware of their responsibilities relating to risk management. Risk management should not be confined to risk specialists or internal control functions. Business lines or units, under the oversight of the management body, should be primarily responsible for managing risks on a day-to-day basis in line with the issuers of ARTs' policies, procedures and controls, taking into account the issuer of ARTs' risk tolerance and appetite.
56. A strong risk culture should include but is not necessarily limited to:
- a. Tone from the top: the management body should be responsible for setting and communicating the issuer's core values and expectations. The behaviour of its members should reflect these values. The management body should contribute to the internal communication of core values and expectations to staff. Staff should act in accordance with all applicable laws and regulations and promptly escalate observed non-compliance within or outside the issuer (e.g. to the competent authority through a whistleblowing process).
  - b. Accountability: relevant staff at all levels should know and understand the core values of the issuer of ARTs and, to the extent necessary for their role and its risk tolerance and appetite. They should be capable of performing their roles and be aware that they will be held accountable for their actions in relation to the issuer of ARTs' risk-taking behaviour.
  - c. Effective communication and challenge: a sound risk culture should promote an environment of open communication and effective challenge in which decision-making processes encourage a broad range of views, allow for testing of current practices, stimulate a constructive critical attitude among staff and promote an environment of open and constructive engagement throughout the entire organisation.
  - d. Incentives: appropriate incentives should play a key role in aligning risk-taking behaviour with the issuer of ARTs' risk profile and its long-term interests in particular for issuers of significant ARTs.

## 8. Corporate values and code of conduct

57. The management body should develop, adopt, adhere to and promote high ethical and professional standards, taking into account the specific needs and characteristics of the issuer of the ARTs, and should ensure the implementation of such standards (through a code of



conduct or similar instrument). It should also oversee the adherence to these standards by staff. Where applicable, the management body may adopt and implement the issuer of ARTs group-wide standards or common standards released by associations or other relevant organisations.

58. Issuers of ARTs should ensure that there is no discrimination towards staff based on gender, race, colour, ethnic or social origin, genetic features, languages, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
59. The policies of issuers of significant ARTs should be gender-neutral<sup>13</sup>. This includes, but is not limited to, remuneration, recruitment policies, career development and succession plans, access to training and the ability to apply for internal vacancies. Issuers of ARTs should ensure equal opportunities<sup>14</sup> for all staff irrespective of their gender, including with regard to career perspectives, and aim to improve representation of the underrepresented gender in positions within the management body. Issuer of significant ARTs should monitor the trend in the gender pay gap.
60. The standards implemented should aim to enhance the issuer of ARTs' robust governance arrangements and reducing the risk to which the firm is exposed, in particular operational and reputational risks, which can have a considerable adverse impact on an issuer of ARTs profitability and sustainability through fines, litigation costs, restrictions imposed by competent authorities, other financial and criminal penalties, and the loss of brand value and investor confidence.
61. The management body should have clear and documented policies for how these standards should be met. These policies should:
  - a. remind staff that all the issuer's of ARTs activities should be conducted in compliance with the applicable law and with the issuer's corporate values;
  - b. promote risk awareness through a strong risk culture in line with Title IV, Section 7, conveying the management body's expectation that activities will not go beyond the defined risk appetite and limits defined by the issuer of ARTs and the respective responsibilities of staff;
  - c. set out principles on and provide examples of acceptable and unacceptable behaviours linked in particular to financial misreporting and misconduct, economic and financial crime including but not limited to fraud, money laundering and terrorist financing

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<sup>13</sup> See the RTS on the minimum content of the governance arrangements on the remuneration policy for issuers of significant ARTs in accordance with Article 45(7)(a) of Regulation (EU) 2023/1114;

<sup>14</sup> See also Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

(ML/TF), anti-trust practices, financial sanctions, bribery and corruption, market manipulation, mis-selling and other violations of consumer protection laws, tax offences, whether committed directly or indirectly;

d. clarify that in addition to complying with legal and regulatory requirements and internal policies, staff are expected to conduct themselves with honesty and integrity and perform their duties with due skill, care and diligence; and

e. ensure that staff are aware of the potential internal and external disciplinary actions, legal actions and sanctions that may follow misconduct and unacceptable behaviours.

62. Issuers of ARTs should monitor compliance with such standards and ensure staff awareness, e.g., by providing training.

## Title V – Internal control framework and mechanisms

### 9. Internal control framework

63. Issuers of ARTs should develop and maintain a culture that encourages a positive attitude towards risk control and compliance within the issuer and a robust and comprehensive internal control framework. Under this framework, issuers of ARTs business lines or internal unit should be responsible for managing the risks they incur in conducting their activities and should have controls in place that aim to ensure compliance with internal and external requirements. As part of this framework, issuers of ARTs should have a permanent and effective internal compliance function with appropriate and sufficient authority, stature and access to the management body to fulfil its mission, and a risk management framework. Where proportionate, taking into account the criteria listed in Title I, issuers of ART should also have an internal risk management and audit function. In any case, the issuer of ARTs should have appropriate risk management and audit policies and procedures in place.
64. The internal control framework of the issuers of ARTs concerned should be adapted on an individual basis to the specificity of its business, its complexity and the associated risks, taking into account, where applicable, the group context. Within a group context, the issuer of ARTs concerned should organise the exchange of the necessary information in a manner that ensures that each management body, business line and internal unit, including each internal control function, is able to carry out its duties.
65. The internal control framework should cover the whole organisation, including the management body's responsibilities and tasks, and the activities of all business lines and internal units, including internal control functions, the use of third-party providers and distribution channels.
66. The internal control framework of an issuer of ARTs should ensure:
- a. effective and efficient operations including with regard to issuance of ARTs;
  - b. adequate identification, measurement and mitigation of risks including operational risk and risk related to ICT in accordance with Regulation (EU) 2022/2554;
  - c. the reliability of financial and non-financial information reported both internally and externally;
  - d. sound administrative and accounting procedures; and
  - e. compliance with laws, regulations, supervisory requirements and the issuer of ARTs internal policies, processes, rules and decisions.

## 10. Implementing an internal control framework

67. The management body should be responsible for establishing and monitoring the adequacy and effectiveness of the internal control framework, processes and mechanisms, and for overseeing all business lines and internal units, including internal control functions (such as compliance, risk management and internal audit functions where established). Issuer of ARTs should establish, maintain and regularly update adequate written internal control policies, mechanisms and procedures, which should be approved by the management body. Where no risk management function is established, the management body should be responsible for establishing, updating and monitoring adequate risk management procedures and policies.
68. An issuer of ARTs should have a clear, transparent and documented decision-making process and a clear allocation of responsibilities and authority within its internal control framework, including its business lines, internal units and internal control functions.
69. Issuers of ARTs should communicate these policies, mechanisms and procedures to all staff and every time material changes have been made.
70. The internal control functions should verify that the policies, mechanisms and procedures set out in the internal control framework are correctly implemented in their respective areas of competence.
71. Internal control functions should regularly submit to the management body written reports on major deficiencies that have been identified. These reports should include, for each new major deficiency identified, the relevant risks involved, an impact assessment, recommendations and corrective measures to be taken. The management body should follow up on the findings of the internal control functions in a timely and effective manner and require adequate remedial actions. A formal follow-up procedure on findings and corrective measures taken should be put in place.

## 11. Risk management framework

72. As part of the overall internal control framework, issuers of ARTs should have a holistic issuer-wide risk management framework extending across all their business lines and internal units, including internal control functions, recognising fully the economic substance of all their risk exposures including the risks the issuer of ARTs poses to itself, the holders of assets, operational risks and risks resulting from the reserve of assets.
73. The risk management framework should enable the issuer of ARTs to make fully informed decisions on all risks they are or might be exposed to including ICT risks in accordance with Regulation (EU) 2022/2554 (DORA)<sup>15</sup> and Section 12. The risk management framework should encompass all risks, including actual risks and future risks that the issuer of ARTs may be

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<sup>15</sup>Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector: [Publications Office \(europa.eu\)](https://publications-office.europa.eu)

exposed to. Risks should be evaluated from the bottom up and from the top down, within and across business lines or internal units using consistent terminology and compatible methodologies throughout the issuer of ARTs and at a consolidated level where applicable. All relevant risks should be encompassed in the risk management framework with appropriate consideration given to both financial and non-financial risks, including concentration, operational, ICT, reputational, legal, conduct and ESG risks. Consideration should also be given to credit risk, market risk, concentration risk and liquidity risk resulting from the reserve assets.

74. An issuer of ARTs risk management framework should include policies, procedures, risk limits and risk controls ensuring adequate, timely and continuous identification, measurement or assessment, monitoring, management, mitigation and reporting of the risks at the business line, internal units, issuer and group level, where applicable.
75. An issuer of ARTs risk management framework should provide specific guidance on the implementation of risk strategies. This guidance should, where appropriate, establish and maintain internal limits consistent with the issuer's risk tolerance, risk appetite and be commensurate with its sound operation, operational resilience, financial strength, liquidity needs and strategic goals. An issuer of ARTs risk profile should be kept within the established limits. The risk management framework should ensure that, whenever breaches of risk limits occur, there is a defined process to escalate and address them with an appropriate follow-up procedure.
76. The risk management framework should be subject to independent internal review, e.g., performed by the internal audit function, and reassessed regularly against the issuer of ARTs risk tolerance and risk appetite.
77. Regular and transparent reporting mechanisms should be established so that the management body and all relevant units in the issuer of ARTs are provided with reports in a timely, accurate, concise, understandable and meaningful manner and can share relevant information about the identification, measurement or assessment, monitoring and management of risks. The reporting framework should be well defined and documented.
78. Effective communication and awareness regarding risks and the risk strategy is crucial for the whole risk management process, including the review and decision-making processes, and helps preventing decisions that may unknowingly increase risk levels. Effective risk reporting involves sound internal consideration and the communication of the risk strategy and relevant risk data both horizontally across the issuer of ARTs and up and down the management chain.

## 12. Operational risk management and operational resilience

79. An issuer of ARTs should have an adequate operational risk management framework and operational resilience framework. This includes effective policies and processes to:
  - a. identify, assess, evaluate, monitor, report and mitigate operational risk on a timely basis; and

- b. identify and protect themselves from threats and potential failures, respond and adapt to, as well as recover and learn from, disruptive events to minimise their impact on delivering critical or important functions<sup>16</sup>.
80. An issuer of ARTs management body should, as part of the risk management framework, approve strategies, policies and processes for the management of operational risk and operational resilience, including the risk appetite for operational risk framework and the risk tolerance for disruption of critical or important functions<sup>17</sup>. Those strategies, policies and processes should be periodically reviewed and updated as appropriate.
81. The management body ensures that these policies and processes are implemented effectively, fully integrated into the issuer of ARTs' overall risk management framework, including the risk in relation of the use of third-party entities, and effectively communicated to relevant staff.
82. An issuer of ARTs should clearly assign the responsibilities for the assessment and management system for operational risk and operational resilience.
83. An issuer of ARTs should identify its exposures to operational risk, track relevant operational risk data, including material loss data, and perform scenario-analysis.
84. Issuer of ARTs should identify its critical operations, consistently with its operational resilience approach, and map the people, technology, processes, data, facilities, third-parties, including intragroup entities, and the interconnections and interdependencies among them that are necessary for the delivery of critical or important functions in a business-as-usual situation and through disruption.
85. The operational risk and operational resilience management framework should be subject to regular reviews performed by internal or external auditors that possess the knowledge necessary to carry out such reviews. The operational risk management framework and the operational resilience framework should be structured with sufficient and adequate human and technical resources. The issuer of ARTs' operational risk assessment system and operational resilience framework should be fully integrated into the risk management framework of the issuer.
86. A system of reporting to management body that provides for adequate operational risk and operational resilience reports from relevant functions within the issuer of ARTs should be implemented. The issuer of ARTs should have in place procedures for taking appropriate actions without delay, as relevant.
87. The issuer of ARTs should identify and assess the operational risk inherent to the issuer of ARTs activities, processes and systems to make sure the inherent risks are well understood.

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<sup>16</sup> BCBS Principles for Operational Resilience, March 2021, <https://www.bis.org/bcbs/publ/d516.pdf>

<sup>17</sup> Tolerance for disruption is the level of disruption from any type of operational risk an issuer is willing to accept given a range of severe but plausible scenarios.

88. Considering Title I on the application of the principle of proportionality, issuer of ARTs should identify, analyse and measure a range of scenarios, including low probability and high severity events, some of which could result in severe operational risk losses. Inputs to the scenario analysis include relevant internal and external loss data, information from self-assessments, expert opinion, the internal control framework, forward-looking metrics, root-cause analyses and the process framework, as appropriate. The scenario analysis process should be used to develop a range of consequences of potential events, including impact assessments for risk management purposes, supplementing other tools based on historical data or current risk assessments.
89. Considering Title I, issuers of ARTs may use qualitative risk assessment approaches, while issuers of significant ARTs should have a more sophisticated approach, including, where available, the use of internal and external loss data to inform the scenario analysis.

## 12.1 New product, system and process approval

90. The issuer of ARTs should have policies and procedures for the assessment and approval of new products, processes, and systems, including on the new issuance of ARTs and related processes and systems.
91. The approval process should consider all the risks, including legal and ICT risks, in the launch of new products and in the implementation of new processes and systems, and include risks related to people, processes, systems and external events.
92. The approval process should also consider effects on the delivery of critical or important functions and on their interconnections and interdependencies as well as changes to the issuers of ARTs' operational risk profile, including changes to the risk related to existing products or activities, the necessary internal controls, risk management processes, and risk mitigation.
93. The issuer of ARTs should ensure the assessment of the evolution of risks associated with new products, systems and processes over time throughout the full life cycle of a product, activities or services.
94. The issuers of ART should have a strong internal control system in accordance with Title V also with regard to new products, processes and systems to ensure that the issuer of ARTs has efficient and effective operations; safeguard its reserve of assets; produce reliable information and comply with applicable laws and regulations.

## 12.2 ICT risk management

95. Issuers of ARTs should establish an ICT risk management framework in line with the requirements defined under Regulation (EU) 2022/2554. In this regard, issuers of ARTs should have in place an internal governance and control framework that ensures an effective and prudent management of ICT risks in order to achieve a high level of digital operational resilience.<sup>18</sup>

## 12.3 Arrangements with third-party entities for operating the reserve of assets, for the investment of the reserve assets, the custody of the reserve assets, or the distribution of the asset-referenced tokens to the public

96. The management body of an issuer of ARTs that has arrangements in place with third-party entities for operating the reserve of assets, for the investment of the reserve assets, the custody of the reserve assets, or, where applicable, for the distribution of the asset-referenced tokens to the public or plans on entering into such arrangements should approve, regularly review and update a policy on the requirements for operational reliance of these third-party entities and ensure their implementation at an individual and, as applicable, group wide basis.

97. This policy should include the main phases of the life cycle of these third-party arrangements and define the principles, responsibilities and processes in relation to the use of third-party. In particular, the policy should cover at least:

- a. the responsibilities of the management body including its involvement, as appropriate, in the decision-making;
- b. the involvement of business lines, internal control functions and other individuals in respect of those arrangements;
- c. the planning and structuring of third-party arrangements, including the definition of business requirements regarding the use of third-parties.
- d. risk identification, assessment and management in accordance with Section 11;
- e. due diligence checks on prospective third-parties;
- f. policies and procedures to identify, prevent, manage and disclose conflicts of interest, in line with Article 32 of Regulation (EU) 2023/1114;
- g. business continuity planning and exit strategies to ensure the issuer of ARTs' operational resilience in the event of a failure or disruption at a third-party entity

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<sup>18</sup> Please refer to Regulation (EU) 2022/2554, OJ L 333, 27.12.2022, p. 1–79



impacting the provision of critical operations. The issuer of ARTs' business continuity and exit plans should assess the substitutability of the third-party entity that it uses for critical operations, and other viable alternatives that may facilitate operational resilience in the event of an outage at a third-party entity such as bringing the activity back in-house;

- h. the approval process of new arrangements;
  - i. the implementation, monitoring and management of those arrangements, including the ongoing assessment of the third-party entities' performance to ensure that the relationship remains within the issuer of ARTs' risk appetite and tolerance for disruption of critical operations and core business lines;
  - j. the procedures for being notified and responding to changes to an arrangement by third-party entities;
  - k. the independent review and audit of compliance with legal and regulatory requirements and policies;
  - l. the renewal processes for arrangements with third-party entities;
  - m. the documentation and record-keeping; and
  - n. the exit strategies and termination processes, including a requirement for a documented exit plan for each arrangement with a third-party entity, where such an exit is considered possible, taking into account possible service interruptions or the unexpected termination of an agreement.
98. Issuers of ARTs should assess the potential impact of arrangements with third-party entities on their operational risk and operational resilience, in accordance with section 12, and should take into account the assessment results when deciding, if a function should be performed by a third-party entity and should take appropriate steps to avoid undue additional operational risks before entering into these arrangements.
99. Within the risk assessment, issuer of ARTs should also take into account the expected benefits and costs of the proposed arrangement, including weighing any risks that may be reduced or better managed against any risks that may arise as a result of the proposed arrangement, taking into account at least the measures implemented by the issuer of ARTs and by the service provider to manage and mitigate those risks.
100. When carrying out the risk assessment prior to the reliance on third-party entity and during ongoing monitoring of the third-party entity's performance, issuer of ARTs should, at least:
- a. identify and classify the relevant functions and related data and systems as regards their sensitivity and criticality and required security measures;

- b. conduct a thorough risk-based analysis of the functions and related data and systems that are being considered for the arrangement and address the potential risks, in particular the operational risks, including subcontracting, legal, ICT, compliance and reputational risks, and the oversight limitations related to the countries where the services are or may be provide;
  - c. consider the geographic dependencies and management of related risks. These risks may relate to the economic, financial, political, legal and regulatory environment in the jurisdiction(s) where the relevant service will be.
101. Before entering into an arrangement with a third-party and considering the risks, including operational risks and counterparty risk, issuers of ARTs should ensure in their selection and assessment process that the third-party entity is suitable.
102. Issuers of ARTs should ensure that the third-party entity has an adequate business reputation, appropriate and sufficient abilities, the expertise, the capacity, the resources (e.g. human, IT, financial), the organisational structure and, if applicable, the required regulatory authorisation(s) or registration(s) to perform the function in a reliable and professional manner to meet its obligations over the duration of the draft contract.
103. Additional factors to be considered when conducting due diligence on a potential third-party entity include, but are not limited to:
- a. its business model, nature, scale, complexity, financial situation, ownership and group structure;
  - b. the long-term relationships with the third-party entity that have already been assessed and perform services for the issuer of ARTs;
  - c. the level of substitutability of the service and service provider including the ability to exit the third-party arrangement and either transition to another service provider or bring the critical service back in-house or the potential impact of such substitution on the issuer of ARTs' critical operations;
  - d. whether or not the third-party entity is supervised by competent authorities.
104. Issuers of ARTs should take appropriate steps to ensure that the third-party act in a manner consistent with their values and code of conduct.
105. Issuers of ARTs should ensure at all times that the third party they use to distribute ARTs to the public complies with the procedures ensuring the compliance with the obligations in relation to the prevention of money laundering and terrorist financing under Directive (EU) 2015/849 and, where applicable, Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets. The third-party entity should in its internal control systems ensure a continuous compliance with the obligations in relation to the prevention of money laundering and terrorist financing under Directive (EU) 2015/849 and, where applicable,

Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets.

## 13. Internal control functions

106. The internal control functions should include an effective and permanent internal compliance function, and where appropriate and proportionate, taking into account the criteria listed in Title I, a risk management function and an internal audit function. Where issuers of ARTs do not establish and maintain a risk management function and an internal audit function, they should be able to demonstrate upon request that the policies and procedures adopted and implemented for an internal control framework effectively achieve the same outcome as the guidelines provided in this Title V.

107. Issuers of significant ARTs are encouraged to establish internal risk management and internal audit functions. Where the issuer of ARTs does not establish an internal risk management function (RMF) or internal audit function (IAF), the responsibilities of these functions as set out in these guidelines are with the management body, who may delegate the operational tasks internally or externally to a third-party provider, e.g. in form of an outsourcing arrangement<sup>19</sup>.

### 13.1 Heads of the internal control functions

108. Heads of internal control functions should be established at an adequate hierarchical level that provides the head of the control function with the appropriate authority and stature needed to fulfil his or her responsibilities. The head of compliance and, where established, the heads of the risk management and internal audit functions should report and be directly accountable to the management body, and their performance should be reviewed by the management body.

109. Where necessary, the heads of internal control functions should be able to have access and report directly to the management body in its supervisory function to raise concerns and warn the supervisory function, where appropriate, when specific developments affect or may affect the issuer of ARTs. This should not prevent the heads of internal control functions from reporting within the regular reporting lines as well.

110. Issuers of ARTs should have documented processes in place to assign the position of the head of an internal control function and for withdrawing his or her responsibilities. In any case, the heads of internal control functions should not be removed without the prior approval of the management body in its supervisory function where it is established.

### 13.2 Independence of internal control functions

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<sup>19</sup> The outsourcing of operational tasks of compliance may still be possible.

111. In order for the internal control functions to be regarded as operating independently, the following conditions should be met:
- a. their staff do not perform any operational tasks that fall within the scope of the activities the internal control functions are intended to monitor and control unless it is demonstrated that, in view of the criteria listed in Title I for the application of the proportionality principle, the internal control functions continue to be effective. In that case, issuer of ARTs should assess whether the effectiveness of their internal control functions is compromised.
  - b. Where appropriate, they are organisationally separate from the activities they are assigned to monitor and control;
  - c. the remuneration of the internal control functions staff should not be linked to the performance of the activities the internal control function monitors and controls and should not otherwise be likely to compromise the staff members' objectivity<sup>20</sup>.

### 13.3 Resources of internal control functions

112. Internal control functions should have sufficient resources. Taking into account the application of the proportionality principle as set out in Title I, they should have an adequate number of qualified staff with adequate skills, knowledge and experience. Staff should remain qualified on an ongoing basis and should receive training as necessary.
113. Internal control functions should have appropriate ICT systems and support at their disposal, with access to the internal and external information necessary to meet their responsibilities. They should have access to all necessary information regarding all business lines and relevant risk-bearing subsidiaries, in particular those that can potentially generate material risks for the issuer of ARTs.

## 14. Risk management function

114. Where established, the risk management function (RMF) should cover the whole issuer of ARTs. The RMF should have sufficient authority, stature and resources, taking into account the proportionality criteria listed in Title I, to implement risk policies and the risk management framework as set out in Section 11.
115. The RMF should have, where necessary, direct access to the management body in its supervisory function, where established.

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<sup>20</sup> See also the EBA guidelines on sound remuneration policies, available at <https://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-sound-remuneration-policies>.

116. The RMF should have access to all business lines and other internal units that have the potential to generate risk.
117. Staff within the RMF should possess sufficient knowledge, skills and experience in relation to risk management techniques and procedures, and markets and products, and should have access to regular training.
118. Where established, the RMF should be a central organisational feature of the issuer of ARTs, structured so that it can implement risk policies and control the risk management framework. The RMF should play a key role in ensuring that the issuer of ARTs has effective risk management processes in place. The RMF should be actively involved in all material risk management decisions. Where applicable, in a group, the RMF in the Union parent undertaking should be able to deliver a group-wide holistic view on all risks and to ensure that the risk strategy is complied with.
119. The RMF should provide relevant independent information, analyses and expert judgement on risk exposures, and advice on proposals and risk decisions made by business lines or internal units, and should inform the management body as to whether such information and advice is consistent with the issuer of ARTs risk profile. The RMF may recommend improvements to the risk management framework and corrective measures to remedy breaches of risk policies, procedures and limits.

### 14.1 RMF's role in risk strategy and decisions

120. The RMF's involvement in decision-making processes should ensure that risk considerations are taken into account appropriately. However, accountability for the decisions taken should remain with the business and internal units, and ultimately the management body.

### 14.2 RMF's role in material changes

121. Before decisions on material changes to products, processes or systems or on exceptional transactions are taken, the RMF should be involved in the evaluation of the impact of such changes on the issuer of ARTs and should report its findings directly to the management body before a decision is taken.
122. The RMF should evaluate how the risks identified could affect the issuer of ART's ability to manage its risk profile and the risks linked to the reserve of assets.

### 14.3 RMF's role in identifying, measuring, assessing, managing, mitigating, monitoring and reporting on risks

123. The RMF should ensure an appropriate implementation of the risk management framework and that all risks are identified, assessed, measured, monitored, managed and properly reported on by the relevant units of the issuer of ARTs.
124. The RMF should ensure that identification and assessment are not based only on quantitative information or model outputs, but also take into account qualitative approaches. The RMF should keep the management body informed of the assumptions used in, and the potential shortcomings of, the risk quantification tools and methods, including models and analysis.
125. The RMF should ensure that transactions with related parties are reviewed and that the risks they pose for the issuer of ARTs are identified and adequately assessed.
126. The RMF should ensure that all identified risks are effectively monitored by the business or internal units.
127. The RMF should regularly monitor the actual risk profile of the issuer of ARTs and scrutinise it against the strategic goals and risk appetite and report the results to enable decision-making by the management body in its management function and challenges by the management body in its supervisory function.
128. The RMF should analyse trends and recognise new or emerging risks and increases in risk arising from changing circumstances and conditions. It should also regularly review actual risk outcomes against previous estimates (i.e. back testing) to assess and improve the accuracy and effectiveness of the risk assessment methods and risk management process.
129. The RMF should evaluate possible ways to mitigate identified risks. Risk reporting to the management body should include proposals for appropriate risk-mitigating actions.

### 14.4 RMF's role in risk appetite and limits

130. The RMF should independently assess breaches of risk appetite or limits. The RMF should inform the business or internal units concerned and the management body and recommend possible remedies. The RMF should report directly to the management body in its supervisory function when the breach is material, without prejudice for the RMF to report to other internal functions.
131. The RMF should play a key role in ensuring that a decision on its recommendation is made at the relevant level, complied with by the relevant business units and appropriately reported to the management body and, where established, the risk committee.

## 14.5 Head of the risk management function

132. Where established, the head of the RMF should be responsible for providing comprehensive and understandable information on risks and advising the management body, enabling this body to understand the issuer of ARTs overall risk profile. Where no independent function has been established, the responsibilities of the head of the risk management function lie with the staff to whom the risk management procedures are entrusted or the members of the management body directly.
133. The head of the RMF should have sufficient expertise, independence and seniority to challenge decisions that affect an issuer of ARTs' exposure to risks. Where the head of the RMF is not a member of the management body, taking into account the principle of proportionality as set out in Title I, issuer of ARTs should appoint an independent head of the RMF who has no responsibilities for other functions and reports directly to the management body. Where it is not proportionate to appoint a person who is dedicated only to the role of head of the RMF, taking into account the principle of proportionality as set out in Title I, this function can be combined with the head of the compliance function or can be performed by another senior person, provided there is no conflict of interest between the tasks performed. In any case, this person should have sufficient authority, stature and independence (e.g. head of legal).
134. The head of the RMF should be able to challenge decisions taken by the issuer's management and its management body, and the grounds for objections should be formally documented. If an issuer of ARTs wishes to grant the head of the RMF the right to veto decisions (e.g., a credit or investment decision or the setting of a limit) made at levels below the management body, it should specify the scope of such a veto right, the escalation or appeal procedures, and how the management body will be involved.
135. Issuers of ARTs should establish strengthened processes for the approval of decisions on which the head of the RMF has expressed a negative view. In its supervisory function, the management body should be able to communicate directly with the head of the RMF on key risk issues, including developments that may be inconsistent with the issuer of ARTs' risk strategy and risk appetite and the head of the RMF should be able to directly report material concerns to the management body in its management function.

## 15. Compliance function

136. Issuers of ARTs should establish a permanent and effective compliance function to manage compliance risk and should appoint a person to be responsible for this function across all the activities of entity (the compliance officer).
137. The role of compliance officer, taking into account the principle of proportionality as set out in Title I, can be combined with the head of the RMF or, where it is not proportionate to appoint a person who is dedicated only to this function, can be performed by another senior

person (e.g. head of legal), provided there is no conflict of interest between the tasks performed.

138. Staff within the compliance function should possess sufficient knowledge, skills and experience in relation to compliance and relevant procedures and should have access to regular training.
139. The management body in its supervisory function should oversee the implementation of a well-documented compliance policy, which should be communicated to all staff. Issuers of ARTs should set up a process to regularly assess changes in the law and regulations applicable to its activities.
140. The compliance function should advise the management body on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should assess the possible impact of any changes in the legal or regulatory environment on the issuer of ARTs' activities and compliance framework.
141. The compliance function should ensure that compliance monitoring is carried out through a structured and well-defined compliance monitoring programme and that the compliance policy is observed. The compliance function should report to the management body and communicate as appropriate with the RMF on the issuer of ARTs' compliance risk and its management. The compliance function and the RMF should cooperate and exchange information as appropriate to perform their respective tasks. The findings of the compliance function should be taken into account by the management body and the RMF in decision-making processes.
142. Issuer of ARTs should take appropriate action against internal or external behaviour that could facilitate or enable fraud or financial crime and breaches of discipline (e.g. breaches of internal procedures or breaches of limits).

## 16. Internal audit function

143. Where established, the internal audit function (IAF) should be independent and have sufficient authority, stature and resources. In particular, issuers of ARTs should ensure that the qualification of the IAF's staff members and the IAF's resources, in particular its auditing tools and risk analysis methods, are adequate for the issuer of ARTs size and locations, and the nature, scale and complexity of the risks associated with the issuer of ARTs' business model, activities, risk culture and risk appetite.
144. The IAF should be independent of the audited activities. Therefore, the IAF should not be combined with other functions.
145. The IAF should, following a risk-based approach, independently review and provide objective assurance of the compliance of all activities and units of an issuer of ARTs, including



the use of third-party entities, with the issuer of ARTs' policies and procedures and with external regulatory requirements.

146. The IAF should not be involved in designing, selecting, establishing or implementing specific internal control policies, mechanisms, procedures or risk limits. However, this should not prevent the management body in its management function from requesting input from internal audit on matters relating to risk, internal controls and compliance with applicable rules.
147. The IAF should assess whether the issuer of ARTs' internal control framework as set out in Title V is both effective and efficient. In particular, the IAF should assess:
- a. the appropriateness of the issuer of ARTs' governance framework;
  - b. whether existing policies and procedures remain adequate and comply with legal and regulatory requirements and with the risk strategy and risk appetite of the issuer of ARTs;
  - c. the compliance of the procedures with the applicable laws and regulations and with decisions of the management body;
  - d. whether the procedures are correctly and effectively implemented (e.g. compliance of transactions, the level of risk effectively incurred, etc.); and
  - e. the adequacy, quality and effectiveness of the controls carried out and the reporting conducted by the business units (first line of defence) and the risk management and compliance functions.
148. The IAF should verify, in particular, the integrity of the processes ensuring the reliability of the issuer of ARTs' methods and techniques for risk quantification, including models. It should also evaluate the quality and use of qualitative risk identification and assessment tools and the risk mitigation measures taken.
149. The IAF should review the adequateness of the processes for the development of white papers, their approval and the processes how ARTs are offered to the public.
150. The IAF should have unfettered issuer-wide access to all the records, documents, information and buildings of the issuer of ARTs. This should include access to management information systems and minutes of all committees and decision-making bodies.
151. The IAF should adhere to national and international professional standards. An example of the professional standards referred to here is the standards established by the Institute of Internal Auditors.
152. Internal audit work should be performed regularly in accordance with an audit plan and a detailed audit programme following a risk-based approach.

153. An internal audit plan should be drawn up at least once a year on the basis of the annual internal audit control objectives. The internal audit plan should be approved by the management body.
154. All audit recommendations should be subject to a formal follow-up procedure by the appropriate levels of management, communicated to the management body of the issuer of ARTs and made available to the competent authority to ensure and report on their effective and timely resolution.

## Title VI – Business continuity management

155. Without prejudice to the applicable requirements under DORA, issuers of ARTs should establish, as part of the implementation of their business continuity policy and plans established in accordance with Article 34 (9) of Regulation (EU) 2023/1114, a sound business continuity management and response and recovery plans to ensure their ability to operate on an ongoing basis, to manage incidents that could disrupt the delivery of critical operations in line with the issuer of ARTs' risk appetite and tolerance for disruption, and to limit losses and disruption to service provision in the event of severe business disruption. Issuers of ARTs may establish a specific independent business continuity function taking into account the proportionality criteria listed in Title I.
156. An issuer of ARTs relies on several critical resources (e.g. IT systems, including cloud services, communication systems, core staff and buildings). The purpose of business continuity management is to reduce the operational, financial, legal, reputational and other material consequences arising from a disaster or extended interruption to these resources and consequent disruption to the issuer of ARTs' ordinary business procedures. Other risk management measures might be intended to reduce the probability of such incidents or to transfer their financial impact to third-parties (e.g. through insurance).
157. In order to establish a sound business continuity management plan, an issuer of ARTs should carefully analyse risk factors for, and its exposure to, severe business disruptions and assess (quantitatively and qualitatively) their potential impact, using internal and/or external data and scenario analysis. This analysis should test the issuer of ARTs' ability to deliver critical operations through disruption and should cover all business lines and internal units, including the RMF or risk management procedures, and should take into account their interdependency. The results of the analysis should contribute to defining the issuer of ARTs recovery priorities and objectives.
158. On the basis of the abovementioned analysis, an issuer of ARTs should put in place:
- a. contingency and business continuity plans to ensure that the issuer of ARTs reacts appropriately to emergencies and is able to deliver critical operations and maintain essential data if there is disruption to its ordinary business procedures;

- b. recovery plans for critical resources and critical or important functions<sup>21</sup> to recover from disruption and enable the issuer of ARTs to return to ordinary business procedures in an appropriate timeframe. Any residual risk from potential business disruptions should be consistent with the issuer of ARTs' risk appetite;
- c. for other activities, or where the continuity of critical essential functions is impossible to ensure, issuers of ARTs should have in place procedures for the timely recovery of data and functions and the timely resumption of their activities.

159. Contingency, business continuity and recovery plans should be documented and carefully implemented. The documentation should be available within the business lines, internal units and RMF for staff in charge of risk management procedures and should be stored on systems that are physically separated and readily accessible in case of contingency. Appropriate training should be provided. Plans should be regularly tested and updated. Any challenges or failures occurring in the tests should be documented and analysed, with the plans reviewed accordingly.

## Title VII – Transparency

160. Strategies, policies and procedures should be communicated to all relevant staff throughout the issuer of ARTs. Staff should understand and adhere to policies and procedures pertaining to their duties and responsibilities.

161. Accordingly, the management body should inform and update the relevant staff about the issuer of ARTs' strategies and policies in a clear and consistent way, at least to the level needed to carry out their particular duties. This may be done through written guidelines, manuals or other means.

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

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 (European Banking Authority) (EBA Regulation)<sup>22</sup> provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis presents the IA of the main policy options included on the Guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens under MICAR.

Regulation (EU) No 2023/1114 sets out a new legal framework for issuers of ARTs laying down governance arrangements requirements. Namely, issuers of ARTS should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or to which they might be exposed to.

#### A. Problem identification

Regulation (EU) No 2023/1114 sets out governance arrangement requirements to be implemented by issuers of ARTs. While crypto assets can bring opportunities in terms of innovative digital services, their interconnectedness with the traditional financial system is also increasing, posing risks to crypto-asset activities, financial institutions, consumers, investors and to the financial stability. Trust in the reliability of the financial system is crucial for its proper functioning and a prerequisite if it is to contribute to the economy as a whole.

Against this background, effective internal governance arrangements are fundamental if entities individually and the financial system they form are to operate well. Against this backdrop, and to ensure the level playing field across the Union and cross sectoral consistency within the financial sector, there is a clear need to address any gaps that may exist regarding the implementation of sound internal governance arrangements by issuers of ARTs.

#### B. Policy objectives

The Guidelines aim at further specifying the governance arrangements for issuers of ARTs tailored to their business model and taking into account the application of the principle of proportionality with the aim to foster harmonisation and to ensure level playing field across the EU and sound and prudent management of the concerned supervised entities.

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<sup>22</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1093>

When issuing these guidelines, EBA shall take into account the provisions on governance requirements in other Union legislative acts on financial services, including Directive 2014/65/EU.

## C. Baseline scenario

In a baseline scenario, there would be no harmonisation of the governance arrangements to be implemented by issuers of ARTs that are not authorised as credit institutions. Credit institutions that intend to issue or issue ARTs are already subject to stricter governance requirements under Directive 2013/36/EU. The uneven playing field between issuers of ARTs would ultimately result in diverging approaches.

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

## D. Options considered, Cost-Benefit Analysis, Preferred options

Section D presents the main policy options discussed and the decisions made during the drafting of the Guidelines. Advantages and disadvantages of the policy options and the preferred options resulting from this analysis are assessed below.

### **Policy issue 1: Distinguishing between the different types of issuers (issuers that are credit institutions and the other legal entities that are not authorised as credit institutions)**

The EBA considered two policy options as to the development of the mandate conferred by Regulation (EU) No 2023/1114.

**Option 1:** Not distinguishing between different type of issuers (credit institution and other legal persons that are not credit institutions);

**Option 2:** Distinguishing between different type of issuers (credit institution and other legal persons that are not credit institutions)

Option 1 envisages applying the same guidelines to all the entities, whether they credit institutions or not, but does not take into account that credit institutions are already subject to stricter requirements under Directive 2013/36/EU and therefore have already the governance arrangements in place, even if these arrangements should also be adapted to the issuance of ARTs. Option 2 has the advantage of taking into account this distinction between entities. For the entities other than credit institutions, the guidelines further specify the requirements to put in place in order to harmonise the practices and create a level playing field.

In the light of the above, Option 2 ensures to achieve the pursued goal of efficient rulemaking and avoidance of uneven level playing field. At the same time this approach allows to appropriately reflect the differences between the different types of issuers. In addition, Option 2 allows a more orderly drafting of these Guidelines with benefits in terms of legal clarity and ensure consistency between different types of regulatory products.

Option 2 has therefore been chosen as the preferred option.

### **Policy issue 2: Consistency with the existing cross-sectoral regulation (IFD and MiFID)**

The cross-sectoral harmonisation and the achievement of the highest consistency with MiFID as referred to in the mandate under Article 34(13) of MiCAR and with IFD is a policy objective of these guidelines. For this purpose, two policy options have been considered.

**Option 1:** develop the Guidelines via cross-references to the EBA Guidelines for investment firms under IFD and the MiFID framework;

**Option 2:** develop the Guidelines by taking into account the EBA Guidelines for investment firms under IFD and the MiFID framework and tailoring them to the specificities of issuers of ARTs.

Both Options 1 and 2 ensure consistency with the investment firm framework. Option 1 has the advantage of the highest alignment with the investment firm framework, which is already known by the market operators and by the CAs. As the overlap between investment firms and issuers of ARTs is not expected to be large, this advantage is not particularly prominent. Option 2 on the other hand has the advantage of having a full set of guidance in one document while taking into account crypto assets activities and in the particular the issuance of ARTs.

Option 2 has been chosen as the preferred option.

### **Policy issue 3: Guidelines on operational risk and operational resilience, the use of third-party entities and business continuity plans;**

**Option 1:** develop specific set of Guidelines tailored to issuers of ARTs;

**Option 2:** develop specific Guidelines by taking into account the requirements in other regulatory frameworks in particular CRD for operational risk, DORA for digital operational resilience, Basel for operational resilience and DORA and EBAs guidelines on outsourcing for business continuity plans to ensure cross sectoral consistency.

Regulation (EU) 2023/1114 contains requirements to further specify the minimum content on the monitoring tools regarding operational risk; the internal control mechanism for risk management, including with regard to the reliance on third-party entities for operating the reserve of assets, and for the investment of the reserve assets, the custody of the reserve assets and, where applicable, the distribution of the asset-referenced tokens to the public; and the business continuity policy and plans.

While the Guidelines provided follow in general the approach taken by the CRD to ensure a level playing field regarding operational risk management, additional guidelines have been provided

regarding operational resilience in line with Basel standards on operational resilience and with the use of third-party entities. A specific framework has also been defined regarding digital operational resilience and ICT business continuity plans under DORA by inserting cross references to DORA, since issuers of ARTs are within the scope of application.

While Option 1 would ensure taking into account the specificities of the business of issuers of ARTs, Option 2 has the advantage of both ensuring cross sectoral consistency while taking into account crypto asset activities specificities.

Option 2 has been chosen as the preferred option.

**Policy issue 4: Additional guidelines on internal control framework and the three lines of defense;**

**Option 1:** requiring issuers of ARTs to set up three independent functions (compliance, risk management and internal audit functions)

**Option 2:** establishing a more proportionate approach, also to be consistent with the MiFID framework: issuers of ARTs should set up a permanent and effective compliance function; are not required to set up an internal risk management function, where justified, but should implement policies and processes to achieve the same objectives; should have a sound and effective internal control framework.

Option 1 is more conservative but does not lead to greater sectoral consistencies and is not proportionate. It would cause additional costs to establish a sound internal control framework and to ensure the independence of the internal control functions.

Option 2 on the other hand would create consistency between the MiFID and IFD frameworks. By implementing policies and processes to achieve the same objectives, issuers of ARTs would still benefit from an effective framework, which would lead to a better alignment of the risk profile with risk appetite as set by the management body.

Therefore Option 2 was retained.

**Policy issue 5: Guidelines on third party risk management including outsourcing;**

**Option 1:** provide no further guidance.

**Option 2:** develop specific guidelines as part of sound governance arrangements by taking into account the requirements in other regulatory frameworks (MiFID in particular).

Option 1 allows ARTs issuers to develop their own internal frameworks on third party risk management and outsourcing. At the same time, this approach may create inconsistencies as there have been already developed regulatory requirements for credit Institutions that potentially issue

ARTs. In addition, MiCAR article 73, provides specific requirements on outsourcing activities or services only for CASPs.

Option 2 bridges the gap and ensures regulatory consistency on third party risk management and outsourcing as part of sound governance arrangements. In particular, financial sector regulations e.g. MiFID, CRD and IFD define such requirements for the use of outsourcing and third party risk management. Thus, Option 2 secures a level playing field among the different financial institution types which potentially issue ARTs.

Therefore, Option 2 has been chosen as the preferred option.

### E. Cost-benefit analysis

Overall, the guidelines are assessed to bring more benefits than costs to the main stakeholders (See table 1). The guidelines are proportionate and tailored to the issuers of ARTs’ business model and take into account that some of the issuers may be authorised as credit institutions therefore already subject to strict requirement on governance arrangements.

Table 1. Costs and benefits of the guidelines

Stakeholders	Costs	Benefits
ART issuers that are not authorised as credit institutions	Cost of compliance, due to the need to fulfil the requirements if not previously applied	Clarity of requirements, leading to better and sounder management of the issuer of ARTs, as well as harmonisation within the EU and consistency across sectors. The guidelines are proportionate to the issuers of ARTs business model, ensuring that the specifics of their business is taken into account.
Clients of ART issuers	None	Increased confidence in the issuers of ARTs and the financial system



## 5.2 Feedback on the public consultation

### Summary of key issues and the EBA's response

The EBA published its consultation paper on 20 October 2023 and received overall 8 responses; 7 of them were published, while the other has been submitted on a confidential basis. The consultation concerned the whole draft guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens.

The main comments received challenged the nature of the guidelines, which – according to some respondents – should be more prescriptive or compulsory in some cases. One respondent suggests that the guidelines should rely primarily on the significance of ARTs instead of factoring all the criteria.

In addition, some respondents suggest that the criteria on principle of proportionality should be more flexible and, in some cases, the Guidelines should include more clarification or concrete examples on how to apply those criteria.

Finally, some respondents require more clarification on the risk management functions. In particular, there were some comments regarding the framework of dedicated control functions and the applicable outsourcing regime of control functions.

A detailed analysis of the comments received is included in the feedback table below.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
Proportionality: Documentation requirements	One respondent suggests that the principle of proportionality should be applied to the documentation requirements.	Title I (par.14) already clarifies that all provisions within the guidelines are subject to the principle of proportionality, meaning that they are to be applied in a manner that is appropriate, taking into account in particular the issuer of ARTs' internal organisation and nature, the volume of ARTs that will be offered to the public or admitted to trading, and the complexity of its activities.	No change
Comply or explain procedure	One respondent suggests that potential consequences should be clarified if CAs declare themselves as non-compliant with the proposed framework.	The consequences are specified in Article 16 of the EBA Founding Regulation. Within 2 months of the issuance of guidelines, each competent authority shall confirm whether it complies or intends to comply with that guideline. In the event that a competent authority does not comply or does not intend to comply, it shall inform EBA, stating its reasons. EBA shall publish the fact that a competent authority does not comply with that guideline and may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that guideline. In any case, competent authorities (and financial institutions) shall make every effort to comply with the guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Responses to questions in Consultation Paper EBA/CP/2023/23</b>			
<b>Q1. Is the background section providing the needed context with regard to the mandate to issue GL on internal Governance under MiCAR?</b>			
General comments	One respondent suggests that the “ <i>Background and rationale</i> ” section should be considered as context only and not as an invitation for CAs or controlling bodies to impose stricter rules than those in MiCAR.	“ <i>Background and rationale</i> ” provides the general explanation and context for the issuance of the Guidelines, they do not themselves form part of the Guidelines that will be implemented by CAs.	No change
3. Background and rationale Para. 4 ESG Risk factors	<p>One respondent suggests that guidelines should not go beyond the requirements for identification and disclosures of climate related adverse impacts set out in MiCA. In particular, MiCA does not outline a disclosure requirement for the “<i>measures taken to reduce the impact caused</i>” on the climate and other environmental aspects by the consensus mechanism used for the validation of transactions.</p> <p>In this context, the respondent suggests the following rewording of para. 4:</p> <p><i>“In the same way, issuers of ARTs should take into account environmental, social and governance (ESG) risk factors within their risk management framework. The consensus mechanisms used for the validation of transactions in crypto-assets have, due to their energy consumption, potentially material adverse impacts on the climate and other environment aspects. In this regard, it should be</i></p>	<p>Articles 19(1)(h) of MiCA introduces disclosure requirements related to principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue asset referenced tokens, as part of the white papers. Article 19(11) requires ESMA, in cooperation with EBA, to develop draft regulatory technical standards on the content, methodologies and presentation of information referred to in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts. The guidelines have been clarified.</p>	Guidelines amended

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	<p><i>ensured that any material adverse impact that they might have on the climate, and any other material environment-related adverse impact, are adequately identified and disclosed by issuers of ARTs, together with <b>any relevant</b> information on measures taken to reduce the impact caused, if available."</i></p>		
<p><b>Q2. Is the subject matter, scope, and definitions section appropriate and sufficiently clear?</b></p>			
<p>General comment</p>	<p>One respondent suggests that the definition of commonly understood concepts of the financial industry (e.g., compliance, risk management...) should be either redefined or refer to already existing definitions.</p>	<p>Risk management is already referred to in MiCAR. Guidelines specify in detail the risk management framework and internal control functions (including the compliance function). Those concepts are deemed sufficiently clear and it is beyond the scope of the guidelines to define commonly used concepts.</p>	<p>No change</p>
<p>Definition of operational resilience</p>	<p>One respondent suggests that more clarity on the definition of operational resilience is needed.</p>	<p>The definition is based on the 2022 Basel Committee on Banking Supervision's Principles for operational resilience and the Principles for the sound management of operational risk.</p>	<p>No change</p>
<p><b>Q3. Is the Title on proportionality appropriate and sufficiently clear?</b></p>			
<p>Para. 15 Proportionality</p>	<p>One respondent suggests that principle of proportionality should be turned into an obligation</p>	<p>The principle of proportionality is a general principle of law and also referred to in MiCAR that also applies</p>	<p>No change</p>

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	<p>to avoid over-regulation and overly strict requirements.</p> <p>Similarly, the same respondent suggests that the elements to consider when establishing the level of proportionality must always be taken into consideration to avoid discrepancies between the various regulators.</p>	<p>to the EBA Guidelines. It entails, that all provisions are applied in a proportionate way.</p>	
<p>One respondent suggests that the guidelines should rely primarily on the significance of ARTs (i.e., significant or non-significant) instead of factoring all the criteria listed in Title I to avoid downward biased evaluation.</p>		<p>The governance arrangements should be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the issuer of ARTs.</p> <p>This section further specifies how to take into account criteria for the application of the proportionality principle.</p> <p>This is not an exhaustive list, and an issuer of ARTs may also consider a combination of these criteria. When applying these criteria, issuers of ARTs should also be able to demonstrate to their CA that they are relevant to their businesses.</p> <p>The criteria listed further specify the principle of proportionality, are non-exhaustive and fully relevant to issuers of ARTs.</p>	No change
<p>One respondent suggests that a <i>de minimis</i> threshold should be included for small issuers of ARTs. This would encourage/incentivise innovation without increasing risks or reducing consumer protection or financial stability.</p>		<p>The criteria listed further specify the principle of proportionality, are non-exhaustive and fully relevant to issuers of ARTs.</p>	No change

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	<p>One respondent suggests a more flexible approach of the proportionality criteria. In particular, paragraph 15 (j) provides for the issuers of ARTs to take into account <i>whether cross borders activities are provided and the size of the operations in each jurisdiction</i>. It may be challenging for issuers of ARTs to determine the size of operations in each jurisdiction once the crypto asset enters a secondary market. In this context, the following amendment of para. 15 is proposed:</p> <p><i>“For the purpose of applying the principle of proportionality and to ensure the appropriate implementation of the governance requirements of Regulation (EU) 2023/1114 as further specified by these Guidelines, issuers of ARTs and competent authorities should take into account the following criteria: j. whether cross borders activities are provided and the size of the operations in each jurisdiction, <b>provided that this is operationally feasible to estimate</b>”</i></p>	<p>White paper for asset-referenced tokens must contain information about the offer to the public of the asset-referenced token or its admission to trading. Therefore, the issuer of ARTs should already be aware of those jurisdictions where it provides activities.</p>	No change
	<p>One respondent suggests that para. 15 (l) (i.e. the volume of reserve assets) should be expanded to include the quality of such assets.</p>	The comment has been accommodated.	Guidelines amended
	<p>One respondent suggests that a new proportionality criterion should be introduced to determine whether the ART refers to direct ownership of an asset, e.g. a physical asset (such as gold), or whether it secures a financial claim against the issuer of the token.</p>	The comment has been accommodated.	Guidelines amended

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	One respondent suggests that concrete examples or criteria should be included for applying proportionality in diverse scenarios.	The criteria listed further specify the principle of proportionality, but cannot provide specific examples for its application in diverse scenarios-	No change
Para. 16 Composition of the ART issuer management body by a single natural person	One respondent suggests that further clarification would be needed with regard to this reference, as Article 34 of MICAR seems to prefigure a collegial management body.	Pursuant to Article 16 of MiCAR, issuers of ART could be either any legal person or other undertaking that is established in the Union and has been authorised in accordance with Article 21, or a credit institution that complies with Article 17. In this respect, MiCAR does not predefines the composition of the management body of the legal person or undertaking, which would be specified by the applicable national company law.	No change
	One respondent suggests that a <i>de minimis</i> threshold should be introduced (including a combination of quantitative and qualitative criteria merits) in connection with the requirements applicable to management bodies of issuers of ARTs composed of a single natural person.	As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements in Directive 2014/65/E and the Guidelines on internal governance (EBA/GL/2021/14) to ensure a level playing field. In addition, para. 16 refers to “single natural person” in single managed firm .	No change
<b>Q4. Are the provisions in Title II regarding the management body appropriate and sufficiently clear?</b>			
Para. 24	One respondent suggests that the principle of proportionality should not be reinforced in such a	The Guidelines do not impose mandatory requirements which are not in MICA, but rather they specify those requirements and their application.	No change

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<p>Para. 31</p> <p>Supervisory function of the management body</p>	<p>way that it could be used to interpreted that this paragraph is mandatory (which is not, by its nature).</p> <p>One respondent seeks clarification as to whether the supervisory function of the management body includes the possible existence of a separate supervisory body. This is particularly relevant for companies which adhere to a two-tier system where the management body and supervisory board are separated.</p>	<p>Guidelines specify that they are intended to apply to all existing board structures without interfering with the general allocation of competences in accordance with national company law or advocating any particular structure. Accordingly, they should be applied irrespective of the board structure used (unitary or dual board structure or another structure) and across Member States.</p> <p>The guidelines further specify that the terms ‘management body in its management function’ and ‘management body in its supervisory function’ are used throughout these guidelines without referring to any specific governance structure, and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.</p> <p>When implementing these guidelines, competent authorities should take into account national company law and specify, where necessary, to which body or members of the management body these functions are allocated.</p>	No change
<p>Independent members of the management body</p>	<p>One respondent suggests that a minimum number of independent members of the management body should be introduced, especially for large ART issuers.</p>	<p>MiCAR does not impose such a requirement but requires that the Management body must be suitable. For issuers, such a requirement would not be in line with the principle of proportionality as issuers</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Q5. Are the provisions in Title III regarding the governance framework appropriate and sufficiently clear?</b>	<p>One respondent suggests that paragraph 38 should be more prescriptive about the complexity of the organization and should prohibit over-complexity in view of the contextual elements of the issuers of ARTs.</p>	<p>are not expected to have the same size and complexity of credit institutions. Therefore, the guidelines do not impose a minimum number of independent directors.</p>	No change
Para. 38	<p>One respondent suggests that the type of decisions subject to this requirement should be specified to avoid unjustly affecting the management body's right to manage the company.</p>	<p>As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034 to ensure a level playing field.</p>	No change
Para. 40	<p>One respondent suggests that the documentation of decision making should be an obligation, not an option.</p>	<p>This paragraph is not drafted as an option. Those decisions should be documented.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 41	One respondent suggests that this paragraph should set a minimum frequency for the review of the organisation, no more than once a year.	As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034 to ensure a level playing field.	No change
Para. 42 and para. 43 5. Organisational framework in a group context	One respondent suggests that the principle of proportionality should be applied in this section. If the business activities of the subsidiaries are of a different nature/sector, a uniform group application does not make sense.  The rules on applicable requirements to the group level should be based on proportionality and on the nature of the business of other group members.	As specified in the guidelines, this section applies to issuers of ARTs and their subsidiaries subject to MiCAR. In addition, the guidelines specify that all provisions within the guidelines are subject to the principle of proportionality.	No change
<b>Q6. Are the provisions in Title IV – Risk culture and business conduct appropriate and sufficiently clear?</b>			
Para. 46 and para. 47	One respondent suggests that these paragraphs should be more directive.	Guidelines cannot impose mandatory requirements which are not in MiCAR, but rather they specify those requirements.	No change
Para. 49 Corporate values and code of conduct	One respondent suggests that Article 49 should be compulsory for all issuers of ARTs. Consequently, para. 53 should impose the existence of clear and adequate policies.	Guidelines cannot impose mandatory requirements which are not in MICA, but rather they specify those requirements.	No change

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<b>Q7. Are the provisions in Title V – Internal control framework and mechanisms appropriate and sufficiently clear?</b>	<p>One respondent suggests the adoption of international industry standards, such as ISO 9001 Quality Management System, ISO 37301 Compliance Management Systems, etc. Such standards include risk and process-based approaches and are helpful tools, like DORA. Furthermore, the internal audit requirements of these standards could contribute to the implementation of internal control functions.</p>	<p>As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034 to ensure a level playing field. Also, the wording is broad enough to capture future standards which might be issued by professional associations in the sector.</p>	No change
General – Disclosure of a Risk management policy	<p>One respondent suggests that a requirement should be included for issuers of ARTs to draft publicly available document expressing its risk appetite.</p>	<p>Article 21 of MiCA does not impose such a requirement.</p>	No change
Proportionality – SME acting as ARTs users	<p>One respondent suggests that this section should offer more flexible and simplified approaches for SMEs acting as issuers of ARTs (e.g. simplified risk assessment procedures, tailored internal control mechanisms, and flexible reporting requirements). Guidelines may recommend tools or methodologies suitable for SMEs for these purposes.</p>	<p>The guidelines specify that all provisions within the guidelines are subject to the principle of proportionality.</p>	No change
Title V Internal control framework and mechanisms	<p>One respondent considers that the provisions in Title V are overly prescriptive, particularly in the case of smaller issuers of ARTs.</p>	<p>As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14)</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		under Directive (EU) 2019/2034, to ensure a level playing field.	
	<p>One respondent suggests that it should be clarified whether the control function is a requirement for a stand-alone function in parallel with internal audit (if existent) or if the control function can be managed within managerial functions and their responsibility to supervise compliance and with processes that predict a different set of checks.</p> <p>In this respect, this respondent suggests providing a descriptive definition of the control function and its relationship with internal audit.</p>	<p>Guidelines already specify that internal control functions comprise compliance, risk management and internal audit functions, where established, and they specify their different roles and interactions within the issuer of ARTs. The only obligation is that the internal audit function is independent, where established.</p>	No change
Para. 58	<p>One respondent suggests that this paragraph should be more prescriptive. The design of the internal control framework should guarantee that all elements quoted in Para. 58 are present.</p>	<p>It is deemed sufficiently clear that the internal control framework should ensure all the elements listed in this paragraph.</p>	No change
Para. 59	<p>One respondent suggests that this paragraph should be rephrased to avoid any doubt about the obligation for management body to apply all the elements quoted. Proportionality applies to the complexity of the task, but not to the existence of the task itself.</p>	<p>It is deemed sufficiently clear that the management body should be responsible for all the elements quoted in this paragraph.</p>	No change
Para. 65	<p>One respondent suggests that the risk management should be limited to identify risks in the market. Going beyond this diverts resources into speculation and potentially reduces the focus on existing risks.</p>	<p>As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14)</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		under Directive (EU) 2019/2034 to ensure a level playing field.	
Para. 67 and 68	One respondent suggests that these paragraphs should be more prescriptive in connection with the escalation processes.	As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034, to ensure a level playing field.	No change
Para. 77	One respondent considers that this paragraph could lead to imposing an internal or external auditor to all issuers of ARTs. The respondent wonders whether this is in line with the principle of proportionality, especially in case of starting ART programs.	As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034 to ensure a level playing field.	No change
Para. 79	One respondent suggests that this paragraph should be rephrased to better define the staff who are required to understand the risks inherent to the activities of the issuers of ARTs. Otherwise, it could lead to extreme situations where all the staff must understand all the operational risks involved, which does not exist in traditional finance.	Pursuant to the BIS Principles for the Sound Management of Operational Risk, for credit institutions, senior management should ensure the identification and assessment of the operational risk inherent in all material products, activities, processes and systems to make sure the inherent risks and incentives are well understood and that an appropriate level of operational risk training is available at all levels throughout the organisation.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 82	One respondent suggests this paragraph should be more prescriptive, and it should refer to the principle of proportionality.	As requested by Article 34(13) of MiCAR, the guidelines take into account, with the necessary adjustments, the provisions on governance arrangements under Directive 2014/65/EU and in the Guidelines on internal governance (EBA/GL/2021/14) under Directive (EU) 2019/2034 to ensure a level playing field.	No change
Para. 88 to 96	10.4 Arrangements with third-party entities for operating the reserve of assets, for the investment of the reserve assets, the custody of the reserve assets, or the distribution of the asset-referenced tokens to the public	Pursuant to Article 37.3 of MiCA, the reserve assets shall be held in custody by either a crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients, (where the reserve assets take the form of crypto-assets), credit institutions (for all types of reserve assets) or an investment firm authorised to provide the ancillary service of safekeeping and administration of financial instruments (where the reserve assets are financial instruments). Guidelines cannot expand the type of entities which may provide this service under MiCA.	No change
	One respondent suggests that this section should be reviewed to include the outsourcing of internal control functions.	Paragraph 98 already refers to the outsourcing of the risk management function and audit function.	No change
Para. 98	Outsourcing of control functions	<i>Para. 98: Where the issuer of ARTs does not establish an internal risk management function (RMF) or internal audit function (IAF), the responsibilities of these functions as set out in these guidelines are with the management body, who may delegate the operational tasks internally or externally to a third-</i>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p><i>party provider, e.g. in form of an outsourcing arrangement.</i></p> <p>There are no restrictions regarding outsourcing the control functions. However, issuers of ARTs need to be able to reintegrate the outsourced functions if needed and ensure that sufficient resources are available to appropriately support and ensure the performance of the responsibilities of the management body, including overseeing the risks and managing the outsourcing arrangements. Consequently, outsourcing must not lead to a situation where an issuer of ARTs becomes an ‘empty shell’ or ‘letter-box entities’ that lacks the substance to remain authorised.</p>	
Para. 105 to para. 126 12. Risk management function	One respondent suggests that the risk management policy should be allocated to a dedicated risk management function.	The risk management function may be assumed by a dedicated function or by the management body of the issuer of ARTs. Therefore, the allocation of the risk management policy will very much depend on whether there is a dedicated RMF or not. It should nevertheless be clarified that the approval of the risk management policy is part of the management body’s responsibilities.	No change
	Some respondents suggests that all issuers of ARTs should establish a risk management function.	The Guidelines specify that all issuers of ARTs should have a permanent and effective compliance function while, in line with the principle of proportionality, not all issuers are required to have a risk management and an internal audit function but are still required to have respective policies and procedures in place.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>One respondent suggests that more clarification is needed that based on the proportionality principle and criteria, any other individual in a senior position of the issuers of ARTs (such as the Head of Legal or Head of Compliance, provided there is no conflict of interests and is independent from other functions) would be able to supervise and assess the issuers of ARTs' potential vulnerability to risks and address those in an efficient manner.</p>	<p><i>Pursuant to Para. 124 "Where it is not proportionate to appoint a person who is dedicated only to the role of head of the RMF, taking into account the principle of proportionality as set out in Title I, this function can be combined with the head of the compliance function or can be performed by another senior person, provided there is no conflict of interest between the tasks performed."</i></p> <p>The Guidelines already include that risk management functions can be performed by other senior staff.</p>	No change
	<p>One respondent suggests that this section should impose more stringent requirements to significant issuers of ARTs to ensure consistency with the principle of proportionality.</p>	<p>The Guidelines specify that all issuers of ARTs should have a permanent and effective compliance function while, in line with the principle of proportionality, not all issuers are required to have a risk management and an internal audit function but are still required to have respective policies and procedures in place.</p>	No change
	<p>One respondent suggests that significant issuers of ARTs should operate internal audit function when certain conditions - to be explicitly defined - are met.</p> <p>For those issuers of ARTs which do not establish a risk management and internal audit function, GL on suitability assessment should set more stringent criteria on the knowledge and experience of auditing directors.</p>	<p>According to Para. 171, option 2 has been chosen on internal control framework and the three lines of defence, consequently issuers of ARTs are not obliged to operate independent internal audit function (in line with the principle of proportionality).</p> <p>In any case, as specified in para. 97 of the guidelines, issuers of ARTs should be able to demonstrate upon request that they have policies and procedures adopted and implemented for an internal control framework effectively achieve the same outcome as the guidelines provided in Title V therein. Senior staff responsible for internal audit should be able in nay</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals	
105- 127	Compliance management Outsourcing and risk functions –	One respondent suggests that the compliance and the risk management functions should be allowed to be outsourced. If not outsourced, these functions should be managed by the management body the issuers of ARTs.	case to demonstrate knowledge and experience in this field	Guidelines amended
Q8. Are the provisions in Title VI – Business continuity management appropriate and sufficiently clear?	General	One respondent suggests that a reference to the principle of proportionality should be included with respect to the business continuity management, especially for standalone issuers of ARTs that are early in their lifecycle.	case to demonstrate knowledge and experience in this field	Guidelines amended
Q8. Are the provisions in Title VI – Business continuity management appropriate and sufficiently clear?	General	One respondent suggests that a reference to the principle of proportionality should be included with respect to the business continuity management, especially for standalone issuers of ARTs that are early in their lifecycle.	<p>Para. 98: Where the issuer of ARTs does not establish an internal risk management function (RMF) or internal audit function (IAF), the responsibilities of these functions as set out in these guidelines are with the management body, who may delegate the operational tasks internally or externally to a third-party provider, e.g. in form of an outsourcing arrangement.</p> <p>The operational tasks of the compliance function should also be allowed to be outsourced just as RMF and IAF.</p> <p>The comment has been accommodated.</p>	Guidelines amended
Q8. Are the provisions in Title VI – Business continuity management appropriate and sufficiently clear?	General	One respondent suggests that a reference to the principle of proportionality should be included with respect to the business continuity management, especially for standalone issuers of ARTs that are early in their lifecycle.	<p>Paragraph 146: “Issuers of ARTs may establish a specific independent business continuity function taking into account the proportionality criteria listed in Title I.”</p> <p>Additional references/rules needed?</p> <p>The paragraph already contains reference to the principle of proportionality.</p>	No change

**Comments**

**Summary of responses received**

**EBA analysis**

**Amendments to  
the proposals**

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**Q9. Are the provisions in Title  
VII – Transparency appropriate  
and sufficiently clear?**

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