

Position Paper

2024 February

Bitkom Reply to EBA's Consultation on the adjustment of own funds requirements and design of stress testing programmes for issuers under MiCAR

Q1: Is the procedure clear and the timelines for the issuer to provide views on the assessment and submit the plan reasonable?

Recognizing the complexity faced by competent authorities in assessing the risks associated with issuers of asset-referenced tokens or e-money tokens, along with the tokens themselves being novel, it is imperative for competent authorities to retain the flexibility to adjust own fund requirements for issuers of such tokens in response to observed higher risks. The provision in Article 35 (3) of Regulation (EU) 2023/1114 stipulates that competent authorities must furnish the issuer of asset-referenced tokens, or where applicable, the issuer of e-money tokens issued by electronic money institutions, with a relevant draft take into account any expressed views from such issuer.

Nonetheless, it remains unclear whether competent authorities base their decision to mandate an increase in own funds on a thorough consideration of the issuer's interests. In contrast to MiFID, MiCAR extends the opportunity for non-financial small and mid-cap entities to offer relevant (non-financial) services. The imposition of increased own fund requirements could significantly and directly impact the business operations, risk management, and overall business viability of any issuer of asset-referenced tokens or e-money tokens. Furthermore, raising adequate capital may pose greater challenges and expenses for crypto asset service providers compared to financial institutions due to potentially limited access to capital markets. Hence, for the sake of transparency, it would be beneficial to clearly delineate in the draft not only the rationale behind the heightened risk according to Article 1 No. 2 (b), but also the extent to which the relevant

interests of the issuer of the asset-referenced token have been duly deliberated, particularly concerning the potential magnitude of the required increase. This specification is deemed necessary, as the absence of defined boundaries for such a requirement may catch issuers of asset-referenced tokens off guard, potentially resulting in an unbalanced obligation.

Q2: Are the timeframes for issuers to adjust to higher own funds requirements feasible?

The one-year timeframe is deemed feasible. However, a timeframe of three months or less is considered impractical. Raising the necessary capital may pose greater challenges and expenses for crypto asset service providers compared to financial institutions due to potentially limited access to capital markets. Consequently, distinct criteria should be applied by competent authorities for issuers of asset-referenced tokens. To meet the heightened own funds requirements, the issuer may need to procure additional capital, a process that would require at least six months. Alternatively, the issuer may need to redeem a portion of the outstanding asset-referenced token to fulfill the higher own funds requirements. However, the latter option should be approached with caution, as redeeming a significant amount of E-money token could induce market effects. Therefore, it is strongly recommended that the option be provided to extend the three-month timeframe to up to six months if

- the issuer can demonstrate a plan to meet the higher own funds requirements within the subsequent six months, or if
- the issuer can present a plan to mitigate any identified material risks within the next six months.

Q3: During the period when own funds need to be increased by the issuer, should there be more restrictions on the issuer to ensure timely implementation of the additional own funds requirements, for example banning the issuance of further tokens?

While fully endorsing the notion of increasing own fund requirements in response to heightened risks in the financial market, it is critical to emphasize the importance of ensuring the issuer's continued operability and fulfillment of obligations for the benefit of both markets and investors, as outlined in the white paper. Specifically, maintaining the peg of the asset-referenced token to the designated underlying asset is paramount. Thus, the creation and redemption of new asset-referenced tokens are indispensable. However, any imposed restrictions should not unduly impede the issuer from delivering services outlined in the white paper or meeting regulatory obligations, nor expose the issuer to substantial operational risks. Hence, it is proposed to implement a hearing process wherein the issuer can provide feedback on proposed restrictions and explain operational infeasibilities or imbalances in requirements.

Additionally, elaboration is requested on the risk being mitigated by prohibiting new issuance while own funds are being raised. These funds are tied to operational expenses rather than reserve assets. If the risks are "issuer external" and expected to materialize, then throttling issuance might be warranted; however, if they stem from relative size without imminent crystallization, there is no rationale, and increases in own funds should integrate into the standard regulatory cycle. Regulatory-induced throttling, among other measures, could incite runs that should be manageable but would disproportionately affect the issuer's prospects for commercial success.

Q4: Do you agree with the criteria to identify if an issuer has a higher degree of risk?

Essentially, the criteria for identifying if an issuer possesses a higher degree of risk are acceptable. Nevertheless, for crypto asset service providers not meeting the criteria of financial institutions, it is imperative that the competent authority's approach to determining the likelihood of breaching specific requirements within the subsequent twelve months is transparent. Additionally, clear definitions of terms such as "stressed conditions" and "significant deterioration of the reserve assets" would be beneficial, enabling issuers to tailor their risk management strategies accordingly.

Q5: Do you agree with the procedure to assess whether an issuer has a higher degree of risk?

Please see the answer to question 4 above.

Q6: Do you consider the criteria and their evaluation benchmarks sufficiently clear?

Please see the answer to question 4 above.

Q7: Do you agree with the need for a solvency and liquidity stress-test and the requirements of the stress-test?

Fundamentally, the importance of solvency and liquidity stress tests, along with the prescribed guidelines for their execution, is recognized.

Q8: Do you agree with the frequency and time horizon of the solvency and liquidity stress-test? Should there be more differentiation between significant and not-significant issuers? Should the stress testing be more frequent for issuers of asset-referenced tokens referenced to official currencies?

Although solvency stress tests are required to be conducted at least quarterly for significant asset-referenced tokens or significant e-money tokens, it remains unclear whether the same frequency applies to issuers of regular, non-significant asset-referenced tokens or e-money tokens. Clarity is needed regarding whether the phrase "the frequency shall be, at least, semi-annual for such issuers" pertains to these issuers as well. Recognizing the stringent requirements for asset reserves to mitigate risks such as legal and operational segregation, specific liquidity criteria, and investment restrictions, we believe that conducting liquidity stress tests on a monthly basis is unnecessary and overly burdensome.

Q9: Should a reverse stress testing requirements/methodology be introduced? Please provide your reasoning.

The introduction of reverse stress testing requirements/methodology is unnecessary. Reverse stress tests aim to identify scenarios causing institutions to default by altering single variables while keeping others constant, often resulting in highly extreme and unrealistic outcomes. Therefore, the focus should prioritize normal stress testing. However, implementing reserve stress testing annually for significant issuers is justifiable. As for non-significant issuers, the requirement is not deemed necessary.

Q10: Do you have any other comments in relation to the stress-testing part in these RTS?

Regarding Article 9, additional guidance is sought concerning how to address the various types of risks, particularly regarding the potential provision of fixed calculation guidelines.

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