EBA/RTS/2024/13

19 June 2024

Final Report

Draft Regulatory Technical Standards

on the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(6) of Regulation (EU) No 2023/1114 (MiCAR) and of e-money tokens denominated in a currency that is not an official currency of a Member State under Article 58(3) of that Regulation

Contents

1. Abbreviations

ART	Asset-referenced token
CASP	Crypto-asset service provider
CP	Consultation paper
EBA	European Banking Authority
ECB	European Central Bank
EU	European Union
EMT	E-money token
FTR	Funds Transfer Regulation (Regulation (EU) 2023/1113)
ITS	Implementing technical standards
MiCAR	Regulation on markets in crypto-assets (Regulation (EU) 2023/1114)
RTS	Regulatory Technical Standards

2. Executive Summary

Articles 22(1)(d) and 58(3) of Regulation (EU) 2023/1114 (MiCAR) require the issuer of an asset-referenced token (ART) or of an e-money token (EMT) denominated in a non-EU currency to report to the competent authority, on a quarterly basis, an estimate of the average number and average aggregate value of transactions per day, during the relevant quarter, that are associated to uses of that token "as a means of exchange within a single currency area".

In support of these provisions, Article 22(6) of MiCAR mandates the EBA to develop, in close cooperation with the European Central Bank, draft regulatory technical standards (RTS) specifying the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an ART "as a means of exchange within a single currency area". In accordance with Article 58(3) of MiCAR, these draft RTS apply to both ARTs and EMTs denominated in a non-EU currency.

On 8 November 2023, the EBA published a Consultation Paper (CP) with its proposals on the draft RTS, for a 3-months consultation period, which ran until 8 February 2024. The EBA received 9 responses to the CP, which raised around 20 distinct issues and requests for clarification. Having assessed these responses, the EBA agreed with some of the proposals made and their underlying arguments and has therefore introduced changes to the draft RTS. The main changes introduced:

- provide clarity on the scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR;
- specify that the geographical scope of the transactions covered the reporting in Article 22(1)(d) of MiCAR is limited to transactions where both the payer and the payee are located in the same single currency area; and
- streamline the reconciliation process by the issuer of the data reported by CASPs to the issuer for the purpose of Article 22(1)(d) of MiCAR.

Regarding the reporting of transactions between non-custodial wallets, which the CP had flagged as a point that was not yet decided, the EBA has followed the suggestion by respondents and has maintained the approach proposed in the CP to exclude such transactions from the scope of the reporting in Article 22(1)(d) of MiCAR.

Next steps

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

3. Background and rationale

3.1 Background

1. The Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets (MiCAR)[1] regulates the offering to the public and admission to trading of asset-referenced tokens (ARTs), e-money tokens (EMTs) and other types of crypto-assets, as well as crypto-assets services provided by crypto-asset service providers (CASPs) in the European Union (EU). MiCAR entered into force on 29 June 2023, and will apply from 30 December 2024, except for Titles III and IV regarding the offering to the public and the admission to trading of ARTs and EMTs, that will apply from 30 June 2024.

2. The objectives of MiCAR are to ensure the proper functioning of markets in crypto-assets, market integrity and financial stability in the EU, as well as the protection of holders of crypto-assets, in particular retail holders[2]. Specifically, MiCAR aims to address risks that the wide use of crypto-assets which aim to stabilise their price in relation to a specific asset or a basket of assets (such as ARTs) could pose to financial stability, the smooth operation of payment systems, monetary policy transmission or monetary sovereignty[3].

3. To allow competent authorities to monitor the use of ARTs, Article 22(1) of MiCAR requires the issuer of an ART to report on a quarterly basis to the competent authority:

   (a) the number of holders;

   (b) the value of the asset-referenced token issued and the size of the reserve of assets;

   (c) the average number and average aggregate value of transactions per day during the relevant quarter; and

   (d) an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of the ART as a means of exchange within a single currency area[4].

4. Furthermore, to enable issuers to report this information to the competent authority, Article 22(3) of MiCAR requires CASPs that provide services related to ARTs to report to the issuer the

[1] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40–205)

[2] See recital 112 of MiCAR

[3] See recital 5 of MiCAR

[4] These reporting requirements apply for each ART with an issue value that is higher than EUR 100 million, and where the competent authority so decides in accordance with Article 22(2) of MiCAR, also for ARTs with a value of less than EUR 100 million.

information necessary to prepare the report referred to in Article 22(1), including by reporting transactions that are settled outside the distributed ledger.

5. In support of these provisions, Article 22(6) of MiCAR mandates the EBA to develop, in close cooperation with the European Central Bank (ECB), draft regulatory technical standards (RTS) specifying the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an ART "as a means of exchange within a single currency area", as referred to in Article 22(1)(d) of MiCAR.

6. Furthermore, Article 22(7) of MiCAR mandates the EBA to develop draft implementing technical standards (ITS) to establish standard forms, formats and templates for the purposes of the reporting in Article 22(1), and for the purpose of the reporting by CASPs to the issuer in accordance with Article 22(3). The EBA is required to submit the draft RTS and ITS mentioned above to the Commission by 30 June 2024.

7. In accordance with Article 58(3) of MiCAR, the provisions of Articles 22, 23 and 24(3) of MiCAR shall also apply to EMTs denominated in a currency that is not an official currency of a Member State. Accordingly, the RTS and ITS mentioned above shall also apply *mutatis mutandis* to such tokens.

8. On 8 November 2023, the EBA published a consultation paper (CP) with its proposals for the draft RTS mentioned above (EBA/CP/2023/31), and a separate CP with its proposals for the draft ITS (EBA/CP/2023/32), for a 3-months consultation period which ended on 8 February 2024.

9. This Final Report concerns the draft RTS mentioned above. The Final Report on the draft ITS is available on the EBA's website (see EBA/ITS/2024/04).

10. The EBA received 9 responses to the CP on the draft RTS. The EBA assessed these responses and has identified around 20 distinct issues and requests for clarification that respondents had raised. The feedback table in Chapter 5 provides an exhaustive list of all the concerns raised by respondents and the respective analysis by the EBA. The Rationale section below focuses on some of the more relevant concerns raised and also explains what, if any, changes the EBA has made to the draft RTS as a result. Chapter 4, in turn, presents the final draft RTS.

3.2 Rationale

11. The key concerns and requests for clarifications that were raised by respondents to the consultation related to:

    - The scope of transactions "associated to uses" of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1)(d) of MiCAR;

    - The geographical scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR;

- The reconciliation by the issuer of the data received from CASPs for the purpose of the reporting in Article 22(1)(d) of MiCAR.

12. The concerns that respondents had raised in this respect, and the changes that the EBA has decided to make to the draft RTS as a result, are summarised below in turn.

13. The EBA has also introduced other less substantive amendments to the draft RTS, which are explained in detail in the feedback table at the end of the Final Report.

14. With regard to the reporting of transactions between non-custodial wallets, the respondents welcomed the EBA's proposal not to include these transactions in the scope of the reporting under Article 22(1)(d) of MiCAR, and were of the view that this strikes an appropriate balance between ensuring a high degree of data quality and imposing a proportionate reporting burden. Having assessed the arguments put forward by respondents, the EBA has decided to maintain the approach proposed in the CP to exclude transactions between non-custodial wallets from the scope of the reporting in Article 22(1)(d) of MiCAR.

3.2.1 The scope of transactions "associated to uses" of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1)(d) of MiCAR

15. Respondents were of the view that the scope of transactions subject to the reporting in Article 22(1)(d) of MiCAR, and in particular the reference in that Article to "as a means of exchange", should be further clarified. Some respondents were of the view that the transactions subject to the reporting under Article 22(1)(d) should be limited to transactions with an ART or an EMT denominated in a non-EU currency where the purpose of those transactions is to purchase goods and services, and should exclude:

- transactions where ARTs/EMTs are used as collateral for the purpose of conducting transactions on financial instruments; and

- transactions where ARTs/EMTs are used to settle a derivative contract.

16. In addition, one respondent was of the view that only transactions where the CASP or the issuer has knowledge, or a reasonable belief, that the purpose of the transaction is for the ART/EMT to be used as means of exchange (e.g., payment for a good or service) should be reported under Article 22(1)(d).

17. Furthermore, some respondents requested clarifications on the provisions in the third subparagraph of Article 22(1) of MiCAR which provides that "Transactions that are associated with the exchange for funds or other crypto-assets with the issuer or with a crypto-asset service provider shall not be considered associated to uses of the asset-referenced token as a means of exchange, unless there is evidence that the asset-referenced token is used for the settlement of transactions in other crypto-assets".

18. Having assessed the feedback received from respondents, the EBA has arrived at the view that more clarity on the scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR should be provided. In line with some of the suggestions proposed by respondents, the EBA has, therefore, decided to amend Article 3(1) of the draft RTS by specifying that the issuer should calculate the estimate referred to in Article 22(1)(d) of MiCAR by deducting from the total number and value of transactions with an ART during the relevant quarter:

    (a) transactions where the ART is exchanged for funds or other crypto-assets with the issuer or with a CASP;

    (b) transactions where the ART is used as collateral for the purpose of conducting transactions with financial instruments;

    (c) transactions where the ART is used to settle a derivative contract; and

    (d) other transactions where the issuer has reasonable grounds to assume that the purpose of the respective transactions with the ART is not to pay for goods or services.

19. With regard to the transactions referred to in (d) above, the EBA has clarified in Article 3(1) of the final draft RTS that, in order to exclude such transactions from the estimates referred to in Article 22(1)(d) of MiCAR, the issuer should be able to demonstrate to the competent authority, upon request, that those transactions do not relate to the use of the ART to pay for goods or services. These changes are reflected in Article 3(1) and recital 3 of the final draft RTS.

20. In the EBA's view, the above changes to the draft RTS are in line with the third subparagraph of Article 22(1) MiCAR, mentioned above, and recital 61 of MiCAR which provides that: "It is particularly important to estimate transactions settled with asset-referenced tokens associated to uses as a means of exchange within a single currency area, namely, those associated to payments of debts including in the context of transactions with merchants. Those transactions should not include transactions associated with investment functions and services, such as a means of exchange for funds or other crypto-assets, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets. A use for settlement of transactions in other crypto-assets would be present in cases where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens".

21. Furthermore, the EBA decided to amend Article 3(2) of the draft RTS by clarifying that the issuer should also include in the estimate referred to in Article 22(1)(d) MiCAR transactions where one or several crypto-assets, different from the ART, is/are used to pay for goods and services, provided that those transactions are settled in the ART. This includes cases where an ART is used as a bridge asset to settle:

    (a) a transaction with a crypto-asset different from the ART, where the purpose of that transaction is to pay for goods or services; and

    (b) a transaction involving 2 crypto-assets different from the ART, where the purpose of that transaction is to pay for goods or services. For example, this may the case where a payer holding a crypto-asset different from the ART wishes to pay to a payee accepting payment

only in another crypto-asset, also different from the ART, and the parties agree to use an ART to settle the transaction.

22. By contrast, in the EBA's view, cases where the parties want to trade or exchange two distinct crypto-assets and agree to settle the transaction using an ART, without the purpose of the underlying transaction being to pay for goods or services, do not fall within the scope of the reporting in Article 22(1)(d) MiCAR. In the EBA's view, such a scenario would imply 2 separate transactions, where a crypto asset is exchanged against an ART with the issuer or a CASP, which according to the third subparagraph of Article 22(1) of MiCAR are excluded from the reporting in Article 22(1)(d) of MiCAR.

23. In this regard, the EBA is of the view that the statement in recital 61 of MiCAR that "A use for settlement of transactions in other crypto-assets would be present in cases where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens" should be read together with Article 22(1)(d) which refers specifically to uses of ARTs "as a means of exchange", and the third subparagraph of Article 22(1) and recital 61 of MiCAR, which also refer to uses of ARTs "as a means of exchange".

24. In the EBA's view, while the scenarios mentioned in paragraph 21 above may be, for now, mostly theoretical, the co-legislators' intention was for the reporting in Article 22(1)(d) MiCAR to be future proof and capture also possible uses of ARTs where other crypto-assets, different from the ART, are used to pay for goods and services, provided that those transactions are settled in the ART.

25. The changes explained in paragraphs 21-24 above have been reflected in Article 3(2) and recital 4 of the final draft RTS.

3.2.2 The geographical scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR

26. The majority of respondents disagreed with the EBA's proposal in the CP to include in the scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR transactions where the payer and the payee are located in different single currency areas. Respondents were of the view that the reference in Article 22(1)(d) to "within a single currency area" entails that the reporting under that Article should cover only transactions where both the payer and the payee are in the same single currency area, and, therefore, should exclude (i) cross-border transactions between different currency areas within the EU and (ii) one-leg transactions where only one party (the payer or the payee) is in the EU. The majority of respondents were of the view that the proposals set out in the RTS go beyond the EBA's mandate and that, if the co-legislators had intended for the reporting obligation in Article 22(1)(d) to encompass transactions between different single currency areas, the wording of that article would have been different.

27. While some of these respondents were of the view that the EBA's proposal set out in the CP align with the MiCAR's objectives, other respondents were of the view that it is reasonable to assume that the co-legislators aimed to maintain a focused reporting framework centred on transactions where both the payer and the payee are in the same single currency area within the EU. One of

these latter respondents was of the view that the wording 'within' a single currency area in Article 22(1)(d) aligns with MiCAR's objective to prevent risks that the wide use of ARTs and of EMTs denominated in a non-EU currency may pose to monetary policy transmission and monetary sovereignty within the EU, as monetary policy transmission and monetary sovereignty are primarily subject to what currencies are used "within" a currency area, not on a cross-border basis across currency areas.

28. In this regard, the EBA remains of the view that transactions with ARTs or EMTs denominated in a non-EU currency can lead to currency substitution effects not only in the case of transactions where the payer and the payee are located in the same single currency area, but also in the case of transactions where the payer and the payee are located in different single currency areas.

29. However, the EBA acknowledges that the reference to "within a single currency area" in Article 22(1)(d) MiCAR could be interpreted as limiting the reporting under those provisions only to transactions where both the payer and the payee are in the same single currency area.

30. Furthermore, the EBA notes that MiCAR includes other safeguards to mitigate risks that the wide use of ARTs/EMTs could raise in terms of monetary policy transmission or monetary sovereignty. These include:

- the withdrawal of the authorisation of an issuer of an ART when the ECB or, where applicable, the central bank of a non-Euro area Member State referred to in Article 20(4) MiCAR, issues an opinion that the ART poses a serious threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty (Article 24 (2));

- the limitation by the competent authority of the amount of an ART to be issued or imposition of a minimum denomination amount in respect of the ART when the ECB or, where applicable, the central bank of a non-Euro area Member State referred to in Article 20(4) MiCAR, issues an opinion that the ART poses a threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty (Article 24(3))[5];

- the possibility for the competent authority, in case of modification of a published crypto-asset white paper for an ART, to require the issuer to take "any appropriate corrective measures to address concerns related to market integrity, financial stability or the smooth operation of payment systems" (Article 25(4)); and

- the classification of ARTs/EMTs as significant where certain criteria specified in Articles 43(1), 44, 56(1) and 57 of MiCAR, as applicable, are met, and the application of more stringent requirements to these tokens under MiCAR (see for example Articles 45 and 58 of MiCAR).

31. Taking into account the above, the EBA has decided, in line with some of the suggestions proposed by respondents, to amend Article 3(5) of the draft RTS by limiting the scope of the transactions to be reported under the Article 22(1)(d) MiCAR to transactions where both the payer and the payee

[5] These provisions also apply to EMTs referencing a non-EU currency (Art. 58(3) MiCAR).

are located in the same single currency area (within the EU). These changes have been reflected in Article 3(5) and recital 5 of the final draft RTS. Also, as a result of these changes, Article 4 of the draft RTS has been deleted and the subsequent articles in the RTS have been renumbered accordingly.

32. The above does not exclude the possibility that further reporting requirements on the value of cross-border transactions in ARTs or EMTs that are associated to uses as a means of exchange, as referred to in Article 2(1) of the European Commission draft Delegated Regulation specifying certain criteria for classifying ARTs and EMTs as significant[6], could be introduced in the future under a different legal instrument. This would allow NCAs to collect the information needed for the assessment of the significance criteria in MiCAR, without including transactions that take place between a payer and a payee located in different single currency areas in the scope of the reporting under Article 22(1)(d), and therefore in the caps in Article 23(1) MiCAR.

3.2.3 The reconciliation by the issuer of the data received from CASPs for the purpose of the reporting in Article 22(1)(d) of MiCAR

33. Some respondents raised concerns that the reconciliation by the issuer of the data reported by CASPs for the purpose of Article 22(1)(d) of MiCAR is too complex, that it may not be possible for issuers to perform such reconciliation process in a fully automated manner, and that, as a result, the workload related to the reconciliation of data will be substantial.

34. Having assessed the merits of the concerns expressed by the respondents, the EBA has decided to amend Annexes III and IV of the final draft ITS under Article 22(7) of MiCAR (which refers to the reporting by CASPs to the issuer) by specifying that, for the purpose of Article 22(1)(d) of MiCAR:

- For transactions between custodial wallets, and transactions from a non-custodial wallet to a custodial wallet, the payee's CASP should report the relevant data to the issuer on an aggregate basis, for each single currency area (instead of both the payer's CASP and the payee's CASP reporting transactional data, for each transaction, to the issuer, as initially proposed in the CP on the ITS);

- For transactions from a custodial wallet to a non-custodial wallet, the payer's CASP should report the relevant data to the issuer, on an aggregate basis, for each single currency area, on a best efforts basis, based on the information available to the payer's CASP.

35. The above takes into account that, for **transactions between custodial wallets**, according to the Funds Transfer Regulation (FTR)[7], the CASP of the originator (i.e, in this context, the CASP of the payer) is required to ensure that transfers of crypto-assets are accompanied by, among others, information on the name of the originator (Article 14(1)(a) FTR), the address of the originator (Article 14(1)(d)) and the name of the beneficiary (Article 14(2)(a), but there is no obligation under

[6]Commission Delegated Regulation (EU) 2024/1506 of 22 February 2024 supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant (OJ L, 2024/1506, 30.5.2024)

[7] Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849

the FTR for the CASP of the originator to collect information on the address/location of the beneficiary.

36. This may entail that, for transactions between custodial wallets, the CASP of the originator (i.e, the CASP of the payer) may not have information on the location of the beneficiary, and therefore may not be able to determine which transactions take place 'within a single currency area' and report them accordingly to the issuer under the data breakdowns for Article 22(1)(d) of MiCAR. By contrast, the payee's CASP is expected to have the information necessary to report to the issuer the relevant data under the data breakdowns for Article 22(1)(d) MiCAR, based on the information it holds on its own customer (the payee) and the information collected under the FTR as regards the originator/payer.

37. In the case of **transactions from a non-custodial wallet to a custodial wallet**, the only CASP involved that could report the relevant data to the issuer for the purpose of the reporting under Article 22(1)(d) of MiCAR is the payee's CASP. According to Article 16(2) of the FTR, in the case of a transfer of crypto-assets made from a self-hosted address[8], the CASP of the beneficiary "shall obtain and hold the information referred to in Article 14(1) and (2)" (which includes the information mentioned above on the name and address of the originator (Article 14(1)(a) and (d)).

38. Conversely, in the case of **transactions from a custodial wallet to a non-custodial wallet**, the only CASP involved that could report the relevant data to the issuer for the purpose of Article 22(1)(d) of MiCAR is the payer's CASP. For such transactions, the EBA acknowledges that there may be cases where the payer's CASPs may not have information on the location of the payee, and therefore may not be able to report such transactions to the issuer under the data breakdowns for Article 22(1)(d) MiCAR. This is because, in such cases, the payer's CASP may not be able to determine which transactions take place "within a single currency area" as referred to in Article 22(1)(d) of MiCAR.

39. However, there may also be cases where the payer's CASP would have this information for transactions from a custodial wallet to a non-custodial wallet. For example, this may be the case (i) where the payer's CASP operates a marketplace platform and allows the payee to register its non-custodial wallet in order to receive payments for goods and services sold via such a platform; or (ii) where a non-custodial wallet is commonly known to belong to a certain payee (e.g, a large merchant).

40. The changes explained in paras. 34-39 above have been reflected in Annexes III and IV of the final draft ITS under Article 22(7) of MiCAR and also in Article 5(2) of the final draft RTS (ex-Article 6(2)).

41. Said changes, together with the other changes explained above regarding the geographical scope of the transactions to be reported under Article 22(1)(d) and the exclusion of transactions

[8] The FTR refers to 'self-hosted addresses' which are defined in Art. 3 point 20 of the FTR as "a distributed ledger address not linked to either of the following: (a) a crypto-asset service provider; (b) an entity not established in the Union and providing services similar to those of a crypto-asset service provider". Instead, MiCAR refers in recital 83 to non-custodial wallets. To align with the terminology in MiCAR, the draft RTS also refer to non-custodial wallets, which are defined in Art. 2 point 3 of the draft RTS as "a crypto-asset wallet address where the user controls the means of access to the crypto-assets, where applicable in the form of private cryptographic keys".

between non-custodial wallets from the reporting under Article 22(1)(d) of MiCAR aim to streamline the process of reconciliation of the data by issuers for the purpose of the reporting in Article 22(1)(d) of MiCAR. They also aim to address challenges that issuers may otherwise face stemming from a double-reporting of transactions by both the payer's CASP and the payee's CASP under Article 22(3) of MiCAR and the ITS, in case of transactions between custodial wallets, where the data sets from the payee's and the payer's CASPs differ (e.g, because of the more limited information the payer's CASP holds on the transaction, compared with the payee's CASP).

4. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets with regard to regulatory technical standards specifying the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(1) point (d) of Regulation (EU) 2023/1114 and of e-money tokens denominated in a currency that is not an official currency of a Member State under Article 58(3) of that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937[9], and in particular Article 22(6), third subparagraph, thereof,

Whereas:

(1) Having regard to the definition of "transactions" in Article 22(1), second subparagraph of Regulation (EU) 2023/1114 and recital 60 of that Regulation, the methodology to be specified according to Article 22(6) of that Regulation should consider that such definition includes transactions that lead to a change in the natural or legal person entitled to the asset-referenced token. This applies even where the beneficial owner, as defined in Article 3, point 6 of Directive (EU) 2015/849 of the European Parliament and of the Council, remains the same, and irrespective of whether those transactions are settled on the distributed ledger ('on-chain') or outside the distributed ledger ('off-chain'). Accordingly, for the purpose of the reporting under Article 22(1), point (d) of Regulation (EU) 2023/1114, the data to be reported by the issuer to the competent authority should not include transfers of an asset referenced token between different addresses or accounts of the same person as these transfers do not qualify as a "transaction" within the meaning of Article 22(1) of that Regulation.

(2) The definition of a "transaction" in Article 22(1) of Regulation (EU) 2023/1114 is agnostic to the type of wallets used by the payer or by the payee for initiating or receiving a transaction associated to the use of an asset-referenced token as a means of exchange. Accordingly, for specifying the methodology referred to in Article 22(6) of Regulation (EU) 2023/1114, it is necessary to consider that the reporting in Article 22(1), point (d) of that Regulation should include transactions between custodial wallets as well as transactions between a custodial wallet and a non-custodial wallet.

[9]Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40–205, ELI: http://data.europa.eu/eli/reg/2023/1114/oj)

Transactions between non-custodial wallets, or between non-custodial wallets and other types of distributed ledger addresses that are used for settlement purposes and are not controlled by a user or by a crypto asset service provider, should be excluded from the scope of the reporting in Article 22(1), point (d) of Regulation (EU) 2023/1114, taking into account that issuers do not have the necessary information to report these transactions under those provisions. This is without prejudice to the reporting obligations of issuers in respect of such transactions under Article 22(1), point (c) of Regulation (EU) 2023/1114 and the Commission Delegated Regulation (EU) 2023/xx [ITS].

(3) Taking into account the provisions of Article 22(1), third subparagraph of Regulation (EU) 2023/1114 and recital 61 of that Regulation, the issuer should estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange as referred to in Article 22(1), point (d) of that Regulation by deducting from the total number and value of transactions settled in the asset referenced token, during the relevant quarter, transactions where the asset-referenced token is exchanged for funds or other crypto-assets with the issuer or with a crypto-asset service provider, transactions where the asset-referenced token is used as collateral for the purpose of conducting transactions with financial instruments and transactions where the asset-referenced token is used to settle a derivative contract. In addition, the issuer may also deduct other transactions with the asset-referenced token where the issuer has reasonable grounds to assume that the purpose of the respective transactions is not to pay for goods or services, provided that the issuer is able to demonstrate to the competent authority, upon request, that those transactions do not relate to the use of the asset-referenced token to pay for goods or services.

(4) Transactions associated to uses of an asset-referenced token as a means of exchange shall also include transactions where one or several crypto-assets, different from the asset-referenced token, is/are used to pay for goods and services, provided that those transactions are settled in the asset-referenced token. This can include, for example, cases where an asset-referenced token is used as a bridge asset to settle transactions with a crypto-asset different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services, and cases where an asset-referenced token is used as a bridge asset to settle a transaction involving two crypto-assets different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services. By contrast, transactions where the parties wish to trade or exchange two distinct crypto-assets different from the asset-referenced token and agree to settle the transaction using an asset-referenced token, without the purpose of the underlying transaction being to pay for goods or services, should not fall within the scope of the reporting in Article 22(1), point (d) of Regulation (EU) 2023/1114.

(5) The issuer should determine for each transaction in scope of Article 22(1), point (d) of Regulation (EU) 2023/1114 the single currency area for which that transaction should be reported. The transactions referred to in Article 22(1), point (d) of that Regulation should cover transactions where both the payer and the payee are located in the same single currency area within the European Union.

(6) To ensure that the data reported to the competent authority pursuant to Article 22(1), point (d) of Regulation (EU) 2023/1114 is correct and complete, the issuer should have systems and procedures in place that allows it to reconcile the data received from the crypto-asset service provider of the payee or, in the case of transactions from a custodial wallet to a non-custodial wallet, the data received from the crypto-asset service provider of the payer, pursuant to Article 22(3) of Regulation (EU) 2023/1114 and the Commission Delegated Regulation (EU) 2023/xx [ITS] with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.

(7) In accordance with Article 58(3) of Regulation (EU) 2023/1114, the provisions of Articles 22, 23 and 24(3) of that Regulation shall also apply to e-money tokens denominated in a currency that is not an official currency of a Member State. Accordingly, this Regulation should also apply *mutatis mutandis* to such tokens.

(8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Supervisory Authority (the European Banking Authority (EBA)).

(9) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010[10].

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation specifies the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an asset-referenced token as a means of exchange within a single currency area, in accordance with Article 22(1), point (d) of Regulation (EU) 2023/1114.
2. In accordance with Article 58(3) of Regulation (EU) 2023/1114, this Regulation shall also apply *mutatis mutandis* to e-money tokens denominated in a currency that is not an official currency of a Member State.

Article 2

Definitions

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

For the purposes of this Regulation, the following definitions shall apply:

(1) 'single currency area' means one or several countries that have the same official currency;

(2) 'custodial wallet' means a crypto-asset wallet address where a crypto-asset service provider ensures the safekeeping or controlling, on behalf of its client, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;

(3) 'non-custodial wallet' means a crypto-asset wallet address where the user controls the means of access to the crypto-assets, where applicable in the form of private cryptographic keys.

Article 3

Scope of the transactions associated to uses of an asset referenced token as a means of exchange

1. The issuer shall estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange, as referred to in Article 22(1), point (d) of Regulation (EU) 2023/1114, by deducting from the total number and value of transactions with that token during the relevant quarter:

   (a) transactions where the asset-referenced token is exchanged for funds or other crypto-assets with the issuer or with a crypto-asset service provider;

   (b) transactions where the asset-referenced token is used as collateral for the purpose of conducting transactions with financial instruments;

   (c) transactions where the asset-referenced token is used to settle a derivative contract;

   (d) other transactions with the asset-referenced token where the issuer has reasonable grounds to assume that the purpose of the respective transactions is not to pay for goods or services.

   In order to exclude from the estimate referred to in the first subparagraph the transactions in point (d) above, the issuer shall be able to demonstrate to the competent authority, upon request, that those transactions do not relate to the use of the asset-referenced token to pay for goods or services.

2. Transactions associated to uses of an asset-referenced token as a means of exchange shall include transactions where one or several crypto-assets, different from the asset-referenced token, is/are used to pay for goods and services, provided that those transactions are settled in the asset-referenced token.

3. The transactions referred to in paragraph 1 shall include:

   (a) transactions settled on a distributed ledger and transactions settled outside a distributed ledger; and

(b) transactions between custodial wallets and transactions between a custodial wallet and a non-custodial wallet or other type of distributed ledger addresses that is not controlled by a user or a crypto-asset service provider.

4. The transactions referred to in paragraph 1 shall exclude transfers between the same accounts or addresses of the same person.

5. The transactions referred to in paragraph 1 shall include transactions where both the payer and the payee are located in the same single currency area within the European Union. The location of a payer or a payee refers to their habitual residence, for natural persons, and to the registered office address, for legal persons.

Article 4

Calculation of the average number and average aggregate value of transactions

1. The issuer shall calculate the quarterly average number and average aggregate value of transactions per day referred to in Article 22(1), point (d) of Regulation (EU) 2023/1114 for each single currency area, as this information stands on the following reporting reference dates: 31 March, 30 June, 30 September and 31 December.

2. The value of the transactions referred in paragraph 1 shall be reported in the official currency of the home Member State of the issuer.

3. The issuer shall determine the value of the transactions referred to in paragraph 1 as follows:

(a) Where the basket of assets referenced by the asset referenced token includes one or more official currencies that are different from the official currency referred to in paragraph 2, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), point (c) of Regulation (EU) 2023/1114.

(b) Where the basket of assets referenced by the asset referenced token includes assets other than an official currency, the issuer shall determine the value of the respective transactions per day by using market prices calculated at the end of each calendar day during the applicable reporting period, whenever possible, in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), point (c) of Regulation (EU) 2023/1114 and Article 36(11) and (12) of that Regulation.

(c) Where the official currency referenced by the e-money token is different from the official currency referred to in paragraph 2, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period.

Article 5

Data quality

1. The issuer shall have systems and procedures in place to ensure that the data submitted to the competent authority pursuant to Article 22(1), point (d) of Regulation (EU) 2023/1114 is correct, complete and submitted within the timeframe specified in the Commission Delegated Regulation (EU) No xx/xx [ITS].
2. The systems and procedures referred to in paragraph 1 shall allow the issuer to reconcile the data received from the crypto-asset service provider of the payee, or, in the case of transactions from a custodial wallet to a non-custodial wallet, the data received from the crypto-asset service provider of the payer pursuant to Article 22(3) of Regulation 2023/1114 and the Commission Delegated Regulation (EU) No xx/xx [ITS] with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.

Article 6

Final provisions

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

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

For the Commission
The President

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

According to Article 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of draft regulatory technical standards (RTS) developed by the EBA. These draft RTS on the methodology to estimate the number and value of transactions associated to uses of ARTs and of e-money tokens EMTs denominated in a non-EU currency as a means of exchange under MiCAR (the 'RTS') are therefore accompanied by an Impact Assessment (IA), which analyses the potential related costs and benefits of the draft RTS. This section presents the IA of the main policy options regarding the draft RTS.

MiCAR sets out a new legal framework for the issuers of ARTs and EMTs. This includes the obligation of issuers of ARTs and of EMTs denominated in a non-EU currency to report, on a quarterly basis, to the competent authority an estimate of the average number and average aggregate value of transactions per day during the relevant quarter that are associated to uses of an ART, or of an EMT denominated in a non-EU currency, as a means of exchange within a single currency area. This reporting obligation applies for each ART and EMT denominated in a non-EU currency with an issue value that is higher than EUR 100 000 000, and where the competent authority so decides in accordance with paragraph 2 of Article 22 of MiCAR, also for ARTs and EMTs denominated in a non-EU currency with a value of less than EUR 100 000 000.

To enable issuers to report to the competent authority the estimate referred to in Article 22(1)(d) of MiCAR, MiCAR requires CASPs that provide services related to ARTs and EMTs denominated in a non-EU currency to report to the issuer the information necessary for issuers to prepare such reports, including by reporting transactions that are settled outside the distributed ledger. The information that CASPs should report to the issuer in accordance with Article 22 of MiCAR will be specified in the implementing technical standards (ITS) under Article 22(7) of MiCAR (see EBA/2024/ITS/xx). In this regard, the costs and benefits for CASPs for complying with those requirements are covered in the draft IA on those ITS, and are not repeated in this IA.

A. Problem identification

While the requirement for issuers to report the estimates mentioned above is clearly specified in MiCAR, the text does not specify how these estimates should be calculated. Due to the fact that the legal framework introduced by MiCAR is new, there is no established methodology to calculate estimates of the number and value of transactions associated to uses of ARTs and EMTs denominated in a non-EU currency "as a means of exchange within a single currency area", as referred to in MiCAR. Moreover, currently there is limited data available particularly with regard to the geographical location of the holders of such tokens, as well as information whether the

transfers of such tokens are made between addresses of different persons or between addresses of the same person.

B. Policy objectives

The general objective of the draft RTS is to clarify the methodology to be used by issuers for the purpose of the reporting referred to in Article 22(1)(d) of MiCAR and to support the objectives of MiCAR of ensuring that the data reported allows to:

- monitor and prevent risks that the wide use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange may have on monetary policy transmission and monetary sovereignty within the EU, through currency substitution effects;
- assess whether an ART or an EMT denominated in a non-EU currency meets the criteria in Articles 43(1) and 56(1) of MiCAR to be classified as significant.

The draft RTS also aim to ensure that issuers apply a similar and harmonized methodology to calculate the estimates referred to in Article 22(1)(d) of MiCAR.

C. Baseline scenario

In a baseline scenario, the issuers of ART and EMTs denominated in a non-EU currency would need to apply the MiCAR requirements to report an estimate of the number and aggregate value of transactions associated to uses of these tokens as a means of exchange within a single currency area, without a clear methodology on how to report such transactions or guidance on the transactions in scope of the reporting. This scenario would lead to divergent approaches and interpretation on how such estimates are calculated and reported. This would lead to competent authorities having data that is not comparable. Moreover, such a divergence in approaches may lead to unreliable estimates which will create unlevel playing field issues, and would not meet the objectives of MiCAR explained above.

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

Policy issues, options considered

Policy issue 1: Reconciliation of data received from CASPs

Articles 22(3) and 58(3) of MiCAR require CASPs that provide services related to ARTs and EMTs denominated in a non-EU currency to report to the issuer the information necessary to enable the issuer to report to the competent authority the information in Article 22(1), including by reporting transactions that are settled outside the distributed ledger. The following two policy options were considered:

Option 1A: Issuers should calculate and report to the competent authority the estimates referred to in Article 22(1)(d) of MiCAR based on transactional data received from both the CASP of the payer and the CASP of the payee, for each transaction

Option 1B: Issuers should calculate and report to the competent authority the estimates referred to in Article 22(1)(d) of MiCAR based on aggregated data received from CASPs, for each single currency area

Option 1A would imply higher costs for the issuer, compared to Option 1B, and may create challenges for issuers stemming from the double counting of transactions by both the payer's CASP and the payee's CASP, in case of transactions between custodial wallets, where the data sets from the payee's and the payer's CASPs differ, e.g, because of the more limited information the payer's CASP holds on the transaction, compared with the payee's CASP, as explained in the Rationale section of the Final Report on the RTS. This in turn may lead to less reliable data on volumes and values of transactions, which will also impact the application of the caps in Article 23 of MiCAR.

Under Option 1B, the issuer would receive data from the CASP of the payee, aggregated for each single currency area, in case of (i) transactions between custodial wallets, and (ii) transactions from a non-custodial wallet to a custodial wallet. For transactions from a custodial wallet to a non-custodial wallet, the issuer would receive data from the payer's CASP, aggregated for each single currency area. This option would streamline the reconciliation by the issuer of the data received from CASPs and would address the challenges mentioned stemming from a double-reporting of the data by both the CASP of the payer and the CASP of the payee in case of transactions between custodial wallets. This option is also likely to entail less costs for the issuer compared to Option 1A above.

Taking into account the above, Option 1B is preferred.

Policy issue 2: Reporting of transactions between non-custodial wallets

Option 2A: issuers to report transactions under Article 22(1)(d) of MiCAR between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved, on a best-efforts basis, using the data available on the distributed ledger coupled with distributed ledger analytics tools.

Option 2B: issuers not to report under Article 22(1)(d) of MiCAR transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved, and to report under Article 22(1)(c) and the ITS under Article 22(7) of MiCAR (i) the number and value of such transactions (on a best efforts basis), as well as (ii) the number and value of all transfers between such wallets or distributed ledger addresses

Option 2A would provide more granular data, compared to Option 2B, on how many transactions between non-custodial wallets or between other type of distributed ledger addresses where there

is no CASP involved are associated to uses of an ART or of an EMT denominated in a non-EU currency as a means of exchange for each single currency area.

On the other hand, this more granular data would be, at most, a rough approximation and unreliable. This is because currently there is no accurate way for issuers of determining, in the case of transfers where there is no CASP involved, (i) whether the transfer is made between addresses of different persons or between addresses of the same person, and (ii) the location of the payer and of the payee, which is needed in order to assign transactions to the relevant single currency area. This option is also expected to have higher implementation costs for issuers, related to using distributed ledger analytics tools, compared to Option 2B.

In this context, due to the issuers using different methodologies for determining (i) which transfers qualify as a "transaction" within the meaning of Article 22(1), and/or (ii) the location of the payer and of the payee, which is needed in order to determine the single currency area for which the transaction should be reported, Option 2A may also lead to unlevel playing field issues as regards the application of the caps in Article 23 which are counted per single currency area.

Option 2B would be easier and less costly for issuers to implement. It would allow competent authorities and EBA to have visibility on the number and value of transfers between non-custodial wallets or between other type of distributed ledger addresses where there is no CASP involved, with the possibility to introduce more detailed requirements for such transactions at a later stage, depending on the evolution of the market (e.g., should the volume and value of these transactions become significant).

However, this option may inadvertently create incentives for the market to promote the use of non-custodial wallets or of other type of distributed ledger addresses where there is no CASP involved, for making payments, to circumvent the more granular reporting requirements for transactions between custodial wallets or between a custodial wallet and a non-custodial wallet.

Overall, the EBA arrived at the view that Option 2B would be preferable, as it would strike a good balance between the quality of the data obtained, on the one hand, and compliance costs on the other hand.

D. Cost and benefit analysis

When comparing with the baseline scenario (where the issuer will need to report information without a clear methodology or guidance on the transactions in scope of the reporting), the RTS is expected to bring benefits by achieving a higher level of harmonisation of methodology, comparability of data, and better data quality. This in turn will contribute to more effective supervision and monitoring of the use of ARTs and of EMTs denominated in a non-EU currency as a means of exchange in line with the MiCAR requirements.

The RTS is expected to lead to moderate costs to issuers in relation to the application of the methodology. These costs are associated with the calculation of the estimates referred to in Article

22(1)(d) of MiCAR and related data quality checks. Given the novelty of the requirements introduced by MiCAR, the EBA does not have at this stage reliable quantitative data to estimate actual costs of implementation of the RTS, however these costs are expected to be moderate, given that the costs of the RTS are only incremental to the costs for implementing the existing reporting requirements set out in MiCAR.

5.2 Feedback on the public consultation

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

The consultation period lasted for 3 months and ended on 8 February 2024. 9 responses were received, of which 4 were published on the EBA's website.

This section presents a summary of the key concerns and other comments raised by respondents, the analysis and discussion resulting from these comments, and the actions the EBA has taken to address them, if deemed necessary, including changes to the draft amending RTS.

In many cases, respondents made similar comments. In such cases, the comments, and the EBA's analysis thereof, are grouped in a way that the EBA considers most appropriate.

Summary of key issues and the EBA's response

The key concerns and requests for clarifications that were raised by respondents to the consultation related to:

- The scope of transactions "associated to uses" of ARTs and of EMTs denominated in a non-EU currency "as a means of exchange", as referred to in Article 22(1)(d) of MiCAR;
- The geographical scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR;
- The reconciliation by the issuer of the data received from CASPs for the purpose of the reporting in Article 22(1)(d) of MiCAR.

The EBA reviewed the draft RTS in the light of the comments received and made a number of changes. The main changes made as a result include:

- Providing more clarity on the scope of transactions covered by the reporting in Article 22(1)(d) of MiCAR and the reference in that Article to "as a means of exchange" (see paragraphs 15-25 of the Rationale section above and the response to comments 1 and 7 in the feedback table);
- Clarifying the geographical scope of the transactions subject to the reporting in Article 22(1)(d) of MiCAR, by specifying that these are limited to transactions where both the payer and the payee are located in the same single currency area (see paragraphs 26-31 of the Rationale section above and the response to comment 8 in the feedback table);
- Streamlining the reconciliation process by the issuer of the data reported by CASPs to the issuer for the purpose of Article 22(1)(d) of MiCAR (see paragraphs 33-41 of the Rationale section and the response to comment 17 in the feedback table).

In some other areas, the EBA has retained its original views and made no substantial changes. This includes the exclusion from the scope of the reporting in Article 22(1)(d) of MiCAR of transactions between non-custodial wallets.

In the feedback table that follows, the EBA has summarised the comments received from respondents and has explained which responses have or have not led to changes and the reasons for the decision.

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

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	Responses to questions in Consultation Paper EBA/CP/2023/31		
	Q1. Do you agree with the EBA's proposals on how issuers should estimate the number and value of transactions associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange", as reflected in Art. 3 of the draft RTS? If not, please provide your reasoning and the underlying evidence, and suggest an alternative approach for estimating the number and value of these transactions		
1.	Respondents were of the view that the terms "as a means of exchange" referred to in Art. 22(1)(d) of MiCAR and Art. 3 of the draft RTS, should be further clarified. Some respondents were of the view that the reporting under Art. 22(1)(d) of MiCAR should be limited to transactions with an ART or EMT denominated in a non-EU currency to purchase goods and services and should exclude: - transactions related to capital markets trading via ARTs and EMTs, including uses of ARTs/EMTs as collateral (to meet margin requirements) for the purpose of conducting transactions on financial instruments; and - transactions where ARTs/EMTs are used to settle a derivative contract. In the respondents' view, these latter transactions fall within the notion of "transactions associated with investment functions", as referred to in recital 61 MiCAR. Moreover, one respondent was of the view that the reporting in Art. 22(1)(d) MiCAR also excludes:	Having assessed the feedback received from respondents, the EBA has arrived at the view that more clarity on the scope of transactions covered by the reporting in Art. 22(1)(d) of MiCAR should be provided. In line with some of the suggestions proposed by respondents, the EBA has, therefore, decided to amend Art. 3(1) of the draft RTS by specifying that the issuer should calculate the estimate referred to in Art. 22(1)(d) of MiCAR by deducting from the total number and value of transactions with an ART during the relevant quarter: (a) transactions where the ART is exchanged for funds or other crypto-assets with the issuer or with a CASP; (b) transactions where the ART is used as collateral for the purpose of conducting transactions with financial instruments; (c) transactions where the ART is used to settle a derivative contract; and	Art. 3(1) of the draft RTS has been amended as follows: "The issuer shall estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange, as referred to in Article 22(1) point (d) of Regulation (EU) 2023/1114, by deducting from the total number and value of transactions with ~~the asset-referenced~~ **that** token during the relevant quarter**:** **(a)** ~~the~~ transactions ~~associated with~~ **where** the **asset-referenced token is** exchange**d** ~~of the asset-referenced token~~

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	- the exchange of ART/EMT for funds or other crypto-assets with another person; and - the transfer of the ART/EMT to third parties free of payment (e.g., by way of a gift). Said respondent suggested that only transactions where the CASP or issuer has knowledge, or a reasonable belief, that the purpose of the transaction is for the ART/EMT to be used as means of exchange (e.g., payment for a good or service) should be reported under Art. 22(1)(d) MiCAR. Another respondent suggested that all transactions involving the buying or selling of crypto-assets, i.e., also settlement transactions, should be excluded from the scope of the reporting in Art. 22(1)(d). Said respondent argued that in such cases the crypto-asset is not used as means of payment and that the purpose of such transactions does not meet the criteria of a retail payment. Furthermore, respondents sought clarifications on how issuers and CASPs are expected to distinguish between transactions "as a means of exchange" and other transactions that are out of scope of the reporting in Art. 22(1)(d), taking into account that issuers and CASPs do not usually have data to know whether an ART/EMT transaction is done to pay for goods and services. Relatedly, some respondents suggested that the estimates reported by issuers and CASPs should be understood to be on a best efforts basis given that issuers and CASPs cannot determine with accuracy which transactions are associated to uses "as a means of exchange".	(d) other transactions where the issuer has reasonable grounds to assume that the purpose of the respective transactions with the ART is not to pay for goods or services. As regards these latter transactions, the EBA has clarified that, where an issuer excludes such transactions from the estimates referred to in Art. 22(1)(d) of MiCAR, the burden of proof lies on the issuer to demonstrate to the competent authority, upon request, that those transactions do not relate to the use of the ART to pay for goods or services. In the EBA's view, this is in line with: - the third subparagraph of Art. 22(1) MiCAR which provides that "transactions that are associated with the exchange for funds or other crypto-assets with the issuer or with a crypto-asset service provider shall not be considered associated to uses of the asset-referenced token as a means of exchange"; and - recital 61 of MiCAR which suggests that the transactions covered by the reporting in Art. 22(1)(d) of MiCAR refer to transactions "*associated to payments of debts including in the context of transactions with merchants"* and "should not include transactions associated with investment functions and services".	for funds or other crypto-assets with the issuer or with a crypto-asset service provider~~.~~**;** **(b) transactions where the asset-referenced token is used as collateral for the purpose of conducting transactions with financial instruments;** **(c) transactions where the asset-referenced token is used to settle a derivative contract;** (d) **other transactions with the asset-referenced token where the issuer has reasonable grounds to assume that the purpose of the respective transactions is not to pay for goods or services**. **In order to exclude from the estimate referred to in the first subparagraph the transactions in point (d) above, the issuer should be able to demonstrate to the competent authority, upon request, that those**

No	Summary of responses received	EBA's analysis	Amendments to the proposals
			transactions do not relate to the use of the asset-referenced token to pay for goods or services."
2.	One respondent sought clarification on what counts as transactions "associated with" the exchange of funds or other crypto-assets with the issuer or with a CASP. The respondent asked whether, in a scenario in which a person exchanges funds with the issuer or a CASP in exchange for ARTs and subsequently transfers the ARTs to another person, the latter transfer would be considered as "associated with the exchange for funds" with the issuer or the CASP.	In the EBA's understanding, in the example given by the respondent, there are 2 separate transactions: (i) a first transaction where funds are exchanged with the issuer or a CASP in exchange of the ART; and (ii) a second transaction where the holder transfers the ART to another person. The first transaction is excluded from the scope of the reporting in Art. 22(1)(d) MiCAR based on the third subparagraph of Art. 22(1) MiCAR. The second transaction should be included in the reporting under Art. 22(1)(d) MiCAR if it relates to uses of an ART as a 'means of exchange'. This has been clarified in Art. 3(1) of the final draft RTS (see in particular point (a) of Art. 3(1) and the response to comment 1 above).	See the amendments to Art. 3(1)(a) mentioned in response to comment 1 above.
3.	One respondent suggested reiterating in the draft RTS or its recitals the provisions of Art. 22(1) of MiCAR which states that a transaction must involve a change in the natural or legal person entitled to the ART/EMT.	These aspects are clarified in Art. 3(4) of the final draft RTS which states that "The transactions referred to in paragraph 1 shall exclude transfers between the same accounts or addresses of the same person" and also in recital 1 of the final draft RTS.	None.
4.	One respondent suggested reflecting an alternative approach for the reporting of transactions under Art. 22(1)(d) MiCAR, whereby issuers would provide estimations based on historical transaction data and	The EBA disagrees and is of the view that the approach suggested by the respondent would not be in line with Art. 22(1)(d) MiCAR. This is because said Article requires issuers to report, on a quarterly basis, estimates of the "average number and average	None.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	trends. In said respondent's view, such approach would simplify the reporting burden for issuers.	aggregate value of transactions *per day* during the relevant quarter" [emphasis added], not historical trends. Moreover, in the EBA's view, Art 22(1)(d) read together with Art. 23(1)(b) (in particular the reference to "within 40 working days of reaching that threshold") suggests that the data to be reported under Art. 22(1)(d) of MiCAR should refer to the latest reporting quarter.	
5.	One respondent asked for clarification on whether, in a scenario in which an ART/EMT is concurrently utilised both as a "means of exchange" and for "transactions associated with investment functions" (such as the use of ARTs/EMTs as collateral for the purpose of conducting transactions on financial instruments), the restrictions in Art. 23(1) MiCAR apply exclusively to the use of the ART/EMT as a "means of exchange". Said respondent suggested that issuers and operators of trading venues of financial instruments should benefit from an exemption from the application of the caps in Art. 23 MiCAR or from a bespoke mechanism whereby investors wanting to access a non-EUR ART/EMT used for investment purposes would still have access to such ART/EMT where the caps in Art. 23 are reached.	This comment relates to the application of the caps in Art. 23(1) MiCAR and therefore falls outside the scope of these RTS.	None.
6.	Some respondents raised concerns that issuers could be exposed to a risk of "wash trading" and artificial inflation of transactional data by malicious actors who could artificially inflate the number of transactions with the aim of making the issuer breach the caps in Art. 23 MiCAR and be forced to stop issuing the token. In the respondents' view, such risk could arise if a malicious actor sends an ART/non-Euro denominated EMT back and forth through a CASP with a third party partner and could lead to the de-pegging of the token. In this regard, one respondent suggested that where CASPs or issuers spot such circular transaction patterns (e.g., a sends €100 million to B, B	MiCAR provides specific safeguards to address such risks where such behaviour gives rise to market abuse (see the provisions in Title VI and Art. 76(7)(g) of MiCAR). If a CASP or issuer has reasonable suspicions of market abuse, it should notify such aspects to the relevant competent authority according to MiCAR. Where the CASP or issuer suspects that the data reported under Art. 22(1)(d) includes such type of transactions, it can also flag this to the competent authority to which the issuer is required to report said data (where that competent authority is different from the competent authority under Title VI MiCAR). The	None.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	sends €100 million to C, C sends €100 million to A, in a short timeframe) seemingly without any economic purpose, they should be able to flag them and remove them from the reporting in Art. 22(1)(c) and (d) of MiCAR. Another respondent suggested that a mechanism should be put in place to ensure that CASPs identify and report such transactions. A third respondent suggested that the risk of market manipulation could be reduced if transaction reporting includes only payment transactions for goods and services.	competent authority could then take into account such elements into its assessment of the data reported by the issuer under Art. 22(1)(d) of MiCAR. The issuer should not automatically exclude such transactions from the scope of the reporting under Art. 22(1)(d) of MiCAR as this would not be in line with that Article and would create risks of underreporting and risks of circumvention of the caps in Art. 23(1) MiCAR.	
Q2. Please describe any observed or foreseen use cases where transactions involving two legs of crypto-assets, that are different from an ART, are settled in the ART, as referred to in recital 61 of MiCAR.			
7.	Some respondents indicated that they are not aware of any existing or planned use cases where transactions involving two legs of crypto-assets, that are different from an ART, are settled in the ART, as referred to in recital 61 of MiCAR. Other respondents referred to a scenario in which the parties want to trade or exchange two distinct crypto-assets (e.g., BTC and ETH or a less common and less liquid pair of crypto assets) and agree to settle the transaction using an ART (e.g., a stablecoin pegged to USD or EUR) to mitigate volatility or for the simplicity of settlement. Some of these respondents indicated that the extent to which such a use case represents a 'means of exchange' will need to be assessed on a case-by-case basis. One respondent indicated that such a scenario could be common in decentralised finance (DeFi) platforms, but that fully decentralised use cases are currently outside the scope of MiCAR (recital 22 MiCAR). Another respondent mentioned the case of a futures contract involving two types of crypto-assets (e.g., a BTC/USDC futures contract) where	Recital 61 of MiCAR specifies, among others, that "*A use for settlement of transactions in other crypto-assets would be present in cases where a transaction involving two legs of crypto-assets, which are different from the asset-referenced tokens, is settled in the asset-referenced tokens".* In the EBA's view, these provisions should be read together with: - Art. 22(1)(d) of MiCAR, which specifically refers to uses of ARTs "as a means of exchange"; - the third subparagraph of Art. 22(1) of MiCAR which provides that "transactions that are associated with the exchange for funds or other crypto-assets with the issuer or with a [CASP] shall not be considered associated to uses of the [ART] as a means of exchange, unless there is evidence that the [ART] is used for the settlement of transactions in other crypto-assets"; and	Art. 3(2) RTS has been amended as follows: "~~By derogation from paragraph 1, t~~**T**ransactions associated to uses of an asset-referenced token as a means of exchange shall include ~~the exchange of an asset-referenced token for funds or other crypto-assets with the issuer or with a crypto-asset service provider where the asset-referenced token is used for settlement of transactions in other crypto-assets~~ **transactions where one or several crypto-assets, different from the asset-referenced token, is/are used to pay for goods and services, provided that those**

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	clients utilise different stablecoins for margin purposes all mirroring the value of the US Dollar, to provide a stable valuation benchmark, and the settlement of the futures contract occurs in a different stablecoin than the stablecoin used as the quote asset. In the respondent's view, such use case does not fall in the scope of the reporting in Art. 22(1)(d) MiCAR because the alternative stablecoin is used for the settlement of a financial instrument (the futures contract) and there are no "transactions" within the meaning of Art. 22(1) of MiCAR.	- the other provisions of recital 61 which provide that: *"It is particularly important to estimate transactions settled with asset-referenced tokens associated to uses as a means of exchange within a single currency area, namely, those associated to payments of debts including in the context of transactions with merchants. Those transactions should not include transactions associated with investment functions and services, such as a means of exchange for funds or other crypto-assets, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets*". Taking into account the above, the EBA is of the view that cases where the parties wish to trade or exchange two distinct crypto-assets and agree to settle the transaction using an ART, without the purpose of the underlying transaction being to pay for goods or services, do not fall under the scope of the reporting in Art. 22(1)(d) MiCAR. In the EBA's view, such a scenario would imply 2 separate transactions, where a crypto asset is exchanged against an ART with the issuer or a CASP, which according to the third subparagraph of Art. 22(1) of MiCAR are excluded from the reporting in Art. 22(1)(d) of MiCAR. By contrast, in the EBA's view, the issuer should include in the estimate referred to in Art. 22(1)(d) MiCAR transactions where one or several crypto-assets, different from the ART, is/are used to pay for goods and services, provided that those transactions are settled in the ART. This includes cases where an ART is used as a bridge asset to settle:	**transactions are settled in the asset-referenced token**." This is also reflected in the new recital 4 of the final draft RTS, which provides that: "**Transactions associated to uses of an asset-referenced token as a means of exchange shall also include transactions where one or several crypto-assets, different from the asset-referenced token, is/are used to pay for goods and services, provided that those transactions are settled in the asset-referenced token. This can include, for example, cases where an asset-referenced token is used as a bridge asset to settle transactions with a crypto-asset different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services, and cases where an asset-referenced token is used as a bridge asset to settle a transaction involving two crypto-assets different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services. By contrast,**

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		(a) a transaction with a crypto-asset different from the ART, where the purpose of that transaction is to pay for goods or services; and (b) a transaction involving 2 crypto-assets different from the ART, where the purpose of that transaction is to pay for goods or services. For example, this may the case where a payer holding a crypto-asset different from the ART wishes to pay to a payee accepting payment only in another crypto-asset, also different from the ART, and the parties agree to use an ART to settle the transaction. In the EBA's view, while the scenarios mentioned in (a) and (b) above may be, for now, mostly theoretical, the co-legislators' intention was for the reporting in Art. 22(1)(d) MiCAR to be future proof and capture also possible uses of ARTs where other crypto-assets, different from the ART, are used to pay for goods and services, provided that those transactions are settled in the ART. Taking into account the above, the EBA has decided to amend Art. 3(2) of the draft RTS by clarifying that the issuer should also include in the estimate under Art. 22(1)(d) MiCAR transactions where one or several crypto-assets, different from the ART, is/are used to pay for goods and services, provided that those transactions are settled in the ART. This is also reflected in recital 4 of the final draft RTS. As regards the example raised by one respondent concerning the use of ARTs for settling a derivative contract, such transactions are not covered by the reporting in Art. 22(1)(d) MiCAR, as clarified in Art. 3(1) of the final draft RTS (see in this regard the response to comment 1 above).	**transactions where the parties wish to trade or exchange two distinct crypto-assets different from the asset-referenced token and agree to settle the transaction using an asset-referenced token, without the purpose of the underlying transaction being to pay for goods or services, should not fall within the scope of the reporting in Article 22(1), point (d) of Regulation (EU) 2023/1114**".

No	Summary of responses received	EBA's analysis	Amendments to the proposals
Q3. Do you agree with the EBA's proposals regarding the geographical scope of the transactions covered by Art. 22(1)(d) of MiCAR, as reflected in Art. 3(5) of the draft RTS? If not, please provide your reasoning and the underlying evidence.			
8.	The majority of respondents disagreed with Art. 3(5) draft RTS and were of the view that the reference to "*within a single currency area*" in Art. 22 (1)(d) entails that the reporting in Art. 22(1)(d) MiCAR covers only transactions where both the payer and the payee are in the same single currency area. In their view, this excludes: - cross-border transactions between different currency areas within the EU; and - one-leg transactions where only one party (payer/payee) is in the EU, because these transactions are not 'within' the same single area, but partly outside. Respondents were of the view that the proposals set out in the RTS go beyond the EBA's mandate. In their view, if the co-legislators had intended for this reporting obligation to encompass transactions between different single currency areas, the wording of Art. 22(1) (d) MiCAR would have been different. Some respondents were of the view that it is reasonable to assume that the co-legislators aimed to maintain a focused reporting framework centred on transactions within a single currency area. One respondent noted that, in its view, the wording 'within' a single currency area in Art. 22(1)(d) aligns with MiCAR's objective to prevent risks that the wide use of ARTs and of EMTs denominated in a non-EU currency may pose to monetary policy transmission and monetary sovereignty within the EU, as monetary policy transmission and monetary sovereignty are primarily subject to what currencies are	As regards the claim that monetary policy transmission and monetary sovereignty are primarily subject to what currencies are used "within" a currency area, not on a cross-border basis across currency areas, the EBA remains of the view explained in the CP that transactions with ARTs or EMTs denominated in a non-EU currency can lead to currency substitution effects not only in the case of transactions where the payer and the payee are located in the same single currency area, but also in the case of transactions where the payer and the payee are located in different single currency areas. However, the EBA acknowledges that the reference to "within a single currency area" in Art. 22(1)(d) MiCAR could be interpreted as limiting the reporting under Art. 22(1)(d) MiCAR only to transactions where both the payer and the payee are in the same single currency area. Furthermore, the EBA notes that MiCAR includes other safeguards to mitigate risks that the wide use of ARTs/EMTs could raise in terms of monetary policy transmission or monetary sovereignty. These include: - the withdrawal of the authorisation of an issuer of an ART when the ECB or, where applicable, the central bank of a non-Euro area Member State referred to in Art. 20(4) MiCAR, issues an opinion that the ART poses a serious threat to the	Art. 3(5) of the draft RTS has been amended as follows: "The transactions referred to in paragraph 1 shall include transactions where ~~at least~~ **both** the payer ~~or~~ **and** the payee ~~is~~ **are** located in **the same single currency area within** the European Union. The location of a payer or a payee refers to their habitual residence, for natural persons, and to the registered office address, for legal persons". Also, Art. 4 of the draft RTS has been deleted accordingly.

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	used "within" a currency area, not on a cross-border basis across currency areas. Said respondent was also of the view that the reporting requirements in Art. 22(1)(a)-(c) MiCAR are consistent with the policy intention stated in recital 60 MiCAR of ensuring "comprehensive monitoring over the whole ecosystem of asset-referenced tokens issuers" and "captur(ing) all transactions that are conducted with any given asset-referenced token". Other respondents were of the view that the EBA's proposal set out in the RTS may align with the MiCAR's objectives, particularly to establish a comprehensive regulatory framework for crypto assets to ensure investor protection and market integrity within the EU and prevent potential currency substitution effects. However, those respondents considered that the provisions in the RTS on the geographical scope of transactions go beyond the EBA's mandate, for the reasons stated above. One respondent also noted that the EBA itself uses the term "within" to describe a transaction where both the payer and the payee are in the same single currency area. More specifically, the respondent referred to point 35 of the CP on the draft RTS and the template S 5 in the draft ITS under Art. 22(7) MiCAR which contains a category "transactions within the EU" covering transactions where both legs are in the EU.	smooth operation of payment systems, monetary policy transmission or monetary sovereignty (Art. 24 (2)); - the limitation by the competent authority of the amount of an ART to be issued or imposition of a minimum denomination amount in respect of the ART when the ECB or, where applicable, the central bank of a non-Euro area Member State referred to in Art. 20(4) MiCAR, issues an opinion that the ART poses a threat to the smooth operation of payment systems, monetary policy transmission or monetary sovereignty (Art. 24(3)) ; - the possibility for the competent authority, in case of modification of a published crypto-asset white paper for an ART, to require the issuer to take "any appropriate corrective measures to address concerns related to market integrity, financial stability or the smooth operation of payment systems" (Art. 25(4)); and - the classification of ARTs/EMTs as significant where certain criteria specified in Articles 43(1), 44, 56(1) and 57 of MiCAR, as applicable, are met, and the application of more stringent requirements under MiCAR to these tokens (see for example Art. 45 and 58 of MiCAR). Taking into account the above, the EBA has decided, in line with some of the suggestions proposed by respondents, to amend Art. 3(5) RTS by limiting the scope of the transactions to be reported under the Art. 22(1)(d) MiCAR to transactions where both the	

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		payer and the payee are in the same single currency area (within the EU).	
9.	A few respondents were of the view that only transactions where both the payer and payee are located *within the Eurozone* should be reported under Art. 22(1)(d) MiCAR. In their view, a 'single currency area' as referenced in MiCAR does not include a non-Euro Member State. In support of their view, these respondents argued that (i) focusing on intra-Eurozone transactions, as opposed to a broader list including non-Member Euro States, would align more closely with the aim of safeguarding monetary policy transmission and monetary sovereignty within the EU, and (ii) that extraterritorial application would likely impose undue burdens without substantially contributing to the regulation's objectives.	The EBA disagrees and is of the view that the respondents' proposal to exclude from the scope of the reporting in Art. 22(1)(d) of MiCAR transactions where the payer and the payee are located in a non-Euro Member State would not be in line with Art. 22(1)(d) MiCAR. A 'single currency area' as referred to in Art. 22(1)(d) MiCAR does not exclude non-Euro Member States.	None.
Q4. Do you agree with the EBA's proposals on how issuers should assign the transactions in scope of Art. 22(1)(d) of MiCAR to a single currency area, as reflected in Art. 4 of the draft RTS? If not, please provide your reasoning and the underlying evidence.			
10.	As explained in comment 8 above, the majority of respondents disagreed with the proposals in the draft RTS regarding the reporting of transactions where the payer and the payee are in different single currency areas, for the reasons outlined above. In addition, some respondents noted that the reporting of transactions where the payer and the payee are in different single currency areas creates a risk of double-counting or over-reporting of transactions. Furthermore, some respondents raised concerns that the reconciliation by the issuer of the data reported by CASPs for the purpose of Art. 22(1)(d) of MiCAR is too complex, that it may not be	As regards the concerns about the geographical scope of the reporting in Art. 22(1)(d), as explained in the response to comment 8 above, the EBA decided to amend Art. 3(5) of the draft RTS by limiting the scope of the transactions to be reported under the Art. 22(1)(d) MiCAR to transactions where both the payer and the payee are in the same single currency area (within the EU). Furthermore, having assessed the merits of the concerns expressed by the respondents, the EBA has decided to amend Annexes III and IV Art. xx of the final draft ITS under Art. 22(7) of MiCAR by specifying that, for the purpose of Art. 22(1)(d) of MiCAR:	See amendments to Art. 3(5) mentioned above. Art. 6(2) draft RTS (new Art. 5(2)) has been amended as follows: "The systems and procedures referred to in paragraph 1 shall allow issuers to reconcile~~, for each transaction,~~ the data received from the crypto-asset service provider of the ~~payer~~ **payee** ~~and~~**, or, in the case of transactions from a**

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	possible for issuers to perform such reconciliation process in a fully automated manner, and that, as a result, the workload related to the reconciliation of data will be substantial (see also in this respect the responses to Q7 below).	(a) For transactions between custodial wallets, and transactions from a non-custodial wallet to a custodial wallet, the payee's CASP should report the relevant data to the issuer on an aggregate basis, for each single currency area (instead of both the payer's CASP and the payee's CASP reporting to the issuer transactional data, for each transaction, as initially proposed in the CP on the ITS); (b) For transactions from a custodial wallet to a non-custodial wallet, the payer's CASP should report the relevant data to the issuer, on an aggregate basis, for each single currency area, on a best efforts basis, based on the information available to the payer's CASP. The above takes into account that: (i) In the case of **transactions between custodial wallets**, according to the Funds Transfer Regulation (FTR) , the CASP of the originator (i.e, in this context, the CASP of the payer) is required to ensure that transfers of crypto-assets are accompanied by, among others, information on the name of the originator (Art. 14(1)(a) FTR), the address of the originator (Art. 14(1)(d) FTR) and the name of the beneficiary (Art. 14(2)(a), but there is no obligation under the FTR for the CASP of the originator to collect information on the address/location of the beneficiary. This may entail that the CASP of the originator (i.e, the CASP of the payer) may not have information on the location of the beneficiary, and therefore may not be able to determine which transactions take place 'within a single currency area' and report them accordingly to the issuer under the data	**custodial wallet to a non-custodial wallet, the data received from** the crypto-asset service provider of the ~~payee~~ **payer,** pursuant to Article 22(3) of Regulation 2023/1114 and the Commission Delegated Regulation (EU) No xx/xx [ITS], ~~as well as to reconcile this data~~ with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger". See also Annexes III and IV of the final draft ITS under Art. 22(7) MiCAR.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
		breakdowns for Art. 22(1)(d) of MiCAR. By contrast, the payee's CASP is expected to have the information necessary to report to the issuer the relevant data under the data breakdowns for Art. 22(1)(d) MiCAR, based on the information it holds on its own customer (the payee) and the information collected under the FTR as regards the originator/payer. (ii) In the case of **transactions from a non-custodial wallet to a custodial wallet**, the only CASP involved that could report the relevant data to the issuer for the purpose of Art. 22(1)(d) of MiCAR is the payee's CASP. According to Art. 16(2) of the FTR, in the case of a transfer of crypto-assets made from a self-hosted address, the CASP of the beneficiary "shall obtain and hold the information referred to in Article 14(1) and (2)" (which includes the information mentioned above on the name and address of the originator). (iii) Conversely, in the case of **transactions from a custodial wallet to a non-custodial wallet**, the only CASP involved that could report the relevant data to the issuer for the purpose of Art. 22(1)(d) of MiCAR is the payer's CASP. For such transactions, the EBA acknowledges that there may be cases where the payer's CASPs may not have information on the location of the payee, and therefore may not be able to report such transactions to the issuer under the data breakdowns for Art. 22(1)(d) MiCAR. This is because, in such cases, the payer's CASP may not be able to determine which transactions take place "within a single currency area" as referred to in Art. 22(1)(d) of MiCAR.	

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		However, there may also be cases where the payer's CASP would have this information for transactions from a custodial wallet to a non-custodial wallet. For example, this may be the case (i) where the payer's CASP operates a marketplace platform and allows the payee to register its non-custodial wallet in order to receive payments for goods and services sold via such a platform; or (ii) where a non-custodial wallet is commonly known to belong to a certain payee (e.g, a large merchant). The changes mentioned above have been reflected in Annexes III and IV of the ITS under Art. 22(7) of MiCAR and also in Art. 6(2) of the draft RTS (new Art. 5(2)). These changes, together with the other changes explained above regarding the geographical scope of the transactions to be reported under Article 22(1)(d) and the exclusion of transactions between non-custodial wallets from the reporting under Art. 22(1)(d) of MiCAR aim to streamline the process of reconciliation of the data by issuers for the purpose of the reporting in Art. 22(1)(d) of MiCAR. They also aim to address challenges that issuers may otherwise face stemming from a double-reporting of transactions by both the payer's CASP and the payee's CASP under Art. 22(3) of MiCAR and the ITS, in case of transactions between custodial wallets, where the data sets from the payee's and the payer's CASPs differ (e.g, because of the more limited information the payer's CASP holds on the transaction, compared with the payee's CASP).	
11.	One respondent sought clarification whether a CASP should report to the issuer a transaction where the payer is in one single currency area (e.g the Euro area) and the payee is in another single currency area,	As explained in response to comment 8 above, the EBA decided to amend Art. 3(5) RTS to align with the wording in Art. 22(1)(d) MiCAR, by limiting the scope of the transactions to be reported	See amendments to Art. 3(5) of the draft RTS mentioned in the response to comment 8 above.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	but outside of the EU. Said respondent was of the view that such transactions should not be reported as there should not be any risk of currency substitution in such case.	under Art. 22(1)(d) MiCAR to transactions where both the payer and the payee are in the same single currency area (within the EU). Accordingly, one-leg out transactions (where one party is in the EU and the other party is outside the EU) are not covered by the reporting under Art. 22(1)(d) of MiCAR.	
Q5. Do you agree with the EBA's proposals on how issuers should calculate the value of transactions referred in Art. 22(1)(d) of MiCAR, as reflected in Art. 5 of the draft RTS? If not, please provide your reasoning and the underlying evidence.			
12.	Some respondents agreed with the proposals set out in Art. 5 of the draft RTS, while others suggested that the transactions referred to in Art. 22(1)(d) of MiCAR should be reported *exclusively in EUR*, not in any other official currency. These latter respondents were of the view that, since the caps in Art. 23(1) MiCAR reference the EUR, reporting in other official currency would increase the operational burden on CASPs and the issuer and may lead to inconsistent reporting if foreign exchange rates are applied at a different time.	Art. 22(1)(d) MiCAR does not require reporting in EUR for those issuers that are established in a non-euro area Member State. The current wording in Art. 5(2) RTS (requiring issuers to report in the official currency of their home Member State) is in line with the approach under the EBA Guidelines on reporting under the Payment Services Directive (see Guideline 2.3 which requires PSPs established in a non-euro area Member State to report in the currency of their home Member State). The EBA does not find compelling arguments to change this approach.	None.
13.	One respondent was of the view the proposals regarding the need for daily valuation using specific exchange rates and market prices are likely to be overly complex and burdensome in practice, especially for smaller issuers. Said respondent suggested to adopt a simplified method for issuers to calculate the value of these transactions (without providing other details as regards the suggested 'simplified' method).	Art. 22(1)(d) MiCAR refers to "the average aggregate value of transactions *per day* during the relevant quarter". This implies that, for calculating such averages, issuers should determine the aggregate value of transactions *per day*. Art. 5(3) draft RTS provides further details on the methodology for determining the value of transactions with an ART, or an EMT referencing a non-EU currency, depending on the asset(s) referenced by the respective token. The EBA does not find compelling arguments to change this approach.	None.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
Q6. In your view, does the transactional data to be reported by CASPs to the issuer, as described in para. 43 [of the CP], cover the data needed to allow the issuer to reconcile the information received from the CASP of the payer and the CASP of the payee before reporting the information in Art. 22(1)(d) to the competent authority? If not, please provide your reasoning with details and examples of which data should be added or removed.			
14.	Some respondents were of the view that the reporting by CASPs of transactional data and of their public distributed ledger addresses used for making transfers on behalf of their clients will not allow issuers to definitively identify whether an on-chain transaction involves a *non-custodial wallet* and therefore to comprehensively reconcile transactions, especially where a wallet address belongs to a third-country firm providing crypto-asset services that is not within the scope of MiCAR or the TFR. Furthermore, several respondents suggested removing the requirement for CASPs to report under the ITS to the issuer the public distributed ledger addresses CASPs use for making transfers on behalf of their clients, as they were of the view that no reporting of transactions and transfers concerning non-custodial wallets should be required (see comment [21] below).	The EBA's assessment on the comments raised regarding reporting of transactions between non-custodial wallets under Art. 22(1)(c) and the ITS is presented in the Final Report on the draft ITS (EBA/ITS/2024/xx). As regards the reporting of such transactions under Art. 22(1)(d), please refer to the response to comments [19-20] below.	None.
15.	Respondents shared divergent views regarding the proposals in the CP on the draft ITS under Art. 22(7) MiCAR with regard to the reporting by CASPs to the issuer of "unique identifier information for each holder". One respondent agreed with the proposals mentioned above and was of the view that, in order to properly reconcile data from several CASPs, for example concerning the number of holders (Art. 22 (1)(a) MiCAR), the issuer would need a reliable way to assess whether a holder at one CASP is also a holder with another CASP to prevent double-counting of holders. In the respondent's view, the crypto-	These comments relate to the draft ITS under Art. 22(7) of MiCAR, and not to these RTS. The EBA's assessment in relation to these comments is presented in the Final Report on the draft ITS (EBA/ITS/2024/xx).	None.

No	Summary of responses received	EBA's analysis	Amendments to the proposals
	asset account number at one CASP will not be sufficient to ensure this goal, as different CASPs use different crypto-asset account numbers. By contrast, other respondents raised concerns that requiring CASPs to provide issuers with the personally identifiable information of their customers creates data privacy concerns and risks that malicious actors could try to hack and exploit such data. In addition, one respondent raised concerns from a competition perspective. Some of these latter respondents were of the view that CASPs should report unique, *pseudonymous* identifiers for transaction reconciliation.		
16.	Some respondents suggested that the draft ITS should include a reporting requirement for CASPs on the absolute overall amount of ARTs and EMTs held by CASPs and their customers. In their view, such data is needed to enable issuers to determine the value of the issued ART or EMT and the corresponding size of the reserve of assets referred to in Art. 22(1)(b) MiCAR and for the assessment of the significance assessment under MiCAR.	These comments relate to the draft ITS under Art. 22(7) of MiCAR, and not to these RTS. The EBA's assessment in relation to these comments is presented in the Final Report on the draft ITS (EBA/ITS/2024/xx).	None.
Q7. Do you agree that, based on the transactional data to be reported by CASPs to the issuer as described in para. 43 [of the CP], issuers will be able to reconcile the data received from the CASP of the payer and the CASP of the payee on a transactional basis and in automated manner? If not, what obstacles do you see and how could these be overcome?			
17.	Some respondents were of the view that reconciliation will be possible, but not necessarily in an automated manner. One respondent mentioned technological limitations and data standardisation issues as potential obstacles to automated data reconciliation. Some respondents noted that, where automation is not possible, the workload related to the reconciliation of data will be substantial, and that costs will have to be borne eventually by customers.	The EBA has made a number of changes in the final draft RTS and the ITS which aim to streamline the reporting burden for issuers and the reconciliation by issuers of the data reported by CASPs to the issuer, in particular: • limiting the transactions to be reported under Article 22(1)(d) to transactions where both the payer and the payee are located	None.

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	To limit such costs and workload for issuers, some respondents suggested removing the best-effort estimates for transactions between non-custodial wallets from the reporting requirements. Another respondent suggested extending the timeframe of reconciliation of quarterly transaction data for the issuer.	in the same single currency area within the EU (see response to comment 1 above); • providing in the ITS that, for the purpose of Art. 22(1)(d) of MiCAR, for transactions between custodial wallets and transactions from a non-custodial wallet to a custodial wallet, the payee's CASP should report the relevant data to the issuer on an aggregate basis for each single currency area (instead of both the payer's CASP and the payee's CASP reporting transactional data, for each transaction); for transactions from a custodial wallet to a non-custodial wallet, the payer's CASPs should report the relevant data to the issuer (see the response to comment 10 above). Furthermore, the EBA has maintained in the final draft RTS its original proposal reflected in the CP to exclude transactions between non-custodial wallets from the reporting under Art. 22(1)(d) of MiCAR (see more details in this regard in the response comments 19 and 20 below). The provisions mentioned above aim to streamline the reporting burden for issuers in reconciling transactions for the purpose of the reporting in Art. 22(1)(d) of MiCAR.	
18.	Several respondents noted that CASPs benefit from a later entry into application of Title V of MiCAR (end of 2024) compared to issuers, and that Art. 143 MiCAR allows Member States to grant a transitional period of up to 18 months for those entities that are already registered or licensed under national regimes.	The EBA notes that according to Art. 143(3) of MiCAR, "Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorisation pursuant to Article 63, whichever is sooner".	None.

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	In their view, this can lead to a situation where CASPs might not report the data covered in Art. 22 MiCAR to the issuer prior to those CASPs being fully in scope of MiCAR's regime. Some respondents were of the view that the reporting obligation of CASPs in Art. 22(3) MiCAR will only apply after the transitional period in Art. 143 MiCAR ends and that this time difference makes it difficult, if not impossible, for issuers to reconcile the data, as issuers may not be receiving data from the CASPs of the payer and payee on a transactional basis in time. Some respondents added that this issue will also make the evaluation of the caps in Art. 23 MiCAR and of the thresholds in Art. 43 MiCAR a complex, if not impossible, endeavour. In this regard, one respondent suggested that, to mitigate such risks, the EBA should either mandate that entities benefiting from the transitional period under Art. 143 MiCAR to report the data under Art. 22 MiCAR even prior to becoming fully MiCAR-compliant CASPs under Title V of MiCAR, or establish a transitional phase for issuers of ARTs/EMTs that would allow them to only start sharing the data under Art. 22 MiCAR once they receive the necessary information from CASPs.	The EBA is of the view that the reporting obligation for CASPs under Art. 22(3) MiCAR and the ITS under Art. 22(7) may not apply to entities benefiting from the transitional period granted under national law based on Art. 143(3) MiCAR, pending their authorisation as CASPs. The EBA acknowledges that, as a result, there could be limitations in terms of what data issuers will be able to report in the first reporting periods under the RTS and the ITS under Art. 22(7) MiCAR. Pending authorisation of those entities as CASPs under MiCAR, the RTS and ITS under Art. 22(6) and (7) of MiCAR cannot impose obligations on those entities as this would go beyond the scope of the EBA mandates in Art. 22(6) and (7) MiCAR.	
Q8. In your view, how can an issuer estimate, in the case of transactions between noncustodial wallets, or between other type of distributed ledger addresses where there is no CASP involved: (i) whether the transfer is made between addresses of different persons, or between addresses of the same person, and (ii) the location of the payer and of the payee? Please describe the analytics tools and methodology that could be used for determining such aspects, and indicate what would be, in your view, the costs associated to using such tools and the degree of accuracy of the estimates referred to above?			
19.	The majority of respondents were of the view that the use by issuers of blockchain analysis tools to approximate transactions between non-custodial wallets or similar addresses without a CASP	Having assessed the arguments presented by the respondents, the EBA decided to maintain the approach proposed in the CP to exclude transactions between non-custodial wallets from the scope of the reporting under Art. 22(1)(d) MiCAR.	None.

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	involvement would result in very inaccurate and unreliable estimates and require significant effort and resources for issuers. One respondent explained that, in order to estimate the location of the holder of an address involved in a transaction between self-custodial wallets, the self-custodial wallet could be traced back to when it was first funded by an exchange, and that, based on a country's share of trading volume or web traffic on that exchange, a certain percentage of these wallets could be attributed to a country. Said respondent explained that these estimates are extremely inaccurate and based on various different assumptions, and that, especially in the crypto-asset industry, a large share of users use VPNs when transacting online, which makes these numbers even less reliable. The respondent also noted that the costs for using such analytics usually amount to between $10k and $100k annually, which constitutes a significant financial burden for issuers. Furthermore, said respondent was of the view that using clustering tools to link addresses to single users would be an operationally impossible project, and lead to very inaccurate estimate, as many weak assumptions are built into such tools. Relatedly, said respondent explained that users of non-custodial wallets usually use multiple addresses to transact on-chain and that in extreme cases, for example for airdrops where tokens are sent for free to users of a blockchain protocol, users create hundreds or thousands of addresses automatically to benefit financially from these airdrops. In addition, some respondents were of the view that it is impossible for issuers to infer whether a transaction between non-custodial wallets is associated with a payment for goods and services, or another purposes (e.g, investment). In said respondents' view, any		

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	such estimates would be built on weak assumptions, and result in very inaccurate estimates.		
Q9. Do you consider the EBA's proposals set out in recital 2 of the draft RTS and further explained in paras. 48-55 [of the CP] as regards the reporting of transactions between non-custodial wallets and between other type of distributed ledger addresses where there is no CASP involved to be achieving an appropriate balance between the competing demands of ensuring a high degree of data quality and imposing a proportionate reporting burden? If not, please provide your reasoning and the underlying evidence.			
20.	In general, respondents welcomed the EBA's proposal not to include in the scope of the reporting under Art. 22(1)(d) MiCAR transactions between non-custodial wallets, or between other type of distributed ledger addresses where there is no CASP involved, and were of the view that this strikes an appropriate balance between ensuring a high degree of data quality and imposing a proportionate reporting burden. More specifically, respondents were of the view that such transactions should be excluded from the scope of reporting under Art. 22(1)(d) MiCAR, because neither issuers nor CASPs have the necessary information to report such transactions under Art. 22(1)(d) MiCAR. Respondents further explained that, in their view, including such transactions in the scope of the reporting would: - lead to extremely inaccurate and unreliable estimates (see comment [19] above); - impact the issuance caps in Art. 23(1) MiCAR; - create significant implementation costs for issuers; - lead to legal uncertainty for issuers, inconsistent approaches and an unlevel playing field where issuers are incentivised to underestimate such transactions;	Having assessed the arguments presented by the respondents, the EBA decided to maintain the approach proposed in the CP to exclude transactions between non-custodial wallets from the scope of the reporting under Art. 22(1)(d) MiCAR.	None.

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	- potentially increase risks of artificial inflation of the number of transactions by malicious actors who would aim to make the issuer reach the caps in Art. 23 (1) MiCAR and be forced to stop issuing the token (see comment [6] above); and - risk undermining the value of non-custodial wallets for users. Furthermore, some respondents added that there is very little evidence that peer-to-peer crypto-asset transactions are used for retail purposes because there is an extremely limited number of merchants who accept payments in EMTs or ARTs from a non-custodial wallet. In this regard, one respondent was of the view that practically all merchants accepting crypto-assets use professional service providers (CASPs) to be able to receive, and instantly exchange crypto-assets for fiat.		
21.	Respondent had divergent views regarding the EBA's proposal to include transactions between non-custodial wallets in the scope of reporting under Art. 22(1)(c) of MiCAR and the ITS under Art. 22(7) of MiCAR, on a best efforts basis. While some respondents supported this proposal, others were of the view that no reporting of transactions (or transfers) between non-custodial wallets should be required at all, neither under Art. 22(1)(c) nor (d) of MiCAR. These latter respondents were of the view that such reporting would undermine the value of the non-custodial wallets for users, create privacy concerns, and lead to poor and unreliable data. In addition, one respondent suggested that, should the ITS include a reporting requirement as regards transactions between non-custodial wallets, such requirements should be on a 'commercially	As explained above, the draft RTS exclude transactions between non-custodial wallets from the scope of the reporting in Art. 22(1)(d) MiCAR. The EBA's assessment as regards the reporting of such transactions under Art. 22(1)(c) MiCAR and the ITS under Art. 22(7) MiCAR is presented in the Final Report on the draft ITS (EBA/ITS/2024/xx).	None.

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	reasonable efforts' basis, instead of on a best-efforts basis, which the respondent deemed to be too high a bar.		