



02/06/2021

AMENDMENTS: 156

Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

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Committee on Economic and Monetary Affairs

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 1

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Some crypto-assets qualify as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council³³. The majority of crypto-assets, however, fall outside of the scope of Union legislation on financial services. There are no rules for services related to crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against fiat currency or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity in the secondary market of crypto-assets, including market manipulation. To address those risks, some Member States have put

Amendment

(3) Some crypto-assets qualify as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council³³. The majority of crypto-assets, however, fall **currently** outside of the scope of Union legislation on financial services. There are no rules for services related to crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against fiat currency or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity in the secondary market of crypto-assets, including market manipulation **and financial crime**. To address those risks,

in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in this area.

³³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

some Member States have put in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in this area.

³³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Or. en

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Amendment 2

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) The consensus mechanisms used for the validation of transactions can have a substantial environmental impact. This is particularly the case for the consensus mechanism known as proof-of-work, which requires participating miners to solve computational puzzles and compensates them proportional to their computational effort. Rising prices of the associated crypto-asset create incentives for increases in computational power as well as the frequent replacement of mining hardware. As a result, proof-of-work is often associated with high energy consumption, a material carbon footprint and significant generation of electronic waste. These characteristics could undermine European and global efforts to achieve the climate and sustainability goals. The best-known application of the proof-of-work consensus mechanism is

Bitcoin. According to most estimates, the energy consumption of the Bitcoin network equals that of entire countries. Moreover, between the period of 1 January 2016 and 30 June 2018, the Bitcoin network was responsible for up to 13 million metric tons of CO₂ emissions. The increasing energy consumption was accompanied by a growth in mining equipment and a generation of significant of electronic waste. It is therefore urgent to introduce environmental sustainability criteria for crypto-assets. The Commission should identify those consensus mechanisms that could pose a threat to the environment having regard to energy consumption, carbon emissions, depletion of real resources, electronic waste and the specific incentive structures. These unsustainable consensus mechanisms should only be applied at small scale.

Or. en

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Amendment 3

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 5 b (new)

Text proposed by the Commission

Amendment

(5 b) In line with the objectives of the Sustainable Finance Agenda, sustainability disclosures requirements as defined in Regulation (EU) 2019/2088 and the EU Taxonomy for sustainable activities should also apply to crypto assets as well as crypto-asset service provider and issuers.

Or. en

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Amendment 4

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Union legislation on financial services should ***not favour one particular technology***. Crypto-assets that qualify as ‘financial instruments’ as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU, regardless of the technology used for their issuance or their transfer.

Amendment

(6) Union legislation on financial services should ***based on the principle ‘same business, same risks, same rules’ and follow a technologically neutral approach***. Crypto-assets that qualify as ‘financial instruments’ as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU, regardless of the technology used for their issuance or their transfer. ***Moreover, crypto-assets that have the same or highly similar features to financial instruments should be treated as equivalent to financial instruments, insofar they provide profit or governance rights or a claim on a future cash flow, and should therefore be subject to the Union financial sector legislation and not to this Regulation. In order to achieve legal clarity with regard to which crypto-***

assets fall under the scope of this Regulation and which crypto-assets are excluded, the ESMA should specify the conditions under which a crypto-asset should be treated as a financial instrument because of its substance and regardless of its form.

Or. en

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Amendment 5

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 34 a (new)

Text proposed by the Commission

Amendment

(34 a) A significant proportion of crypto-asset service providers are deemed to have inadequate KYC and customer due diligence procedures pose increased risks of money laundering and terrorist financing. In 2019 the FATF adopted ‘the Travel Rule’ requiring all firms providing services in crypto-assets to obtain and hold required and accurate originator information and required beneficiary information on any transfers in crypto-assets, submit the information to beneficiary service provider and counterparts, if any, and make it available on request to the authorities. The Travel Rule has so far been implemented in a few jurisdictions, but not in the Union. With a view to stepping up the fight against money laundering and terrorist financing, the Union should ensure that crypto-asset service providers comply with

stringent AML obligations, and that the Union AML regulatory framework is aligned with the FATF international standards on combating money laundering and the financing of terrorism.

Or. en

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Amendment 6

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) *This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third-country firm at their own initiative. Where a third-country firm provides crypto-asset services at the own initiative of a person established in the Union, the crypto-asset services should not be deemed as provided in the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises crypto-asset services or activities in the Union, it should not be deemed as a crypto-asset service provided at the own initiative of the client. In such a case, the third-country firm should be authorised as a crypto-asset service provider.*

Amendment

(51) *Due to the inherently digital nature of crypto-asset services, third-country firms are often able to offer their services to customers in the Union without any physical or legal presence in the Union. This poses significant risks of circumvention of the standards of this Regulation and of putting crypto-asset service providers authorised in the Union at a competitive disadvantage vis-a-vis third-country competitors. No legal or natural person shall therefore be allowed to provide crypto-asset services to Union citizens on a non-occasional basis without having a legal representative in the Union and being authorised under this Regulation, even if services are provided solely at the own initiative of EU clients. ESMA should monitor and report annually on the scale and severity of circumvention of this Regulation by third-*

country actors, as well as propose possible countermeasures. The European Commission should, in its final report, analyse the scale and severity of circumvention of this Regulation by third-country actors and propose concrete and effective dissuasive sanctions to such entities to end or significantly reduce such circumvention.

Or. en

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Amendment 7

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 65

Text proposed by the Commission

(65) **Competent authorities** should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced **tokens or e-money** tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. Given the cross-border nature of crypto-asset markets, **competent authorities** should cooperate with **each other** to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets. Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens **or e-money** tokens and crypto-asset service

Amendment

(65) **ESMA** should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. Given the cross-border nature of crypto-asset markets, **there should be a European single supervisor responsible for the supervision of those crypto-assets and crypto-asset service providers with the view of ensuring consistency and effectiveness in the supervision. ESMA** should cooperate with **the relevant authorities in Member States** to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets. Competent authorities should also have the power to

providers.

impose sanctions on issuers of crypto-assets, including asset-referenced tokens *ore-money* tokens and crypto-asset service providers.

Or. en

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Amendment 8

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 1 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(e a) measures to prevent the misuse of crypto-assets for illicit purposes to protect the internal market from the risks relating to money laundering, terrorist financing and other criminal activities;

Or. en

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Amendment 9

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) Moreover, this Regulation does not apply to crypto-assets which resemble in substance or share a high degree of similarity with any of the categories listed in point (a) to (e) of this paragraph.

Or. en

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Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. *For the purpose of paragraph 2, ESMA shall develop draft regulatory technical standards outlining the criteria and conditions under which a crypto-asset can be considered in substance as equivalent or highly similar to a financial instrument irrespective of its form.*

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

Or. en

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Amendment 11

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3 a

Environmental sustainability of crypto-assets

- 1. Crypto-assets issued, offered or admitted to trading in the Union shall meet the environmental sustainability criteria in accordance with this Article.***
- 2. Where a crypto-asset relies on an environmentally unsustainable consensus mechanism, this consensus mechanism shall only be operated at small scale.***
- 3. A consensus mechanism shall be deemed environmentally unsustainable if it might have a significant environmental impact when operated at sufficiently large scale, considering the consumption of energy, the use of real resources, carbon emissions, electronic waste and specificities of the incentive design.***

4. An environmentally unsustainable consensus mechanism shall be deemed to be operated at small scale if, due to the limited scale of its operations, its environmental impact can be safely assumed not to cause significant harm to any of the environmental objectives set out in Regulation (EU) 2020/852 [Taxonomy Regulation] as well as not to jeopardise the achievement of the EU objectives of the Paris Agreement.

5. A crypto-asset shall be deemed to rely on a certain consensus mechanism also if it relies on a digital infrastructure which relies on that consensus mechanism. In that case, the full environmental impact of the digital infrastructure's operation of the consensus mechanism shall be counted towards the crypto-asset for the purpose of assessing the criterion in paragraph 2.

6. The Commission is empowered to adopt delegated acts in accordance with Article 121 to determine environmentally unsustainable consensus mechanisms as well as criteria to determine whether they are operated at small scale.

Where environmentally unsustainable consensus mechanisms are currently in use at large scale, the Commission may set an appropriate transition period to allow for a potential transition to more sustainable alternatives.

Or. en

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Amendment 12

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

(1) ‘distributed ledger technology’ or ‘DLT’ means a *type of* technology that *support the distributed recording of encrypted* data;

Amendment

(1) ‘distributed ledger technology’ or ‘DLT’ means a technology that *enables to store and share records of data and transactions in a synchronized manner across network nodes, using a consensus mechanism*;

Or. en

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Amendment 13

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1 a) ‘consensus mechanism’ means a set of rules and procedures by which an agreement, among DLT network nodes, is achieved leading to the validation of a transaction ;

Or. en

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Amendment 14

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6 a) ‘offeror of crypto-assets’ means any natural or legal person which offers crypto-assets, if different from the issuer;

Or. en

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Amendment 15

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘offer to the public’ means *an* offer *to third parties to acquire a crypto-asset in exchange for fiat currency or other* crypto-assets;

Amendment

(7) ‘offer to the public’ means *a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable a person to decide to purchase those crypto-assets. This definition also applies to the placing of crypto-assets through crypto-assets service providers;*

Or. en

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Amendment 16

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 9 – point c

Text proposed by the Commission

(c) the exchange of crypto-assets for
fiat currency that is legal tender;

Amendment

(c) the exchange of crypto-assets for
funds;

Or. en

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Amendment 17

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 9 – point h a (new)

Text proposed by the Commission

Amendment

***(h a) providing portfolio management
on crypto-assets;***

Or. en

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Amendment 18

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 17 a (new)

Text proposed by the Commission

Amendment

(17 a) ‘portfolio management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets;

Or. en

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Amendment 19

Sven Giegold

Proposal for a regulation

Article 3 – paragraph 1 – point 17 b (new)

Text proposed by the Commission

Amendment

(17 b) 'unhosted wallet' means a software or hardware that allows to hold, store and transfer crypto-assets which is not hosted by a third party, such as a financial institution or a credit service provider;

Or. en

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Amendment 20

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point 28 a (new)

Text proposed by the Commission

Amendment

(28 a) ‘client’ means any natural or legal person to whom a crypto-asset provider provides a crypto-asset service;

Or. en

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Amendment 21

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. No **issuer of** crypto-assets, other than asset-referenced tokens or e-money tokens, **shall**, in the Union, **offer such crypto-assets** to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that **issuer**:

Amendment

1. No **person shall offer** crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union, to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that **person**:

Or. en

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Amendment 22

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) has notified *that* crypto-asset *white paper* in accordance with Article 7;

Amendment

(c) has notified *and obtained the approval by ESMA of the crypto-asset key information sheet* in accordance with Article 7;

Or. en

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Amendment 23

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) *the crypto-assets are unique and not fungible with other crypto-assets;* *deleted*

Or. en

Justification

The rapid surge in NFT investment and speculation in the recent months does not justify an exemption from any obligations applied to other crypto-assets

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Amendment 24

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) the offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.

deleted

Or. en

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Amendment 25

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. *The operator of a trading platform shall be liable to comply with this Article when crypto-assets are admitted to trading on its own initiative.*

The operator of a trading platform shall ensure compliance and be liable for such compliance when a person seeking admission of a crypto-assets to trading is established in a third country.

In such case, the operator of the trading platform shall ensure that the person seeking admission of a crypto-assets to trading provides all the necessary information to enable the operator to comply with the requirements set out in this Article.

Or. en

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Amendment 26

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – title

Text proposed by the Commission

Amendment

Content and form of the *crypto-asset white paper*

Content and form of the *key information sheet*

Or. en

Justification

"White paper" is an established term in the field of crypto-currencies. Most white papers of existing crypto-currencies do not comply with the requirements of this regulation. To avoid confusion, a more neutral term should be used. This amendment should apply throughout the text accordingly.

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Amendment 27

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

*(a a) information about the offeror or
the person seeking admission to trading if
different from the issuer;*

Or. en

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Amendment 28

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(a b) the relevant key financial information on the issuer, or offeror or person seeking admission to trading, as applicable, for the purpose of assessing the ability to fulfil its obligations in relation to potential liability claims;

Or. en

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Amendment 29

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point a c (new)

Text proposed by the Commission

Amendment

*(a c) where applicable, information
about the crypto-asset service provider
operating a trading platform;*

Or. en

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Amendment 30

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) a detailed description of the *issuer's* project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public;

Amendment

(b) a detailed description of the *crypto-asset* project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public;

Or. en

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Amendment 31

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point e

Text proposed by the Commission

(e) information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets;

Amendment

(e) information on the underlying technology, ***protocols***, and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets;

Or. en

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Amendment 32

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) a description of any adverse impact by the issuer or the crypto-asset project, including its consensus mechanism and underlying technology, on sustainability factors in relation to any adverse impact on climate and other environmental, social and governance adverse impacts;

Or. en

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Amendment 33

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(f b) a declaration by the issuer, offeror or person seeking admission to trading or where applicable the operator of a trading platform or its management body that, to the best of their knowledge, the information contained in the key information sheet is in accordance with the facts and that the key information sheet makes no omission likely to affect its import.

Or. en

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Stefan Berger

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Amendment 34

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 5 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(d a) Where applicable, the crypto-asset key information sheet shall contain a clear risk warning that the crypto-assets are not covered by the investor compensation schemes established in accordance with Directive 97/9/EC of the European Parliament and of the Council nor by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.

Or. en

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Stefan Berger

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Amendment 35

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – title

Text proposed by the Commission

Notification of the crypto-asset *white paper*, and, where applicable, of the marketing communications

Amendment

Scrutiny and approval of the crypto-asset *key information sheet*, and, where applicable, of the marketing communications

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 36

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. ***Competent authorities shall not require an ex ante approval of a crypto-asset white paper, nor of any marketing communications relating to it before their publication.***

Amendment

1. A crypto-asset ***key information sheet shall not be published unless it has been approved by ESMA.***

Or. en

Justification

ESMA should be the single supervisor for all crypto-assets due to their inherent cross-border nature. This amendment should apply accordingly throughout the text.

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Amendment 37

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to ***the competent authority of their home Member State at least 20 working days before publication of the crypto-asset white paper. That competent authority*** may exercise the powers laid down in Article 82(1).

Amendment

2. Issuers, ***offerors or persons seeking admission to trading*** of crypto-assets, other than asset-referenced tokens or e-money tokens, ***or the operator of a trading platform, where applicable***, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to ***ESMA. ESMA*** may exercise the powers laid down in Article 82(1).

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 38

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – paragraph 3 – point a

Text proposed by the Commission

(a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU;

Amendment

(a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU ***or a crypto-asset which is deemed to be equivalent to a financial instrument in accordance with the criteria to be specified by ESMA in accordance with Article 2a;***

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 39

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – paragraph 4 – introductory part

Text proposed by the Commission

4. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, ***provide the competent authority of their home Member State with a list of host Member States, if any, where they intend to offer their crypto-assets to the public or intend to seek admission to trading on a trading platform for crypto-assets. They shall also inform their home Member State of the starting date of the intended offer to the public or intended admission to trading on such a trading platform for crypto-assets.***

Amendment

4. Issuers, ***offerors or persons seeking admission to trading*** of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, inform ***ESMA*** of the starting date of the intended offer to the public or intended admission to trading on such a trading platform for crypto-assets. ***ESMA shall notify the issuer, the offeror or the person asking for admission to trading of its decision regarding the approval of the crypto-asset key information sheet within 10 working days of the submission of the draft crypto-asset key information sheet. Where ESMA fails to take a decision within such time limit, such failure shall not be deemed to constitute approval of the application.***

Or. en

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Amendment 40

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 7 – paragraph 5

Text proposed by the Commission

5. ***Competent authorities shall communicate to ESMA the crypto-asset white papers that have been notified to them and the date of their notification.***

ESMA shall make the notified crypto-asset white papers available in the register referred to in Article 57.

Amendment

5. ESMA shall make the notified crypto-asset white papers available in the register referred to in Article 57.

Or. en

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Amendment 41

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website for as long as the crypto-assets are held by the public.

Amendment

1. Issuers *offerors or persons seeking admission to trading* of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website for as long as the crypto-assets are held by the public.

Or. en

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Amendment 42

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. The published crypto-asset white paper, and, where applicable, the marketing communications, shall be identical to the version ***notified to the relevant competent authority*** in accordance with Article 7, or, where applicable, modified in accordance with Article 11.

Amendment

2. The published crypto-asset white paper, and, where applicable, the marketing communications, shall be identical to the version ***approved by ESMA*** in accordance with Article 7, or, where applicable, modified in accordance with Article 11.

Or. en

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Amendment 43

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The issuer, offeror or person seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall immediately notify to ESMA the modified crypto-asset key information sheet, and where applicable, modified marketing communications, including the reasons for such modification. ESMA shall notify the issuer, the offeror or the person asking for admission to trading of its decision regarding the approval of the crypto-asset key information sheet within 5 working days of the submission of the draft crypto-asset key information sheet.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 44

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. The issuer shall immediately inform the public on its website of the notification of a modified crypto-asset ***white paper with the competent authority of its home Member State*** and shall provide a summary of the reasons for which it has notified a modified crypto-asset white paper.

Amendment

2. ***Once, approved,*** the issuer ***or offeror or person seeking admission to trading,*** shall immediately inform the public on its website of the notification ***to ESMA*** of a modified crypto-asset ***key information sheet*** and shall provide a summary of the reasons for which it has notified a modified crypto-asset white paper.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 45

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible.

Amendment

3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible ***and within 14 days at the latest.***

Or. en

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Amendment 46

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body has infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body for damage caused to her or him due to that infringement.

Amendment

1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body ***or the operator of an exchange that has admitted the crypto-assets to trading at its own initiative*** has infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body ***or the operator of an exchange that has admitted the crypto-assets to trading at its own initiative*** for damage caused to her or him due to that infringement.

Or. en

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Amendment 47

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, has infringed Article 5 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said crypto-assets.

deleted

Or. en

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Amendment 48

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 15 – paragraph 1

Text proposed by the Commission

1. No issuer of asset-referenced tokens shall, within the Union, offer such tokens to the public, or seek an admission of such assets to trading on a trading platform for crypto-assets, unless such issuers have been authorised to do so in accordance with Article 19 by *the competent authority of their home Member State*.

Amendment

1. No issuer of asset-referenced tokens shall, within the Union, offer such tokens to the public, or seek an admission of such assets to trading on a trading platform for crypto-assets, unless such issuers have been authorised to do so in accordance with Article 19 by *ESMA*.

Or. en

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Amendment 49

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 15 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the offer to the public of the asset-referenced tokens is solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.

deleted

Or. en

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Amendment 50

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 15 – paragraph 5

Text proposed by the Commission

5. The authorisation granted by *the competent authority* shall be valid for the entire Union and shall allow an issuer to offer the asset-referenced tokens for which it has been authorised throughout the Union, or to seek an admission of such asset-referenced tokens to trading on a trading platform for crypto-assets.

Amendment

5. The authorisation granted by *ESMA* shall be valid for the entire Union and shall allow an issuer to offer the asset-referenced tokens for which it has been authorised throughout the Union, or to seek an admission of such asset-referenced tokens to trading on a trading platform for crypto-assets.

Or. en

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Amendment 51

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 16 – paragraph 1

Text proposed by the Commission

1. Issuers of asset-referenced tokens shall submit their application for an authorisation as referred to in Article 15 to ***the competent authority of their home Member State.***

Amendment

1. Issuers of asset-referenced tokens shall submit their application for an authorisation as referred to in Article 15 to ***ESMA.***

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 52

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 16 – paragraph 2 – point d

Text proposed by the Commission

(d) *a* legal opinion that the asset-referenced tokens do not qualify as financial instruments, electronic money, deposits or structured deposits;

Amendment

(d) ***an independent and reasoned*** legal opinion that the asset-referenced tokens do not qualify as financial instruments, electronic money, deposits or structured deposits;

Or. en

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Amendment 53

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 16 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) a description of the applicant crypto-asset service provider's internal control mechanisms and procedures, referred to in [Article 30a], to ensure compliance with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council;

Or. en

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Amendment 54

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 16 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(e b) a description of the policies and procedures to identify, manage and disclose any conflicts of interests;

Or. en

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Amendment 55

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 17 – paragraph 1 – point e

Text proposed by the Commission

(e) detailed information on the nature and enforceability of rights, including **any** direct redemption right or any claims, that holders of asset-referenced tokens **and any legal or natural person as referred in Article 35(3)**, may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures.

Amendment

(e) detailed information on the nature and enforceability of rights, including:

(i) information on the direct redemption right or any claims **granted in accordance with Article 32;**

(ii) any other rights that holders of asset-referenced tokens, may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures.

Or. en

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Amendment 56

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 18 – paragraph 1

Text proposed by the Commission

1. **Competent authorities receiving** an application for authorisation as referred to in Article 16 **shall, within 20 working days of receipt of such application**, assess whether that application, including the crypto-asset **white paper** referred to in Article 16(2), point (i), is complete. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset **white paper**, is complete. Where the application, including the crypto-asset **white paper**, is not complete, **they** shall set a deadline by which the applicant issuer is to provide any missing information.

Amendment

1. **ESMA shall, within 20 working days of receipt of** an application for authorisation as referred to in Article 16, assess whether that application, including the crypto-asset **key information sheet** referred to in Article 16(2), point (i), is complete. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset **key information sheet**, is complete. Where the application, including the crypto-asset **key information sheet**, is not complete, **it** shall set a deadline by which the applicant issuer is to provide any missing information.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 57

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 18 – paragraph 2

Text proposed by the Commission

2. **The competent authorities** shall, within 3 months from the receipt of a complete application, assess whether the applicant issuer complies with the requirements set out in this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those three months, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset **white paper** referred in Article 16(2), point (i).

Amendment

2. **ESMA** shall, within 3 months from the receipt of a complete application, assess whether the applicant issuer complies with the requirements set out in this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those three months, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset **key information sheet** referred in Article 16(2), point (i).

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 58

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 18 – paragraph 3

Text proposed by the Commission

3. **Competent authorities** shall, after the three months referred to in paragraph 2, transmit **their** draft decision to the applicant issuer, and **their** draft decision and the application file to the EBA, **ESMA** and the ECB. Where the applicant issuer **is established** in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, **competent authorities** shall consult the central bank of that Member State. Applicant issuers shall have the right to provide **their competent authority** with observations and comments on their draft decisions.

Amendment

3. **ESMA** shall, after the three months referred to in paragraph 2, transmit **its** draft decision to the applicant issuer, and **its** draft decision and the application file to the EBA and the ECB. Where the applicant issuer **intends to make an offer of crypto-assets to the public or is seeking admission to trading** in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, **the ESMA** shall consult the central bank of that Member State. Applicant issuers shall have the right to provide **ESMA** with observations and comments on their draft decisions.

Or. en

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Amendment 59

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 18 – paragraph 4

Text proposed by the Commission

4. The EBA, *ESMA*, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue *a non-binding* opinion on the application and transmit their *non-binding* opinions to the *competent authority concerned*. *That competent authority* shall duly consider those *non-binding* opinions and the observations and comments of the applicant issuer.

Amendment

4. The EBA, the ECB and, where applicable, a central bank as referred to in paragraph 3 *shall*, within 2 months after having received the draft decision and the application file, issue *an* opinion on the application and transmit their opinions to the *ESMA*. *ESMA* shall duly consider those opinions and the observations and comments of the applicant issuer *and refuse the authorisations in the cases indicated in Article 19 (2)*

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 60

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 19 – paragraph 1

Text proposed by the Commission

1. **Competent authorities** shall, within one month after having received the **non-binding** opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

Amendment

1. **ESMA** shall, within one month after having received the opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

Or. en

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Committee on Economic and Monetary Affairs

02/06/2021

Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 61

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 19 – paragraph 2 – introductory part

Text proposed by the Commission

2. **Competent authorities** shall refuse authorisation where there are objective and demonstrable grounds for believing that:

Amendment

2. **ESMA** shall refuse authorisation where there are objective and demonstrable grounds for believing that:

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 62

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 19 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) the EBA has assessed that the asset-referenced token has a payment function and gives a negative opinion;

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 63

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 19 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(c b) the ECB or the national central banks of the ESCB give a negative opinion within their exclusive competence for the conduct of the monetary policy, and the promotion of the smooth operation of payment systems.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 64

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 19 – paragraph 3 – introductory part

Text proposed by the Commission

3. **Competent authorities** shall inform the EBA, **ESMA** and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted. ESMA shall include the following information in the register of crypto-assets and crypto-asset service providers referred to in Article 57:

Amendment

3. **The ESMA** shall inform the EBA and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted. ESMA shall include the following information in the register of crypto-assets and crypto-asset service providers referred to in Article 57:

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 65

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 20 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(g a) the issuer fails to have in place effective measures and procedures to prevent, detect and investigate illicit activities connected to its asset-referenced tokens;

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 66

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 20 – paragraph 1 – point g b (new)

Text proposed by the Commission

Amendment

(g b) the issuer's activity poses a threat to financial stability, market integrity or investor and consumer protection.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 67

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 20 – paragraph 1 – point g c (new)

Text proposed by the Commission

Amendment

(g c) the ECB or the national central banks of the ESCB within their exclusive competences, issue a negative opinion that the asset-referenced tokens pose a serious threat to monetary policy transmission or monetary sovereignty and the smooth operation of payment systems.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 68

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

1. **Where an** issuer of asset-referenced tokens or its management body **has infringed Article 17, by providing** in its crypto-asset **white paper** or in a modified crypto-asset **white paper** information which is not complete, fair or clear or **by providing information which is** misleading, a holder of such asset-referenced tokens may claim damages from that issuer of asset-referenced tokens or its management body for damage caused to her or him due to that infringement.

Amendment

1. **The** issuer of asset-referenced tokens or its management body **is solely responsible for the information provided** in its crypto-asset **key information sheet** or in a modified crypto-asset **key information sheet and shall be held legally liable to pay compensation for any claim, loss or damage resulting from providing** information which is not complete, fair or clear or misleading, **in infringement of Article 17**. A holder of such asset-referenced tokens may claim damages from that issuer of asset-referenced tokens or its management body for damage caused to her or him due to that infringement, **in accordance with the applicable national law as determined by the relevant rules of private international law**.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 69

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 22 – paragraph 2

Text proposed by the Commission

Amendment

2. It shall be the responsibility of the holders of asset-referenced tokens to present evidence indicating that the issuer of asset-referenced tokens has infringed Article 17 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said asset-referenced tokens.

deleted

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 70

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 26 a (new)

Text proposed by the Commission

Amendment

Article 26 a

Reporting obligations to ESMA

Issuers of asset-referenced tokens shall regularly report to ESMA on the developments in the markets in relation of their asset-referenced tokens. An issuer of asset-referenced tokens provide the following information to ESMA for each asset reference token:

(a) the customer base;

(b) the value and market capitalisation of the asset referenced tokens;

(c) the size of the reserve;

(d) the average number of transactions per day;

(e) the average number of transactions linked with the purchase of goods or

services.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 71

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 27 – paragraph 1

Text proposed by the Commission

1. Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens. Where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 30(5) point (h), issuers of asset-referenced tokens shall establish procedures to facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities.

Amendment

1. Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens ***and other interested parties, including consumer associations***. Where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 30(5) point (h), issuers of asset-referenced tokens shall establish procedures to facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 72

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 30 – paragraph 3

Text proposed by the Commission

3. Natural persons who either own, directly or indirectly, more than 20% of the share capital or voting rights of issuers of asset-referenced tokens, or who exercise, by any other means, a power of control over such issuers shall have the necessary good repute and competence.

Amendment

3. Natural persons who either own, directly or indirectly, more than 20% of the share capital or voting rights of issuers of asset-referenced tokens, or who exercise, by any other means, a power of control over such issuers shall have the necessary good repute and competence ***and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism.***

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 73

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 30 – paragraph 11

Text proposed by the Commission

11. Issuers of asset-referenced tokens shall ensure that they are regularly audited by independent auditors. The results of those audits shall be communicated *to* the management body of the issuer concerned and *made* available *to* the competent authority.

Amendment

11. Issuers of asset-referenced tokens shall ensure that they are regularly audited by independent *external* auditors, *at least annually*. The results of those audits shall be communicated *to* the management body of the issuer concerned and *the ESMA at the latest within 4 weeks of the date of the valuation and shall be made publicly available without delay, unless the competent authority has requested a delay of such publication in the interest of the holders and financial stability*.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 74

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 31 – paragraph 3 – point g a (new)

Text proposed by the Commission

Amendment

(g a) any vulnerability revealed by the results of the stress test referred to in Article 31a.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 75

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 31 – paragraph 4 – point c a (new)

Text proposed by the Commission

Amendment

(c a) the common reference parameters of the stress test scenarios to be included in the stress tests taking into account the factors specified in paragraph 1.

The draft regulatory standards shall be updated at least every two years taking into account the latest market developments”.

Or. en

Justification

Alignment with MMF Regulation.

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 76

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31 a

Stress testing

1. Issuers of asset-referenced tokens shall have in place sound stress testing processes that identify possible events or future changes in financial conditions which could have unfavourable effects on the asset-referenced token. Without prejudice to the provisions on digital operational resilience testing laid down in Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA], the issuer of asset referenced tokens shall conduct, on a regular basis, stress testing that consider the effects of severe plausible scenarios.

The stress test scenarios shall at least take into consideration reference parameters that include the following factors:

(a) hypothetical changes in the level of liquidity of the assets held in the portfolio of the asset-referenced tokens;

(b) hypothetical changes in the level of credit risk of the assets held in the portfolio of the asset-referenced tokens;

(c) hypothetical movements of the interest rates and exchange rates;

(d) hypothetical levels of redemption;

(e) hypothetical widening or narrowing of spreads among indices to which interest rates of portfolio assets are tied;

(f) hypothetical macrosystemic shocks affecting the economy as a whole.

2. Where the stress test reveals any vulnerability, the issuer of the asset-referenced tokens shall draw up a report with the results of the stress testing and an action plan and submit them to the ESMA. Where necessary, the issuer of the asset-referenced tokens shall take action to strengthen the robustness of the asset-referenced tokens, including actions that reinforce the liquidity or the quality of the assets of the asset-referenced tokens and shall immediately inform the ESMA of the measures taken.

Or. en

Justification

Alignment with MMF Regulation

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 77

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 32 – paragraph 1

Text proposed by the Commission

1. Issuers of asset-references tokens shall at all times constitute and maintain a reserve of assets.

Amendment

1. Issuers of asset-references tokens shall at all times constitute and maintain a reserve of assets *to cover the claims from holders in respect to the asset referenced tokens in circulation. The aggregate value of reserve assets shall always be at least equal to the aggregate face value of the claims on the issuer from holders of asset-referenced tokens in circulation. For the purpose of calculating the aggregate face value of token holders' claims, and for any valuation of the reserve assets under paragraph 5 of this Article, Article 30(11), point (c) of Article 35(2), Article 41 and Article 42, the face value of claims, and the value of funds and other reserve assets, including other crypto-assets, shall be expressed in the same official currency*

Or. en

Justification

The aggregate value of reserve asset shall always be equal to the aggregate value of the claims on the issuer to ensure adequate protection of holders of the ART in circulation.

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 78

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 33 – paragraph 1 – point a

Text proposed by the Commission

(a) the reserve assets are segregated from the issuers' own assets;

Amendment

(a) the reserve assets are ***legally and operationally*** segregated from the issuers' own assets ***and insulated in the interest of the holders of asset-referenced tokens, in particular in the event of insolvency;***

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 79

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 34 – paragraph 4 – point c a (new)

Text proposed by the Commission

Amendment

(c a) (d) liquidity requirements establishing which percentage of the reserve assets should be comprised of daily maturing assets, reverse repurchase agreements which are able to be terminated by giving one working day's prior notice or cash which is able to be withdrawn by giving one working day's prior notice;

(e) liquidity requirements establishing which percentage of the reserve assets should be comprised of weekly maturing assets, reverse repurchase agreements which are able to be terminated by giving five working days' prior notice, or cash which is able to be withdrawn by giving five working days' prior notice;

(f) concentration requirements preventing the issuer from investing more than a certain percentage of assets issued by a

single body;

(g) issuer from keeping in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers or credit institutions which belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council().*

Or. en

Justification

As recommended in the ECB opinion, to ensure reserve assets of asset-referenced tokens and e-money tokens are able to withstand severe liquidity strains and minimise risks to financial stability.

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 80

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 1

Text proposed by the Commission

1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens, ***including any*** direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets.

Amendment

1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens ***to ensure a*** direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 81

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Holders of asset-referenced tokens shall be provided with a permanent right of redemption on the issuer of such asset-referenced tokens. Any asset-referenced token that does not provide all holders with a permanent redemption right shall be prohibited. Upon request by the holder of asset-referenced tokens, the respective issuers shall redeem , at any moment and at market value, the monetary value of the asset-referenced tokens held to the holders of asset-referenced tokens, either in cash or by credit transfer.

Such right of redemption shall be granted without prejudice to the application of restrictive measures imposed on the issuer under other Union or national legislation and in particular in accordance with anti-money laundering and anti-terrorist financing rules, which may require the

issuer to take appropriate action to freeze the funds or take any specific measure linked to the prevention and investigation of crimes.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 82

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. By way of derogation from paragraph 1a, issuers of asset-referenced tokens may, in accordance with the conditions set out in the crypto-asset key information sheet and only in exceptional cases temporarily suspend the redemption of its tokens, where such suspension is in the interests of the holders of the asset referenced tokens.

In the event of a temporary suspension, the issuers of asset referenced tokens shall, without delay, communicate their decision to the ESMA.

The ESMA may require the suspension of the redemption of tokens in the interest of the holders of the asset-referenced tokens or of the public.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 83

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 2 – introductory part

Text proposed by the Commission

2. *Where holders of asset-referenced tokens are granted rights as referred to in paragraph 1*, issuers of asset-referenced tokens shall establish a policy setting out:

Amendment

2. Issuers of asset-referenced tokens shall establish a policy setting out

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 84

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 2 – point c

Text proposed by the Commission

(c) *the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when **those rights are exercised by the holder of asset-referenced** tokens;*

Amendment

(c) *methodology and criteria to ensure **a fair, reliable and transparent** valuation of the asset-referenced tokens and of the reserve assets when **the issuer offers the right to redeem the asset referenced tokens at market value, and its verification by an independent auditor;***

Or. en

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Amendment 85

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) the fees applied by the issuers of asset-referenced tokens when the holders exercise those rights.

deleted

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 86

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The fees referred to in point (e) shall be proportionate and commensurate with the actual costs incurred by the issuers of asset-referenced tokens.

deleted

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 87

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 3

Text proposed by the Commission

Amendment

3. Where issuers of asset-referenced tokens do not grant rights as referred to in paragraph 1 to all the holders of asset-referenced tokens, the detailed policies and procedures shall specify the natural or legal persons that are provided with such rights. The detailed policies and procedures shall also specify the conditions for exercising such rights and the obligations imposed on those persons.

deleted

Issuers of asset-referenced tokens shall establish and maintain appropriate contractual arrangements with those natural or legal persons who are granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and each of those natural or legal persons. A contractual

arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 88

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

Amendment

4. Issuers of asset-referenced tokens that do not grant rights as referred to in paragraph 1 to all the holders of such asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service referred to in Article 3(1) point (12). The issuer of asset-referenced tokens shall ensure that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis.

deleted

Where the market value of asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets, the holders of asset-referenced tokens shall have the right to

redeem the crypto-assets from the issuer of crypto-assets directly. In that case, any fee applied for such redemption shall be proportionate and commensurate with the actual costs incurred by the issuer of asset-referenced tokens.

The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 89

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 5 – introductory part

Text proposed by the Commission

5. The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards specifying:

Amendment

5. The EBA shall, in close cooperation with ESMA **and the ESCB**, develop draft regulatory technical standards specifying:

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 90

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 35 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the conditions which need to be met by the issuer after the adoption of the temporary suspension of the redemption of the asset referenced tokens, once the suspension has been decided.

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 91

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – introductory part

Text proposed by the Commission

1. *The EBA shall classify asset-referenced tokens as significant asset-referenced tokens **on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least three** of the following criteria are met:*

Amendment

1. *A issuer of asset-referenced tokens shall **be designated** asset-referenced tokens as significant asset-referenced tokens **whereat** least **two** of the following criteria are met:*

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 92

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the size of*** the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities referred to in Article 30(5), point (h);

Amendment

(a) the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities referred to in Article 30(5), point (h) ***is at least 5 million;***

Or. en

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Amendment 93

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – point b

Text proposed by the Commission

(b) the value of the asset-referenced tokens issued or, where applicable, their market capitalisation;

Amendment

(b) the value of the asset-referenced tokens issued or, where applicable, their market capitalisation ***is at least EUR 5 billion in the last financial year;***

Or. en

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Stefan Berger

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Amendment 94

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – point c

Text proposed by the Commission

(c) the number and value of transactions in those asset-referenced tokens;

Amendment

(c) the number and value of transactions in those asset-referenced tokens *is at least [xxx] transactions per day or EUR 300 million per day respectively;*

Or. en

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Stefan Berger

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Amendment 95

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the issuer of the asset-referenced tokens is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU).../... (Digital Markets Act);

Or. en

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Amendment 96

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

*(d b) the asset-referenced tokens are
used in at least 5 Member States;*

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 97

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 39 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. *Where a issuer of assets referenced tokens authorised in accordance with Article 19 meets at least two of the thresholds in paragraph 2, it shall notify ESMA without undue delay and at the latest 7 days after those thresholds are satisfied and provide it with the relevant information identified in paragraph.*

Or. en

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Amendment 98

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40 a

Quasi e-money tokens

Where the ESMA considers that a significant asset-referenced token is being widely used for payments in the Union, it shall request an opinion to the EBA.

Where EBA concludes, after consulting the ECB and the relevant central banks of Member States whose currency is not the euro, that the significant asset-referenced token has become widely used as a means of exchange, the asset-referenced token shall be re-classified as quasi-e-money token and the supervisory responsibilities shall be transferred to the EBA.

The EBA shall require the issuer of significant quasi-e-money tokens to comply with the same requirements regarding the issuance and redeemability provided for issuers of e-money tokens in

accordance with Article 4.4, without prejudice to the application of higher fines and sanctions for significant asset referenced tokens.

Or. en

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Amendment 99

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 43 – paragraph 2

Text proposed by the Commission

Amendment

2. *Paragraph 1 shall not apply to:* *deleted*

(a) e-money tokens that are marketed, distributed and held by qualified investors and can only be held by qualified investors;

(b) if the average outstanding amount of e-money tokens does not exceed EUR 5 000 000, or the corresponding equivalent in another currency, over a period of 12 months, calculated at the end of each calendar day.

For the purpose of point (b), where the Member State has set a threshold lower than EUR 5 000 000 in accordance with Article 9 (1)(a) of Directive 2009/110/EC, such a threshold shall apply.

In the case referred to in points (a) and (b), the issuers of electronic money tokens shall produce a crypto-asset white paper

and notify such crypto-asset white paper to the competent authority in accordance with Article 46.

Or. en

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Amendment 100

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 44 – paragraph 6

Text proposed by the Commission

Amendment

6. Redemption may be subject to a fee only if stated in the crypto-asset white paper. Any such fee shall be proportionate and commensurate with the actual costs incurred by issuers of e-money tokens.

deleted

Or. en

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Amendment 101

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 46 – title

Text proposed by the Commission

Content and form of the crypto-asset *white paper* for electronic money tokens

Amendment

Content and form of the crypto-asset *key information sheet* for electronic money tokens

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 102

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 46 – paragraph 1

Text proposed by the Commission

1. Before offering e-money tokens to the public in the EU or seeking an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall **publish** a crypto-asset **white paper** on its website.

Amendment

1. Before offering e-money tokens to the public in the EU or seeking an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall **obtain approval for its** a crypto-asset **key information sheet and, once approved, it shall publish it** on its website.

Or. en

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Amendment 103

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 46 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(f a) a declaration by the issuer or its management body that, to the best of their knowledge, the information contained in the key information sheet is in accordance with the facts and that the key information sheet makes no omission likely to affect its import;

Or. en

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Amendment 104

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 46 – paragraph 9 – introductory part

Text proposed by the Commission

9. The issuer of e-money tokens shall notify its draft crypto-asset ***white paper***, and where applicable their marketing communications, to the relevant competent authority as referred to in Article 3(1) point (24)(b) ***at least*** 20 working days ***before its date of its publication***.

Amendment

9. The issuer of e-money tokens shall notify its draft crypto-asset ***key information sheet***, and where applicable their marketing communications, to the relevant competent authority as referred to in Article 3(1) point (24)(b). ***The relevant authority shall notify the issuer of its decision regarding the approval within 20 working days of the submission of the draft key information sheet.***

Or. en

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Amendment 105

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 47 – paragraph 1 – introductory part

Text proposed by the Commission

1. **Where an** issuer of e-money tokens or its management body **has infringed Article 46, by providing** in its crypto-asset **white paper or** in a modified crypto-asset **white paper** information which is not complete, fair or clear or by providing information which is misleading, a holder of such e-money tokens may claim damages from that issuer of e-money tokens or its management body for damage caused to her or him due to that infringement.

Amendment

1. **The** issuer of e-money tokens or its management body **is solely responsible for the information provided** in its crypto-asset **key information sheet or in a** in a modified crypto-asset **key information sheet and shall be held legally liable to pay compensation for any claim, loss or damage resulting from providing** information which is not complete, fair or clear or by providing information which is misleading, **in infringement of Article 46.** A holder of such e-money tokens may claim damages from that issuer of e-money tokens or its management body for damage caused to her or him due to that infringement, **in accordance with the applicable national law as determined by the relevant rules of private international law.**

Or. en

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Amendment 106

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 53 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Crypto-asset service providers shall, at all times, meet the conditions for their authorisation.

Amendment

Crypto-asset service providers shall, at all times, meet the conditions for their ***initial authorisation and shall notify ESMA without undue delay, of any material changes to the conditions for their*** authorisation.

Or. en

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Amendment 107

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Crypto-asset service providers ***that provide crypto-asset services on a cross-border basis*** shall ***not*** be required to ***have a physical*** presence in the ***territory of a host Member State***.

Amendment

Crypto-asset service providers shall be required to ***appoint a resident director and to have substantive management*** presence in the ***Union***.

Or. en

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Amendment 108

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 1

Text proposed by the Commission

1. Legal persons that intend to provide crypto-asset services shall apply for authorisation as a crypto-asset service provider to ***the competent authority of the Member State where they have their registered office.***

Amendment

1. Legal persons that intend to provide crypto-asset services shall apply for authorisation as a crypto-asset service provider to ***ESMA.***

Or. en

Justification

ESMA should be the single direct supervisor for crypto-asset service providers providing their services in the Union given the inherent cross-border nature of the business. This amendments is meant to apply throughout the text accordingly.

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Amendment 109

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) name and contact details of a central contact person in charge of compliance with this Regulation and anti-money laundering obligations;

Or. en

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Amendment 110

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) a statement that the applicant crypto-asset service provider is not a subsidiary of a crypto-assets service provider or of the parent holding of such crypto-asset service provider, and is not controlled by a crypto-asset service provider-, located is in any of the following countries:

(i) a third country which is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council;

(ii) a third country which is listed in Annex I or Annex II of the EU list of noncooperative jurisdictions for tax purposes.

Or. en

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Amendment 111

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point f

Text proposed by the Commission

(f) for all natural persons involved in the management body of the applicant crypto-asset service provider, and for all natural persons who, directly or indirectly, hold **20%** or more of the share capital or voting rights, proof of the absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, counter-terrorism legislation, and professional liability obligations;

Amendment

(f) for all natural persons involved in the management body of the applicant crypto-asset service provider, and for all natural persons who, directly or indirectly, hold **10%** or more of the share capital or voting rights, ***or ownership interest in the crypto-asset service provider, including through bearer shareholdings, or through control via other means, information on their identities***, proof of the absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, counter-terrorism legislation, and professional liability obligations;

Or. en

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Amendment 112

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point g

Text proposed by the Commission

(g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider **collectively** possess sufficient knowledge, skills and experience to manage that provider and that those natural persons are required to commit sufficient time to the performance of their duties;

Amendment

(g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider possess sufficient knowledge, skills and experience to manage that provider and that those natural persons are required to commit sufficient time to the performance of their duties;

Or. en

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Amendment 113

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(g a) for the persons involved in the management body, a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed;

Or. en

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Amendment 114

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point m a (new)

Text proposed by the Commission

Amendment

(m a) a description of the policies and procedures to identify, manage and disclose any conflicts of interests;

Or. en

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Amendment 115

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 54 – paragraph 2 – point m b (new)

Text proposed by the Commission

Amendment

(m b) a description of the applicant crypto-asset service provider's internal control mechanisms and procedures, referred to in Article 61 Article 61a, including the procedures to ensure compliance with the obligations in relation to money laundering and terrorist financing;

Or. en

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Amendment 116

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 56 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(e a) fails to have in place effective measures and procedures to prevent, detect and investigate illicit activities connected to the provision of crypto-asset services;

eb) its activity poses a threat to financial stability, market integrity or investor and consumer protection;

Or. en

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Amendment 117

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 1

Text proposed by the Commission

1. Members of the management body of crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties. They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

Amendment

1. Members of the management body of crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties ***and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism.*** They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

Or. en

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Amendment 118

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 2

Text proposed by the Commission

2. Natural persons who either own, directly or indirectly, more than **20%** of the crypto-asset service provider's share capital or voting rights, or who exercise, by any other means, a power of control over the said crypto-asset service provider shall provide evidence that they have the necessary good repute and competence.

Amendment

2. Natural persons who either own, directly or indirectly, more than **10%** of the crypto-asset service provider's share capital or voting rights, or who exercise, by any other means, a power of control over the said crypto-asset service provider shall provide evidence that they have the necessary good repute and competence ***and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism.***

Or. en

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Amendment 119

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 3

Text proposed by the Commission

3. None of the persons referred to in paragraphs 1 or 2 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

Amendment

3. None of the persons referred to in paragraphs 1 or 2 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes ***or for misconduct or fraud in the management of a business..***

Or. en

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Amendment 120

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Crypto-asset service providers shall establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;

3b. Crypto-asset service providers shall establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of crypto-asset service provider;

Or. en

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Amendment 121

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9 a. Crypto-asset service providers shall not provide services related in any way, shape, or form to crypto-assets with an in built anonymisation function that limits the traceability of transactions. In particular, they shall not facilitate the purchase or trading of such crypto-assets and shall not offer custody services for such crypto-assets.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 122

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 – paragraph 9 b (new)

Text proposed by the Commission

Amendment

9 b. Crypto-asset service providers shall not provide services related in any way, shape, or form to crypto-assets that do not meet the environmental sustainability criteria in accordance with Article 3a. In particular, they shall not facilitate the purchase or trading of such crypto-assets and shall not offer custody services for such crypto-assets.

Or. en

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Amendment 123

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 a (new)

Text proposed by the Commission

Amendment

Article 61 a

Know your customer policy

1. All crypto-assets service providers shall have in place internal control mechanisms and effective procedures for prevention, detection and investigation of money laundering and terrorist financing and other criminal activities, in accordance with Directive (EU) 2015/849.

They shall establish, implement and apply adequate customer due diligence procedures by identifying and verifying the client identity on the basis of documents, data or information obtained from a reliable and independent source and by identifying the identity of the beneficial owner and taking reasonable measures to verify that person's identity.

2. The internal control mechanisms and

procedures referred to in paragraph 1 shall foresee enhanced due diligence measures for customers that wish to transfer crypto-assets to or from unhosted wallets.

3. Crypto-asset service providers shall not have any operation or any controlled entities in a third country which is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council or in a third country which is listed in Annex I or Annex II of the EU list of noncooperative jurisdictions for tax purposes, or be controlled by an entity established in any of those jurisdictions.

4. Crypto-asset service providers transferring crypto-assets shall have internal control mechanisms and effective procedures in place to ensure the full traceability of all transfers of crypto-assets, which equal or exceed EUR 1 000, and in particular to ensure they comply with the following obligations:

(a) obtain and hold required and accurate information on the originator and the beneficiary and transmit this information to the crypto-service provider or financial institution of the beneficiary;

(b) make the information available to the competent authorities upon request;

(c) monitor the availability of information;

(d) take freezing actions, and prohibit transactions with persons and entities included in the list of persons and entities subject to sanctions or any transfers towards a crypto-assets service provider included in the EU Register of non-compliant crypto-asset service providers referred to in Article 61b.

For the purpose of point (a), the required information shall include:

(i) the originator's name;

(ii) originator's account number where such an account is used to process the transaction;

(iii) the originator's physical address, or national identity number, or customer identification number that uniquely identifies the originator to the ordering institution, or date and place of birth;

(iv) beneficiary's name;

(v) beneficiary account number where such an account is used to process the transaction;

(vi) date of the transaction and amount transferred.

Where crypto-asset service providers cannot obtain the information required in accordance with the paragraph above, they shall refuse to process the transaction.

5. Crypto-assets service providers shall without delay immediately report to the competent authorities any reasonable suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing or other criminal activity, and provide the competent authority directly, at its request, with all necessary information.

Or. en

EUROPEAN PARLIAMENT

Committee on Economic and Monetary Affairs

02/06/2021

Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 124

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 61 b (new)

Text proposed by the Commission

Amendment

Article 61 b

ESMA Register of non-compliant crypto-assets service providers

For the purpose of Article 61a, point (d) of paragraph 3, ESMA shall identify crypto-asset service providers operating within and outside the EU which do not comply with EU or international standards for AML/CTF and tax purposes or do not at all times cooperate with EU law enforcement authorities and which pose significant threats to the financial system of the Union and the proper functioning of the internal market.

ESMA shall set up and maintain a public register of 'non-compliant crypto-assets service providers' and update the register on a regular basis. In order to identify non-compliant crypto-asset service providers, ESMA shall take into account

the following indicators:

(a) the crypto-asset service provider has strong deficiencies in relation to customer due diligence procedures and only requires its clients minimal information, such as an email address, name and a phone number;

(b) the crypto-asset service provider has not a clear domiciliation in any country;

(c) the crypto-asset service provider is located in a country included in the EU AML/CTF list of high risk third country;

(d) the crypto-asset service provider is located in a country included in the EU list of non-cooperative jurisdictions for tax purposes;

(e) the crypto-asset service provider is a decentralised exchange.

When drawing up the list, ESMA shall take into account relevant evaluations, assessments or reports drawn up by international organisations with competence in the field of preventing money laundering and combating terrorist financing, law enforcement and intelligence agencies and any information provided by crypto-assets service providers.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 125

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 65 – paragraph 1 – introductory part

Text proposed by the Commission

1. Crypto-asset service providers shall maintain and operate an effective policy to prevent, identify, manage **and disclose** conflicts of interest between themselves and:

Amendment

1. Crypto-asset service providers shall maintain and operate an effective policy to prevent, identify **or** manage conflicts of interest between themselves and:

Or. en

Justification

Disclosure should be done as a last resort

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 126

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 65 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The conflicts of interest policy established in accordance with paragraph 1 shall specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts, including at least the following:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 127

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 65 – paragraph 2 – introductory part

Text proposed by the Commission

2. Crypto-asset service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.

Amendment

2. Crypto-asset service providers shall **clearly** disclose to their clients and potential clients the general nature and sources of conflicts of interest **as well as the risks to the client that arise as a result of the conflicts of interest** and the steps taken to mitigate them **before undertaking business on their behalf**.

Crypto-asset service providers shall ensure that disclosure to clients and potential clients is a measure of last resort that shall be used only where the effective conflicts of interest policy established to prevent or manage its conflicts of interest is not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 128

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 65 – paragraph 4

Text proposed by the Commission

4. Crypto-asset service providers shall assess and at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

Amendment

4. Crypto-asset service providers shall assess and at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies. ***Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the crypto-asset service provider's conflicts of interest policy.***

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 129

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 67 – paragraph 8

Text proposed by the Commission

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be liable to their clients for loss of crypto-assets as a resulting from a malfunction or hacks up to the market value of the crypto-assets lost.

Amendment

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be liable to their clients for loss of crypto-assets ***or of the means of access to the crypto-assets*** as a resulting from ***an operational incident associate with the provision of the service or the operation of the service provider, including*** a malfunction or hacks, up to the market value of the crypto-assets lost.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 130

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 70 – paragraph 3

Text proposed by the Commission

3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it.

Amendment

3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it.

That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the crypto-asset service provider for the client. Crypto-asset service providers shall obtain the prior and informed consent of their clients to the order execution policy.

Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate. Where the crypto-asset service provider considers, on the basis of the information

received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the crypto-asset service provider shall warn the client or potential client. That warning may be provided in a standardised format. Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for them. That warning may be provided in a standardised format.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 131

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 73 – title

Text proposed by the Commission

Advice on crypto-assets

Amendment

Advice on crypto-assets *and portfolio
management*

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 132

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 73 – paragraph 1

Text proposed by the Commission

1. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall assess the **compatibility** of such crypto-assets with the needs of the clients and **recommend** them only when this is in the interest of the clients.

Amendment

1. Crypto-asset service providers that are authorised to provide advice on crypto-assets **or portfolio management of crypto-assets** shall assess the **suitability and appropriateness** of such crypto-assets **and services** with the needs **and specific situation** of the clients and **provide** them only when this is in the interest of the clients.

1a. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall not accept and retain fees, commissions or any monetary or nonmonetary benefits paid or provided by an issuer or any third party or a person acting on behalf of a third party in relation to the provision of the service to their clients.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 133

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 73 – paragraph 3 – introductory part

Text proposed by the Commission

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets shall ***request information about*** the client or prospective ***client's knowledge of***, and ***experience in*** crypto-assets, ***objectives***, ***financial situation including the*** ability to bear losses ***and a basic understanding of risks involved in purchasing*** crypto-assets.

Amendment

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets ***or portfolio management of crypto-assets*** shall ***obtain from*** the client or prospective ***client the information referred to in Article 73a (2), so as to enable the crypto-asset service provider to provide to the client or prospective client the services and crypto-assets that are suitable for him or her and, in particular, are in accordance with his risk tolerance and*** ability to bear losses.

Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall warn clients that:

a) due to their tradability, the value of crypto-assets may fluctuate;

b) the crypto-assets may be subject to full or partial losses;

c) the crypto-assets may not always be transferable;

d) the crypto-assets may not be liquid;

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 134

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 73 – paragraph 5

Text proposed by the Commission

5. **Where clients do not provide the information required pursuant to paragraph 4, or** where crypto-asset service providers that are authorised to provide advice on crypto-assets consider, on the basis of the information received under paragraph 4, that the **prospective clients or clients have insufficient knowledge,** crypto-asset service providers that are authorised to provide advice on crypto-assets shall inform those clients or prospective clients that the crypto-assets or crypto-asset services **may be** inappropriate for them and **issue them a warning on the risks associated with** crypto-assets. **That risk warning shall** clearly state the risk of losing the entirety of the money invested or converted into crypto-assets. Clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider

Amendment

5. Where crypto-asset service providers that are authorised to provide advice on crypto-assets consider, on the basis of the information received under paragraph 3 , that the **crypto-assets services or crypto-assets are not suitable nor appropriate for the investment profile of the client, the** crypto-asset service providers that are authorised to provide advice on crypto-assets shall inform those clients or prospective clients that the crypto-assets or crypto-asset services **are** inappropriate for them and **shall not recommend or shall not decide to trade where the services or** crypto-assets **are not suitable for the client** clearly state the risk of losing the entirety of the money invested or converted into crypto-assets. Clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider

concerned.

concerned.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 135

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 73 a (new)

Text proposed by the Commission

Amendment

Article 73 a

Suitability and appropriateness test

1. Crypto-asset service providers that are authorised to provide the services referred to in Articles 70 to 73 shall, before offering a service to a client or a prospective client, assess whether and which crypto-asset service offered is appropriate for the prospective client.

2. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers shall obtain information about the prospective client's knowledge of, and experience in crypto-assets, objectives, risk tolerance, financial situation including the ability to bear losses, and a basic understanding of risks involved in purchasing crypto-assets.

3. Crypto-asset service providers shall

review the assessment referred to in paragraph 1 for each client every year after the initial assessment made in accordance with that paragraph.

4. Where crypto-asset service providers that are authorised to provide the services referred to in Articles 70 to 72 consider, on the basis of the information received under that paragraph, that the prospective clients have insufficient knowledge or experience or ability to bear losses, crypto-asset service providers shall inform those prospective clients that the services offered are inappropriate for them and issue them a risk warning. That risk warning shall clearly state the risk of losing the entirety of the money invested. Prospective clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider concerned.

5. ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to specify the arrangements necessary to:

(a) carry out the assessment referred to in paragraph 1;

(b) provide the information referred to in paragraphs 2.

Such arrangements shall be not less stringent than the arrangements set out in Commission Delegated Regulation (EU) 2017/565.

ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 136

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 77 – paragraph 2

Text proposed by the Commission

Amendment

2. Issuers of crypto-assets may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

deleted

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuers;

(b) delay of disclosure is not likely to mislead the public;

(c) the issuers are able to ensure the confidentiality of that information.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 137

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 81 – paragraph 1

Text proposed by the Commission

1. **Member States** shall *designate the competent authorities* responsible for carrying out the functions and duties provided for in this Regulation and *shall inform* the EBA and ESMA thereof.

Amendment

1. **ESMA** shall *be the single direct supervisor of all crypto-assets and asset-referenced tokens, except for e-money tokens, and all crypto-asset service providers in the Union. ESMA shall be* responsible for carrying out the *supervisory* functions and duties provided for in this Regulation and *ensuring compliance with the requirements and obligations laid down in this Regulation, in close cooperation with* the EBA.

1a. EBA shall be the single direct supervisor of significant e-money tokens and asset-referenced tokens designated as ‘quasi-e-money tokens’. EBA shall be responsible for carrying out the supervisory functions and duties provided for in this Regulation and ensuring compliance with the requirements and obligations laid down in this Regulation,

*in close cooperation with the ESMA , the
ECB, the ESCB and the national
competent authorities.*

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 138

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 82 – paragraph 1 – introductory part

Text proposed by the Commission

1. In order to fulfil their duties under Titles II, III, IV and V of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

Amendment

1. In order to fulfil their duties under Titles II, III, IV and V of this Regulation, ***ESMA, EBA and the national*** competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 139

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 94 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall provide that one or more of the following bodies, as determined by national law, also may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that this Regulation are applied:

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting consumers;

(c) professional organisations having a legitimate interest in acting to protect their members.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 140

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 116 a (new)

Text proposed by the Commission

Amendment

Article 116 a

EBA intervention powers

1. EBA may suspend the offer to the public or prohibit the trading of e-money tokens, in circumstances, or be subject to exceptions, to be specified by EBA, where the following conditions are fulfilled:

(a) this Regulation has been infringed or there are reasonable grounds for suspecting that this Regulation has been infringed or the proposed action addresses a significant consumer or investor protection concern or a threat to the orderly functioning and integrity of financial markets;

(b) a competent authority or competent authorities have not taken action or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, EBA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a significant e-money or asset referenced token has been marketed, distributed or sold.

2. Before deciding to take any action under this Article, EBA shall notify competent authorities of the action it proposes.

3. EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

4. Action adopted by EBA under this Article shall prevail over any previous action taken by a competent authority.

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 141

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article -122 (new)

Text proposed by the Commission

Amendment

Article -122

ESMA annual report on market developments

By [12 months from the date of application of this Regulation] and every year thereafter, the ESMA, in close cooperation with the EBA, shall submit a report to the European Parliament and to the Council on the application of this Regulation and the developments in the markets in crypto-assets. The reports shall be made publicly available.

The report shall include the following elements:

a) the number of issuances of crypto-assets in the EU, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-assets issued and their market

capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;

b) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in asset-referenced tokens;

c) the number of issuers of e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;

e) the number of issuers of significant e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves and the volume of payments in significant e-money tokens;

f) an estimation of the number of EU residents using or investing in crypto-assets issued in the EU;

g) an estimation of the number of EU residents using or investing in crypto-assets issued and offered by crypto-assets service providers outside the EU;

h) a mapping of the geographical location and level of KYC and customer due diligence procedures of unauthorised exchanges providing services in crypto-assets to EU residents, including number of exchanges without a clear domiciliation and number of exchanges located in jurisdictions included in the EU AML/CFT list of high-risk third countries or in the list of non-cooperative jurisdictions for tax purposes, classified by level of compliance with adequate KYC

procedures;

i) volume of transactions in decentralised finance protocols and decentralised exchanges, accompanied by an analysis of risks posed for money laundering, terrorist financing and other criminal activities;

j) proportion of transactions in crypto-assets that occur through a crypto asset service provider or unauthorised service provider or peer-to-peer, and transaction volume;

k) the number and value of fraud, scams, hacks, cyberattacks, ransomwares, thefts or losses of crypto-assets reported in the EU, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

l) number of complaints received by crypto-asset service providers, issuers of crypto-assets and national competent authorities in relation to false and misleading information contained in the crypto-asset key information sheet or in marketing communications, including via social media platforms;

m) possible approaches and options, based on best practices and reports by relevant international organisations, to mitigate financial crime risks and illicit activity connected with the use of crypto-assets.

n) possible approaches and options, based on best practices and reports by relevant international organisations, to contain and sanction the circumvention of the standards of this Regulation by third-country actors providing crypto-asset services in the Union without authorisation.

Member States and EBA shall provide the ESMA with the information necessary for the preparation of the report. For the purpose of the report, the Commission may request information from law enforcement agencies.

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 142

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – title

Text proposed by the Commission

Amendment

Report

Evaluation report and review

Or. en

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Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 143

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 1

Text proposed by the Commission

1. By ... [36 months after the date of entry into force of this Regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, where appropriate accompanied by a legislative proposal.

Amendment

1. By ... [36 months after the date of entry into force of this Regulation] after consulting the EBA and ESMA ***and taking into account the findings of their annual reports***, the Commission shall present a report to the European Parliament and the Council on the application ***and implementation*** of this Regulation ***and on the compliance with its obligations and requirements. The report shall*** where appropriate ***be*** accompanied by a legislative proposal.

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 144

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) an estimation of the number of EU residents using or investing in crypto-assets issued and offered outside the EU;

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 145

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point c

Text proposed by the Commission

(c) the number and value of fraud, hacks and thefts of crypto-assets reported in the EU, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

Amendment

(c) the number and value of fraud, *scams*, hacks, *ransomwares* and thefts of crypto-assets reported in the EU, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

Or. en

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Stefan Berger

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 146

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(i a) an assessment of the enforcement and effectiveness of the obligations laid down in this Regulation, including any infringement of the requirement for third-country firms providing crypto-assets services to persons established in the Union to be authorised as crypto-assets service providers in accordance with this Regulation;

ib) an assessment of possible measures and effective and dissuasive sanctions to prevent third country actors to offer crypto-asset services to persons established in the Union without authorisation, to prevent circumvention of this Regulation and with a view to ensure consumer and investor protection;

Or. en

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Committee on Economic and Monetary Affairs

02/06/2021

Stefan Berger

Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 147

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point i b (new)

Text proposed by the Commission

Amendment

(i b) an assessment of fraudulent marketing communications and scams involving crypto-assets occurring through social media networks;

Or. en

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Amendment 148

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point i c (new)

Text proposed by the Commission

Amendment

(i c) an assessment of the level of threat of money laundering, terrorist financing and other criminal activity in relation to crypto-assets channelled through decentralised finance systems and the necessity and feasibility to establish appropriate and effective measures, including transactional restrictions on payments in crypto-assets for goods and services involving payments above a de minimis thresholds, stronger intelligence channels and a regime of effective, proportionate and dissuasive sanctions to prevent illicit transactions in crypto-assets;

Or. en

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Amendment 149

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(j a) an assessment of whether the prudential requirements for crypto-assets service providers are appropriate and whether they should be aligned with the requirements for initial capital and own funds applicable to investment firms under Regulation (EU) 2019/2033 and Directive 2019/2034/EU;

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 150

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 122 a (new)

Text proposed by the Commission

Amendment

Article 122 a

Commission report on a EU list of banned crypto-addresses and non-compliant entities

By ... [12 months after the date of entry into force of this Regulation], with a view to strengthen the fight against financial crime and ensure that financial institutions, firms, crypto-assets service providers and other obliged entities under the scope of the European AML legislation do not engage in unauthorized transactions or facilitate criminal activities, the Commission shall assess the possibility of creating a central EU List of banned addresses, persons and entities, including crypto-assets wallet addresses owned or associated with persons, groups and entities which are subject to European sanctions, which should

integrate the ESMA list of non-compliant crypto-asset service providers.

The Commission shall also assess how the use of smart contracts can be integrated in the AML/CFT framework to ensure compliance with AML obligations, facilitate due diligence procedures and prevent transactions with listed addresses.

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 151

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 123 – paragraph 1

Text proposed by the Commission

1. **Articles 4 to 14 shall not apply to** crypto-assets, other than asset-referenced tokens and e-money tokens, which were offered to the public in the Union or admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application].

Amendment

1. Crypto-assets, other than asset-referenced tokens and e-money tokens, which were offered to the public in the Union or admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application] **shall comply with Articles 4 to 14 if they want to continue to be admitted to trading.**

By way of derogation from this Regulation, for crypto-assets, other than asset-referenced tokens and e-money tokens, which were admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application of this Regulation], a crypto-asset service provider operating a trading platform shall:

a) provide or draft a crypto-asset information sheet in accordance with Article 4a;

b) comply with the applicable requirements laid down in Articles 5 to 11; and

c) be liable for the information provided in the key information sheet they drafted in accordance with Article 14.

Or. en

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Amendment 152

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 123 a (new)

Text proposed by the Commission

Amendment

Article 123 a

Amendment of Directive 2014/57/EU

Directive 2014/57/EU is amended as follows:

In Article 1, paragraph 2, point (da) is added:

da) a crypto-asset admitted to trading or for which a request for admission to trading to a crypto-asset service provider has been made;

Or. en

Justification

Criminal sanctions for market abuse Directive

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 153

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 123 b (new)

Text proposed by the Commission

Amendment

Article 123 b

Amendment of Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

In Article 2, point (gh) is added:

other crypto-asset service providers as defined in Article 2 of Regulation (EU) .../... of the European Parliament and of the Council of ... on Markets in Crypto-Assets (EU) 2021/XXX

In Article 2, point (ea) is added:

other persons trading in goods to the extent that payments are made or received in crypto-assets of whatever form in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

Justification

The alignment of the EU AML framework with international standards in relation to crypto-assets is urgent and should not wait the overall revision of the AML framework.

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Amendment 154

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Annex I – Part F – point 5 a (new)

Text proposed by the Commission

Amendment

5 a. 1. Description of risks that may have an adverse impact on factors, including environmental, social and governance factors (if any). .

Or. en

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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 155

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Annex II – Part D – point 3 a (new)

Text proposed by the Commission

Amendment

3 a. 1. Description of risks that may have an adverse impact on factors, including environmental, social and governance factors (if any).

Or. en

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Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 156

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Annex III – Part F – point 3 a (new)

Text proposed by the Commission

Amendment

3 a. 1. Description of risks that may have an adverse impact on factors, including environmental, social and governance factors (if any).

Or. en



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Proposal for a regulation COM(2020)0593 - C9-0306/2020 – 2020/0265(COD)

Amendment 161

Sven Giegold

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 123 c (new)

Text proposed by the Commission

Amendment

Article 123 c

***Amendment to Regulation
2019/2088/EU[Sustainability-related
disclosures Regulation]***

***Regulation 2019/2088 is amended as
follows:***

***In Article 2 point 1 the following item is
added:***

***ja) a crypto-asset service provider which
provides portfolio management as defined
in point (17a) of Article 3 of Regulation
(EU) .../... of the European Parliament
and of the Council of ... on Markets in
Crypto-Assets (EU) 2021/XXX.***

***In Article 2 point 11 the following item is
added:***

***(da) a crypto-asset service provider which
provides investment advice as defined in***

point (17) of Article 3 of Regulation (EU) .../... of the European Parliament and of the Council of ... on Markets in Crypto-Assets (EU) 2021/XXX.

In Article 2 point 12 the following item is added:

ga) a issuer of crypto-assets as defined in point (6) of Article 3 of Regulation (EU) .../... of the European Parliament and of the Council of ... on Markets in Crypto-Assets(EU) 2021/XXX.

Or. en