



## Circular CSSF 25/890

Application of the joint ESA Guidelines on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114 (JC 2024 28)

# Circular CSSF 25/890

## Application of the joint ESA Guidelines on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114 (JC 2024 28)

To all:

- offerors, persons seeking admission to trading, or operators of trading platforms for a crypto-asset other than an asset-referenced token ("ART") or an electronic money token ("EMT");
- credit institutions intending to offer to the public or seek admission to trading of an ART;
- legal persons or other undertakings that are not credit institutions intending to offer to the public or seek admission to trading of an ART;
- persons intending to carry out, or carrying out, crypto-asset services within the scope of Regulation (EU) 2023/1114<sup>1</sup> ("MiCAR").

Luxembourg, 30 April 2025

Ladies and Gentlemen,

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the Guidelines of the European Supervisory Authorities ("ESAs") on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of MiCAR (Ref. JC 2024 28) (the "Guidelines"), published on 10 December 2024. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level.

### 1. The Guidelines

The Guidelines are issued by the ESAs on the basis of Article 97(1) of MiCAR pursuant to Article 16 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

The Guidelines apply as from 12 May 2025.

In accordance with Article 97(1) of MiCAR, these joint Guidelines establish:

- the content and form of the explanation and legal opinion referred to in Article 8(4) and Article 17(1), point (b)(ii), and Article 18(2), point (e), respectively, of MiCAR;
- a common approach for the regulatory classification of crypto-assets under MiCAR.

The Guidelines are attached to this circular and are available on the EBA's website <https://www.eba.europa.eu/> and on ESMA's website <https://www.esma.europa.eu/>.

<sup>1</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

## 2. Scope of application

This circular shall apply to:

- offerors, persons seeking admission to trading, or operators of trading platforms for a crypto-asset other than an ART or an EMT, who are required to notify the crypto-asset white paper to the competent authority, accompanied by an explanation describing why the crypto-asset should not be considered excluded from the scope of MiCAR, or classified as an ART or EMT pursuant to Article 8(4) of MiCAR;
- credit institutions intending to offer to the public or seek admission to trading of an ART who are required to provide to the competent authority a legal opinion on the qualification of the crypto-asset pursuant to Article 17(1), point (b)(ii), of MiCAR;
- legal persons or other undertakings that are not credit institutions intending to offer to the public or seek admission to trading of an ART who are required to provide to the competent authority a legal opinion on the qualification of the crypto-asset pursuant to Article 18(2), point (e), of MiCAR;
- persons intending to carry out, or carrying out, crypto-asset services when assessing whether activities within their existing or intended remit involve a crypto-asset within the scope of MiCAR.

## 3. Date of application

This circular shall apply as from 12 May 2025.

**Claude WAMPACH**  
Director

**Marco ZWICK**  
Director

**Jean-Pierre FABER**  
Director

**Françoise KAUTHEN**  
Director

**Claude MARX**  
Director General

Annex                      ESA Guidelines on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114 (JC 2024 28)

JC 2024 28

---

10 December 2024

---

## Guidelines

---

on templates for explanations and opinions, and the standardised test for crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114

# 1. Compliance and reporting obligations

---

## Status of these guidelines

1. These Guidelines are issued pursuant to Article 16 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (the ESA Regulations)<sup>1</sup>. In accordance with Article 16(3) of the ESA Regulations, competent authorities, financial market participants and financial institutions must make every effort to comply with the guidelines.
2. Competent authorities as defined in point (35)(a) of Article 3(1) of Regulation (EU) 2023/1114<sup>2</sup> (MiCAR) should comply with these guidelines by incorporating them into their practices as appropriate (e.g. by amending the legal framework or their supervisory processes), including where guidelines are directed primarily at financial market participants and financial institutions.

## Reporting requirements

3. Within two months of the date of publication of these guidelines on the websites of the ESAs in all EU official languages, according to Article 16(3) of each of the Regulations to which reference is made in paragraph 1 of these Guidelines, competent authorities must notify the EBA, EIOPA or ESMA, as the case may be, as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance. In the absence of any notification by this deadline, competent authorities will be considered by the ESAs to be non-compliant. Notifications should be sent by submitting the form available on the websites of each of the ESAs with the reference 'EBA/GL/2024/16'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the respective ESAs.
4. Notifications will be published on the websites of each of the ESAs, in line with Article 16(3) of the ESA Regulations.
5. Financial market participants are not required to report whether they comply with these guidelines.

---

<sup>1</sup> EBA – Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

EIOPA – Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

ESMA – Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 84).

<sup>2</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p.40).

## 2. Subject matter, scope and definitions

---

### Subject matter

6. In accordance with Article 97(1) of Regulation (EU) 2023/1114, these joint Guidelines establish:
  - a. the content and form of the explanation and legal opinion referred to in Article 8(4) and Article 17(1), point (b)(ii), and Article 18(2), point (e), respectively, of that Regulation;
  - b. a common approach for the regulatory classification of crypto-assets under that Regulation.

### Scope of application and addressees

7. These Guidelines apply to competent authorities, as defined in Article 3(1), point (35)(a), of Regulation (EU) 2023/1114.
8. These Guidelines also apply<sup>3</sup> to:
  - a. offerors, persons seeking admission to trading, or operators of trading platforms for a crypto-asset other than an asset-referenced token (ART) or an electronic money token (EMT), who are required to notify the crypto-asset white paper to the competent authority, accompanied by an explanation describing why the crypto-asset should not be considered excluded from the scope of that Regulation, or classified as an ART or EMT pursuant to Article 8(4) of that Regulation;
  - b. credit institutions intending to offer to the public or seek admission to trading of an ART who are required to provide to the competent authority a legal opinion on the qualification of the crypto-asset pursuant to Article 17(1), point (b)(ii), of Regulation (EU) 2023/1114;
  - c. legal persons or other undertakings that are not credit institutions intending to offer to the public or seek admission to trading of an ART who are required to provide to the competent authority a legal opinion on the qualification of the crypto-asset pursuant to Article 18(2), point (e), of Regulation (EU) 2023/1114.
9. These Guidelines also apply to persons intending to carry out, or carrying out, crypto-asset services when assessing whether activities within their existing or intended remit involve a crypto-asset within the scope of that Regulation.

---

<sup>3</sup> The application date for MiCAR is established by Article 149 MiCAR (entry into force and application) which should be read in accordance with Article 143 (transitional measures).

## Definitions

10. Unless otherwise specified, terms used and defined in Regulation (EU) 2023/1114 have the same meaning in these Guidelines.

## 3. Implementation

---

### Date of application

11. These Guidelines apply from 12.05.2025.



## 4. Templates and standardised test

---

### Template for the purposes of Article 8(4) Regulation (EU) 2023/1114

12. Offerors, persons seeking admission to trading, and operators of trading platforms for crypto-assets other than ARTs and EMTs (relevant persons) should use the template referred to in Annex A to provide the explanation referred to in Article 8(4) of Regulation (EU) 2023/1114.
13. All fields set out in the template should be completed with all information necessary to provide a clear, fair, not misleading and complete explanation of the classification of the crypto-asset. Reference should be made to the following informing the explanation of the classification of the crypto-asset:
  - a. the source of the definitions taken into account for each regulatory product referred to in the template, including applicable EU and national law;
  - b. all relevant:
    - i. case law of the Court of Justice of the European Union and national courts;
    - ii. regulatory measures, including rules and guidance, in the Member State concerned;
    - iii. interpretative guidance from the European Commission and Guidelines from the European Supervisory Authorities;
    - iv. interpretative guidance from competent authorities or any other source relevant to the interpretation of regulatory concepts.

### Template for the purposes of Article 17(1), point (b)(ii), and Article 18(2), point (e), Regulation (EU) 2023/1114

14. Credit institutions, and legal persons and other undertakings intending to offer to the public or seek admission to trading of an ART should use the template referred to in Annex B for the purposes of the legal opinion on the qualification of the crypto-asset referred to in Article 17(1), point (b)(ii), and Article 18(2), point (e), of Regulation (EU) No 2023/1114.
15. All fields set out in the template should be completed with all information necessary to provide clear, fair, not misleading and complete explanation of the classification of the crypto-asset. Reference should be made to the following informing the explanation of the classification of the crypto-asset:

- a. the source of the definitions taken into account for each regulatory product referred to in the template, including applicable EU and national law;
  - b. all relevant:
    - i. case law of the Court of Justice of the European Union and national courts;
    - ii. regulatory measures, including rules and guidance, in the Member State concerned;
    - iii. interpretative guidance from the European Commission and Guidelines from the European Supervisory Authorities;
    - iv. interpretative guidance from competent authorities or any other source relevant to the interpretation of regulatory concepts.
16. The template should be completed by an in-house or external legal adviser. The legal adviser should be able to issue the opinion in an objective manner, free from conflicts of interest that cannot be effectively managed. Evidence should be provided of the legal adviser's ability, as a matter of professional practice, to issue a legal opinion. This may include, as applicable, a diploma, a practicing certificate, registration with the relevant professional body in the Member State concerned.

## Standardised test for the classification of crypto-assets

17. Competent authorities and other persons to whom these Guidelines are addressed should apply a common approach to determine the classification of a crypto-asset on a case-by-case basis taking into account all the attributes of the token in question in accordance with the flow chart provided in Annex C.
18. Competent authorities and other persons to whom these Guidelines are addressed should determine if there is a digital representation of a value or right, these being the necessary attributes of a crypto-asset as defined in Article 3(1) point (5) of Regulation (EU) 2023/1114. The terms 'value' and 'right' should be interpreted broadly in accordance with recital (2) of that Regulation. Crypto-assets with no-intrinsic value, but having a value attributed to them by the seller / buyer or by market participants<sup>4</sup> should be treated as digital representations of value.
19. Competent authorities and other persons to whom these Guidelines are addressed should also assess if the digital representation of the value and/or right can be transferred and stored electronically using distributed ledger technology (DLT) or similar technologies. A token may be considered 'non-transferable' only where at least the following conditions are satisfied (i) the token is accepted only by the issuer or offeror, and (ii) there is no technical possibility for the token to be transferred by a holder to persons other than the issuer or offeror (recital (17) of Regulation

---

<sup>4</sup> For example tokens such as Bitcoin and so-called 'meme coins' traded at exchanges with public prices.

(EU) 2023/1114). To assess if a technology is similar to DLT the functional attributes of such technology should be considered, including the basis on which the records (the ledger) are held, shared and how consensus is achieved (i.e. the functioning of any consensus mechanism).

20. If both elements (digital representation of a value and/or right, and transferred and stored electronically using DLT or similar technology) are satisfied competent authorities and other persons to whom these Guidelines are addressed should consider that the token is compatible with a crypto-asset for the purposes of Regulation (EU) 2023/1114.

21. In order to determine if the crypto-asset is within the scope of Regulation (EU) 2023/1114, competent authorities and other persons to whom these Guidelines are addressed should assess all of the exclusions identified in Article 2, points (2) to (4) of Regulation (EU) 2023/1114:

- a. Article 2(2): is the issuer or offeror a person referred to in that paragraph? MiCAR does not apply to persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies; liquidators or administrators acting in the course of an insolvency procedure (except for the purposes of Article 47 of MiCAR); the ECB, central banks of the Member States when acting in their capacity as monetary authorities, or other public authorities of the Member States; the European Investment Bank and its subsidiaries; the European Financial Stability Facility and the European Stability Mechanism; public international organisations.
- b. Article 2(3): is the crypto-asset unique and not fungible with other crypto-assets?<sup>5</sup> In assessing if the crypto-asset is unique and not fungible, competent authorities and other persons to whom these Guidelines apply should have regard to Article 2(3) and recital (11) of Regulation (EU) 2023/1114 as well as the Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments.<sup>6</sup>
- c. Article 2(4): does the crypto-asset qualify as a relevant product enlisted in that paragraph? Regulation (EU) 2023/1114 does not apply to financial instruments, deposits, structured deposits, funds (except e-money tokens), securitisation positions (per Regulation (EU) 2017/2402<sup>7</sup>), insurance products and reinsurance contracts (per Directive 2009/138/EC), pension products primarily providing retirement income, officially recognised occupational pension schemes (per Directives (EU) 2016/2341<sup>8</sup> and 2009/138/EC<sup>9</sup>), employer-mandated individual pension products, pan-European Personal Pension

---

<sup>5</sup> This may include, for example, a non-fungible crypto-asset evidencing an exclusive property right in a specific tangible asset in real estate (such as a house or commercial property), or intangible asset such as a patent.

<sup>6</sup> Link to be added once ESMA GL are final (for the consultation paper, see ESMA75-453128700-52).

<sup>7</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ([OJ L 347, 28.12.2017, p. 35](#)).

<sup>8</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) ([OJ L 354, 23.12.2016, p. 37](#)).

<sup>9</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([OJ L 335, 17.12.2009, p. 1](#)).

Products (per Regulation (EU) 2019/1238<sup>10</sup>), and social security schemes (per Regulations (EC) No 883/2004<sup>11</sup> and (EC) No 987/2009<sup>12</sup>).

22. Without prejudice to any other relevant materials, the information referred to in paragraph 13 of these Guidelines should be taken into account for the purposes of assessing whether the crypto-asset is a:

- a. financial instrument, competent authorities and other persons to whom these Guidelines are addressed should apply the Guidelines issued by the European Securities and Markets Authority under Article 2(5) of Regulation (EU) 2023/1114;<sup>13</sup>
- b. deposit, competent authorities and other persons to whom these Guidelines are addressed should refer to European Banking Authority's 2014 Opinion and Report and 2020 Opinion on the perimeter of credit institutions, which provide indications on the notion of 'deposit'<sup>14</sup> and to the EBA's 2024 Report on structured deposits<sup>15</sup>;
- c. insurance product or insurance contract, competent authorities and other persons to whom these Guidelines are addressed should recall that there is no explicit definition of insurance at EU level, either as an activity or a contract.<sup>16</sup>

23. If none of the exclusions referred to in paragraph 22 apply, competent authorities and other persons to whom these Guidelines are addressed should assess the characteristics of the crypto-assets to determine if the crypto-asset is an EMT, ART or other crypto-asset under Regulation (EU) 2023/1114 and should take into account the following:

- a. Does the crypto-asset purport to maintain a stable value by referencing only the value of a single official currency? If so, it is to be classified as an EMT pursuant to Title IV of Regulation (EU) 2023/1114.
- b. If the crypto-asset does not purport to maintain a stable value by referencing only the value of a single official currency, does it purport to maintain a stable value by reference to another value or right (or combination thereof), including one or more official

---

<sup>10</sup> Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) ([OJ L 198, 25.7.2019, p. 1](#)).

<sup>11</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([OJ L 166, 30.4.2004, p. 1](#)).

<sup>12</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([OJ L 284, 30.10.2009, p. 1](#)).

<sup>13</sup> Link to be added once ESMA GL are final (for the consultation paper, see ESMA75-453128700-52).

<sup>14</sup> EBA 2014 Opinion and Report on the perimeter of credit institutions: <https://www.eba.europa.eu/publications-and-media/press-releases/eba-publishes-opinion-perimeter-credit-institutions> and EBA 2020 Opinion: [https://www.eba.europa.eu/sites/default/files/document\\_library/Publications/Opinions/2020/931784/EBA%20Opinion%20on%20elements%20of%20the%20definition%20of%20credit%20institution.pdf](https://www.eba.europa.eu/sites/default/files/document_library/Publications/Opinions/2020/931784/EBA%20Opinion%20on%20elements%20of%20the%20definition%20of%20credit%20institution.pdf)

<sup>15</sup> EBA 2024 Report on structured deposits: <https://www.eba.europa.eu/sites/default/files/2024-07/b807c1a8-6f1d-4c2b-b2a0-2cdcb7737282/Report%20on%20structured%20deposits.pdf>

<sup>16</sup> [Final Report of the Commission Expert Group on European Insurance Contract Law. European Commission, 2014, p 38 ff.](#)

currencies? If so, it is to be classified as an ART pursuant to Title III of Regulation (EU) 2023/1114.

- c. If the crypto-asset does not purport to maintain a stable value by referencing another value or right (and is therefore not an ART or EMT) it is to be classified as a crypto-asset pursuant to Title II of Regulation (EU) 2023/1114.

# Annex A - Template

---

This template is provided for the purposes of the explanation referred to in Article 8(4) of Regulation (EU) 2023/1114.

**TEMPLATE: EXPLANATION FOR THE PURPOSES OF ARTICLE 8(4) REGULATION (EU) 2023/1114**

**An explanation prepared for the purposes of Article 8(4) Regulation (EU) 2023/1114 (MiCAR) should contain information for each of the below fields.**

<b>Information about explanation</b>	<b>Date on which this explanation is issued</b>	
	<b>Name of the person(s) (legal or natural) issuing this explanation</b>	<i>Please include: name, address, email address, and telephone number.</i>
	<b>Point of contact of the person(s) (legal or natural) issuing this explanation (if different to above)</b>	<i>Please include: name, address, email address, and telephone number.</i>
	<b>Confirmation that this explanation is issued for the purposes of Article 8(4) of MiCAR</b>	<i>Please confirm.</i>
<b>Information about offeror(s), person(s) seeking admission to trading, and/or operators of trading</b>	<b>Name of the offeror(s), person(s) seeking admission to trading, or operator(s) of trading platforms, on whose behalf this explanation is issued</b>	<i>Please use the Annex to this template for the provision of this information.</i>
	<b>White paper to which this explanation refers (this should be the 'final version' of the white paper submitted for the purpose of Article 8(1) of MiCAR))</b>	<i>Please indicate the date of the white paper notified for the purposes of Article 8(1) of MiCAR, and assessed for the purposes of this explanation and to which this explanation refers. Please also attach a copy of the white paper to this explanation.</i>
	<b>Member State(s) in which the offer to the public or admission to trading will take place</b>	
<b>Crypto-asset</b>	<b>Applicable law</b>	<i>Please indicate the law applicable to the crypto-asset as referred to in the white paper.</i>
	<b>Executive summary of the regulatory classification of the crypto-asset</b>	<i>Please indicate the purported regulatory classification and any key points you wish to highlight in the executive summary.</i>
	<b>Detailed explanation that the digital representation to which the white paper relates is a crypto-asset within the meaning of Article 3(1), point (5), of MiCAR</b>	<i>Explanation may be provided in an Annex and should cover all aspects of the definition of 'crypto-asset', including the value or right that it represents, and the distributed ledger technology or similar technology on which the crypto-asset may be transferred or stored.</i>
	<b>Detailed explanation that the crypto-asset to which the white paper relates is not an electronic money token within the meaning of Article 3(1), point (7), of MiCAR</b>	<i>Explanation may be provided in an Annex and should include all aspects that demonstrate that the crypto-asset is not intended to purport to maintain a stable value by reference to an official currency, with full cross-references to the relevant provisions of the white paper.</i>
	<b>Detailed explanation that the crypto-asset to which the white paper relates is not an asset-referenced token within the meaning of Article 3(1), point (6), of MiCAR</b>	<i>Explanation may be provided in an Annex and should include all aspects that demonstrate that the crypto-asset is not intended to purport to maintain a stable value by reference to another value or right or a combination thereof, with full cross-references to the relevant provisions of the white paper.</i>
	<b>Detailed explanation that the crypto-asset is not any of the following:</b>	

	<ul style="list-style-type: none"> <li>- <b>Financial instrument, as referred to in Article 2(4), point (a), of MiCAR.</b></li> </ul>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation (including the Guidelines adopted pursuant to Article 2(5) of MiCAR):</b></p> <p><b>Explanation:</b></p> <p><i>Note: Explanation may be supplemented in an Annex and should include all aspects that demonstrate that the crypto-asset is not a financial instrument. The explanation should indicate why the crypto-asset does not correspond to any of the financial instrument types (transferable security, money market instrument etc), make full reference to the ESMA Guidelines under Article 2(5) of MiCAR, and any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of [MiFID2] in the home Member State within the meaning of Article 3(1), point (33), of MiCAR.</i></p>
	<ul style="list-style-type: none"> <li>- <b>Deposits, including structured deposits, as referred to in Article 2(4), point (b), of MiCAR</b></li> </ul>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation:</b></p> <p><b>Explanation:</b></p> <p><i>Note: Explanation should include all aspects that demonstrate that the crypto-asset is not a deposit. The explanation should make full reference to any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of [CRD/CRR] in the home Member State within the meaning of Article 3(1), point (33), of MiCAR.</i></p>
	<ul style="list-style-type: none"> <li>- <b>Funds as referred to in Article 2(4), point (c), of MiCAR</b></li> </ul>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation:</b></p>



	<b>Explanation:</b>  <i>Note: Explanation should include all aspects that demonstrate that the crypto-asset is not funds. The explanation should make full reference to any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of Directive (EU) 2015/2366 of the European Parliament and of the Council in the home Member State within the meaning of Article 3(1), point (33), of MiCAR.</i>
<b>Brief explanation, unless more detailed assessment is relevant, that the crypto-asset is not any of the following:</b>	
- <b>Securitisation positions as referred to in Article 2(4), point (d), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not a securitisation position.</i>
- <b>Non-life or life insurance products or reinsurance or retrocession contracts as referred to in Article 2(4), point (e), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not a non-life or life insurance product.</i>
- <b>Pension product as referred to in Article 2(4), point (f), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not a pension product.</i>
- <b>Officially recognised occupational pension schemes as referred to in Article 2(4), point (g), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not an occupational pension scheme.</i>
- <b>Individual pension products as referred to in Article 2(4), point (h), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not an individual pension product.</i>
- <b>Pan-European Pension Products as referred to in Article 2(4), point (i), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not a Pan-European Pension Product.</i>
- <b>Social security schemes as referred to in Article 2(4), point (j), of MiCAR</b>	<i>Note: Explanation should confirm that the crypto-asset is not a social security scheme.</i>
<b>Additional relevant information</b>	<i>Note: Please set out such other information as you consider appropriate to explain the regulatory classification of the crypto-asset.</i>

**ANNEX TO TEMPLATE: INFORMATION ABOUT OFFERORS, PERSONS SEEKING ADMISSION TO TRADING, OPERATORS OF TRADING PLATFORMS**

Name of the offeror(s), person(s) seeking admission to trading, or operator(s) of trading platforms, on whose behalf this explanation is issued	Regulated status (if any) of the offeror(s), person(s) seeking admission to trading, or operator(s) (authorisation or registration to carry out financial services activity/ies)	LEI (if applicable)	EEA/Member State of establishment, branch or registered office (as applicable)	Point of contact
			<i>Please indicate jurisdiction and status (establishment, branch, registered office).</i>	<i>Please include: name, address, email address, and telephone number.</i>

## Annex B - Template

---

This template is provided for the purposes of the legal opinion referred to in Article 17(1), point (b)(ii) and Article 18(2), point (e) of Regulation (EU) 2023/1114.

**TEMPLATE: LEGAL OPINION FOR THE PURPOSES OF ARTICLE 17(1), point (b)(ii) and ARTICLE 18(2), point (e) REGULATION (EU) 2023/1114**

**An Opinion issued for the purposes of these articles should contain information for all the below fields.**

<b>Information about Opinion</b>	<b>Date on which this Opinion is issued</b>	
	<b>Name of the person(s) (legal or natural) issuing this Opinion</b>	<i>Please include: name, address, email address, and telephone number.</i>
	<b>Point of contact of the person(s) (legal or natural) issuing this Opinion (if different to above)</b>	<i>Please include: name, address, email address, and telephone number.</i>
	<b>Declaration of any potential conflicts of interest and measures to manage effectively those conflicts</b>	
	<b>Evidence of the person(s) ability to act as a legal adviser</b>	<i>Please include as much information as possible, e.g. degree, licence, professional registration number, certificate to practice law etc.</i>
	<b>Purpose for which this Opinion is issued</b>	<i>Specify:</i> <ul style="list-style-type: none"> <li>- Article 17(1), point (b)(ii), or</li> <li>- Article 18(2), point (e), of MiCAR</li> </ul>
<b>Information about person intending to offer to the public or seek admission to trading</b>	<b>Name of the credit institution/financial institution/other undertaking intending to offer to the public, or seek admission to trading of the crypto-asset on whose behalf this Opinion is issued</b>	
	<b>Regulated status (authorisation or registration to carry out financial services activity/ies)</b>	<i>E.g. credit institution, electronic money institution etc.</i>
	<b>LEI (if applicable)</b>	
	<b>EEA/Member State of establishment</b>	
	<b>Point of contact</b>	<i>Please include: name, address, email address, and telephone number.</i>
	<b>Intention of the credit institution/financial institution/other undertaking</b>	<i>Specify:</i> <ul style="list-style-type: none"> <li>- Offer to the public</li> <li>- Seek admission to trading</li> </ul>
	<b>White paper to which this Opinion refers (this should be the 'final version' of the white paper submitted for the purpose of Article 17(1), point (b) (ii) and Article 18 (2), point (e) of MiCAR)</b>	<i>Please indicate the date of the white paper assessed for the purposes of this Opinion and to which this Opinion refers. Please also attach a copy of the white paper to this Opinion.</i>
<b>Member State(s) in which the offer to the public or admission to trading will take place</b>		
<b>Crypto-asset</b>	<b>Applicable law</b>	<i>Please indicate, the law applicable to the crypto-asset as referred to in the white paper.</i>
	<b>Executive summary of the regulatory classification of the crypto-asset</b>	<i>Please indicate the purported regulatory classification and any key points you wish to highlight in the executive summary.</i>
	<b>Opinion, with detailed explanation, that the digital representation to which this Opinion relates is a crypto-asset within</b>	<i>Explanation may be provided in an Annex and should cover all aspects of the definition of 'crypto-asset', including the value or right, and the distributed</i>

<p><b>the meaning of Article 3(1), point (5), of MiCAR</b></p>	<p><i>ledger technology or similar technology on which the crypto-asset may be transferred or stored.</i></p>
<p><b>Detailed description of the value or right or official currencies to which the crypto-asset refers</b></p>	<p><i>Description should set out the value, right or official currencies to which the crypto-asset refers and is intended to purport to maintain a stable value, with full cross-references to the relevant provisions of the white paper.</i></p>
<p><b>Opinion, with detailed explanation, that the crypto-asset to which this Opinion relates is not an electronic money token within the meaning of Article 3(1), point (7), of MiCAR</b></p>	<p><i>Explanation may be provided in an Annex to the Opinion and should include all aspects that demonstrate that the crypto-asset is not intended to purport to maintain a stable value by reference to a single official currency, with full cross-references to the relevant provisions of the white paper.</i></p>
<p><b>Opinion, with detailed explanation, that the crypto-asset to which this Opinion relates is not any of the following:</b></p>	
<p>- <b>Financial instrument, as referred to in Article 2(4), point (a), of MiCAR.</b></p>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation (including the Guidelines pursuant to Article 2(5) of MiCAR):</b></p> <p><b>Explanation:</b></p> <p><i>Note: Explanation may be supplemented in an Annex and should include all aspects that demonstrate that the crypto-asset is not a financial instrument. The explanation should indicate why the crypto-asset does not correspond to any of the financial instrument types (transferable security, money market instrument etc), make full reference to the ESMA Guidelines under Article 2(5) of MiCAR, and any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of [MiFID2] in the home Member State within the meaning of Article 3(1), point (33), of MiCAR.</i></p>
<p>- <b>Deposits, including structured deposits, as referred to in Article 2(4), point (b), of MiCAR</b></p>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation:</b></p> <p><b>Explanation:</b></p>

	<p><i>Note: Explanation may be provided in an Annex and should include all aspects that demonstrate that the crypto-asset is not a deposit. The explanation should make full reference to any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of [CRD/CRR] in the home Member State within the meaning of Article 3(1), point (33) of MiCAR.</i></p>
<ul style="list-style-type: none"> <li>- Funds as referred to in Article 2(4), point (c), of MiCAR</li> </ul>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation:</b></p> <p><b>Explanation:</b></p> <p><i>Note: Explanation may be provided in an Annex and that demonstrate that the crypto-asset is not funds. The explanation should make full reference to any applicable case law, or relevant regulatory or supervisory materials issued by the competent authority for the purposes of [PSD] in the home Member State within the meaning of Article 3(1), point (33), of MiCAR.</i></p>
<p><b>Brief explanation, unless more detailed assessment is relevant, that the crypto-asset is not any of the following:</b></p>	
<ul style="list-style-type: none"> <li>- Securitisation positions as referred to in Article 2(4), point (d), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not a securitisation position.</i></p>
<ul style="list-style-type: none"> <li>- Non-life or life insurance products or reinsurance or retrocession contracts as referred to in Article 2(4), point (e), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not a non-life or life insurance product.</i></p>
<ul style="list-style-type: none"> <li>- Pension products as referred to in Article 2(4), point (f), of MiCAR</li> </ul>	<p><i>Explanation should confirm that the crypto-asset is not a pension product.</i></p>
<ul style="list-style-type: none"> <li>- Officially recognized occupational pension schemes as referred to in Article 2(4), point (g), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not an occupational pension scheme.</i></p>
<ul style="list-style-type: none"> <li>- Individual pension products as referred to in Article 2(4), point (h), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not an individual pension product.</i></p>
<ul style="list-style-type: none"> <li>- Pan-European Pension Products as referred to in Article 2(4), point (i), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not a Pan-European Pension Product.</i></p>
<ul style="list-style-type: none"> <li>- Social security schemes as referred to in Article 2(4), point (j), of MiCAR</li> </ul>	<p><i>Note: Explanation should confirm that the crypto-asset is not a social security scheme.</i></p>

<p><b>Opinion, with full explanation that the crypto-asset is within the meaning of Article 3(1), point (6), of MiCAR</b></p>	<p><b>Source of definition(s) (EU and/or national law as applicable):</b></p> <p><b>Case law (including paragraph references, as appropriate) to which reference is made in the explanation:</b></p> <p><b>Regulatory measures or guidance to which reference is made in the explanation:</b></p> <p><b>Explanation:</b>  <i>Note: Explanation should not repeat the foregoing but should describe the attributes of the crypto-asset that conform to the definition of ‘asset-referenced token’. The explanation may be provided in an Annex to this Opinion and should refer to all relevant provisions of the white paper, among any other materials, that are considered relevant in supporting the Opinion as to the regulatory classification of the crypto-asset.</i></p>
<p><b>Additional relevant information</b></p>	<p><i>Note: Please set out such other information as you consider appropriate to explain the regulatory classification of the crypto-asset.</i></p>

## Annex C – Flow chart

---

This flow chart is provided for the purposes of the standardised test referred to in Article 97(1) of Regulation (EU) 2023/1114.

\*



