EBA/RTS/2024/02

13 March 2024

Final report

Draft Regulatory Technical Standards

to specify the requirements, templates and procedures for handling complaints under Article 31 of the Regulation (EU) 2023/1114 on Markets in Crypto-assets

Contents

1. Abbreviations

ART	Asset-referenced token
BSG	Banking Stakeholder Group
CASP	Crypto-Asset Services provider
EBA	European Banking Authority
ECSPR	Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business
EDPS	European Data Protection Supervisor
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
ESFS	European System of Financial Supervision
EU	European Union
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
IART	Issuer of asset-referenced tokens
JC	Joint Committee
MiCAR	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
MS	Member States
NCA	National Competent Authority
RTS	Regulatory Technical Standards

2. Executive Summary

On 29 June 2023, the Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR) entered into force in the European Union (EU), and the provisions relating to Asset-Referenced Tokens (ART) will apply from 30 June 2024. MiCAR aims at building a dedicated and harmonised framework for markets in crypto-assets at Union level in order to provide specific rules for crypto-assets and related services and activities that are not yet covered by Union legislative acts on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of protection of retail holders and the integrity of markets in crypto-assets.

To that end, Article 31 MiCAR required the EBA, in close cooperation with the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards (RTS) on complaints handling procedures of Issuers of Assets Referenced Tokens (IART) and, where applicable, third-party entities. The mandate required the EBA also to specify the requirements, templates and procedures for handling complaints received from holders of ART and other interested parties, including consumer associations that represent holders of ART, and procedures to facilitate the handling of complaints between holders of ART and third-party entities, where applicable.

The resultant draft RTS developed by the EBA, together with the provisions already stated in the MiCAR itself, set out effective and transparent procedures for the prompt, fair and consistent handling of complaints by holders of ARTs. The draft RTS set out the handling of complaints and requirements related to the complaints management policy and function, and the provision of information to holders of ARTs and other interested parties. The draft RTS continue with templates and recording, the languages, the procedure to investigate complaints and to communicate the outcome of the investigations to complainants, and specific provisions for complaints handling involving third-party entities.

The draft RTS was subject to a public consultation between 12 July 2023 and 12 October 2023. Having assessed the responses, the EBA decided to make a small number of targeted amendments with the aim to provide greater clarity and to further align with the related RTS on complaints handling for CASPs developed by the European Securities and Markets Authority (ESMA). The changes include amendments on language requirements, the requirement to provide the complainant with a copy of the complaint where an electronic complaint form is filed by the complainant and a new section in the template related to 'complainant/legal representative'. Some provisions have also been added in relation to data protection.

Next steps

The draft RTS will be submitted to the European Commission for endorsement by 30 June 2024 following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

3. Background and rationale

3.1 Background

1. In September 2020, the European Commission published its legislative proposal for a regulation on markets in crypto-assets (MiCAR), with a view to create a holistic approach to the regulation and supervision of crypto-asset activities that are not already covered by EU law. Following the endorsement of the European Parliament and the Council of the EU, the publication in the Official Journal of the EU took place on 9 June 2023.

2. One of the mandates that MiCAR confers on the EBA is set out in Article 31 which requires the EBA, in close cooperation with ESMA, to develop draft RTS addressed to IART to further specify the requirements, templates and procedures for handling complaints received from holders of ART and other interested parties, including consumer associations that represent those holders.

3. Article 31 further provides that:

   - "Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints […] and shall publish descriptions of those procedures".

   - "Where the asset-referenced tokens are distributed, totally or partially, by third-party entities […], issuers of asset-referenced tokens shall establish procedures to also facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities".

   - "Holders of asset-referenced tokens shall be able to file complaints free of charge with the issuers of their asset-referenced tokens or, where applicable, with the third-party entities […]."

   - "Issuers of asset-referenced tokens and, where applicable, the third-party entities […], shall develop and make available to holders of asset-referenced tokens a template for filing complaints and shall keep a record of all complaints received and any measures taken in response thereto."

   - "Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to the holders of their asset-referenced tokens within a reasonable period."

4. Recitals 40, 49, 79, 110 and 111 of MiCAR provide further context for and reasoning behind the mandates stating for example that the aim of the Regulation is to ensure high level of consumer protection, market integrity and financial stability across the EU.

5. The Rationale section below provides an overview of the key changes that have been made following the public consultation of the draft RTS originally proposed.

3.2 Rationale

6. The subject matter of these final draft RTS covers requirements regarding complaints handling procedures, which the EBA considers to be procedures that are not specific to the markets in crypto-assets, or to any type of market, sector (banking, insurance, investments), product or service, financial institutions, or geographical location.

7. It is for this reason that the three European Supervisory Authorities (ESMA, EIOPA and EBA, in short: ESAs) developed in 2013/14 Joint ESAs Guidelines on complaints handling procedures that apply uniformly to all financial institutions across the three sectors (JC Guidelines). The sectoral consistency of Joint Guidelines aims at reducing compliance costs for financial institutions compared to an alternative scenario where complaints handling procedures would have deviated across markets, sectors, or financial institutions. The consistency of Joint Guidelines also achieved efficiency gains for supervisory authorities, given that they have to supervise only one set of requirements across all three sectors and financial institutions.

8. In 2018, the EBA extended the legal entity scope of these Guidelines[1] to also include the new institutions established under the revised Payment Service Directive (PSD2)[2] and the Mortgage Credit Directive (MCD)[3], i.e. mortgage credit intermediaries, account information service providers, and payment initiation service providers. The content of the Guidelines remained unchanged.

9. In 2021, the Joint Committee of the three ESAs (JC) assessed the extent to which those Guidelines have achieved their stated aims and eventually published a report[4], which concluded that the JC Guidelines have contributed to a consistent approach to complaints-handling across the banking, insurance and securities sectors, have resulted in better outcomes for consumers and, crucially, remained fit for purpose and, thus, did not require any revision.

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[1] Final report on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under PSD2 and/or the MCD, JC 2018 35, 31 July 2018

[2] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), OJ L 337, 23.12.2015, p. 35–127

[3] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, OJ L 60, 28.2.2014, p. 34–85

[4] Joint Committee Report on the assessment of the application of the Guidelines on complaints-handling, JC 2021 24, 18 February 2021

10. In developing the draft RTS under MiCAR on hand, the EBA therefore followed the content of the JC Guidelines nearly verbatim. But, where the mandate under MiCAR requires the EBA to develop additional requirements that are not covered in the JC Guidelines, the EBA aligned the draft EBA RTS with ESMA's emerging RTS under MiCAR on complaints handling for crypto-asset service providers, with a view to bring about a desired degree of consistency across the EBA and ESMA RTS.

11. Following the EBA's public consultation, the EBA assessed the concerns and requests for clarification that have been raised by respondents. Some of the responses requested a closer alignment between the draft RTS of ESMA, the consultation paper for which had proposed a number of provisions that deviated from the JC Guidelines, and the EBA's draft RTS. As a result, the EBA engaged further with ESMA and came to understand that ESMA was contemplating amending its final draft RTS such that it would align more closely with the JC Guidelines.

12. The EBA welcomed these efforts and, reciprocally, assessed whether the EBA's draft RTS should benefit from a limited number of amendments to further align with ESMA's draft RTS, where strong arguments exist to do so. To that end, the EBA decided to introduce changes to the draft RTS with regard to i) languages requirements, ii) the requirement to provide the complainant with a copy of the complaint where an electronic complaint form is filed by the complainant, and iii) a new section in the template related to 'complainant/legal representative' which is present in ESMA draft RTS and the RTS on complaints handling under Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business (ECSPR) the ESMA draft RTS leverage on. In addition, further amendments have been introduced to align the draft RTS with the General Data Protection Regulation (GDPR) following the informal advice the EBA received from the European Data Protection Supervisor (EDPS). The main elements of these changes are described below.

13. Finally, editorial amendments were made that are not sufficiently substantial to elaborate on them in this Rationale section but that are explained instead in the feedback table at the end of the Final Report.

3.2.1 Alignment with the RTS of ESMA

14. In response to the public consultation, several respondents saw the approach proposed by the EBA in the Consultation Paper to be appropriately balanced and supported it. The EBA's Banking Stakeholder Group (BSG) in particular indicated that for consumers as investors in this market, it is key to have complaints handling processes which follow established rules and definitions.

15. Some other respondents in turn, indicated that that they would welcome a more harmonized approach across EBA and ESMA draft RTS[5] which should deliver a uniform set of complaints handling RTS applying across the financial sectors. Those respondents in particular called for

[5] ESMA consultation paper on the technical standards specifying certain requirements of MiCAR – see page 30 for the draft RTS on complaints handling.

ESMA to align as much as possible with the JC Guidelines and presented several arguments against a divergence of approaches:

- an approach whereby ESMA and EBA RTS diverge would go against a consistent EU-wide standard-setting as well as demonstrate a malfunctioning of EU regulatory bodies;
- such divergence would be a failure to address risks arising in crypto-asset markets that deliver services mostly in a horizontally integrated value chain across several firms;
- another argument presented is that it would be detrimental to all stakeholders (holders, issuers and providers of crypto-asset services as well as competent authorities). Also because it can be assumed that some companies act both as IARTs and Crypto-Assets Services Providers (CASPs) and in that case would need to comply with different requirements;
- it would be difficult to explain to holders why different standards for complaints handling would apply depending on whether provided by an IART, a CASP or some other service provider, when consumers already benefit from the well-established complaints handling processes across all financial sectors;
- such divergence could create key operational and procedural issues, if for a given complaint it still has to be determined whether the root cause is to be found in the issuing of the crypto-asset or in the related crypto-asset services and most importantly, using the current JC Guidelines provide an efficiency gain and prevent any costs increase for competent authorities and the industry.

16. Having assessed the arguments raised by the stakeholders, the EBA arrived at the view to maintain the approach proposed in the Consultation Paper of aligning nearly verbatim with the JC Guidelines. But, where the RTS mandate under MiCAR requires to develop something additional that is not covered in the JC Guidelines, to read across the requirements from ESMA's emerging RTS under MiCAR, with a view to bring about a desired degree of consistency.

17. However, reciprocally, the EBA saw some merits in the arguments presented by respondents to have further alignment across ESMA and EBA draft RTS. EBA has therefore agreed with ESMA for them to amend their own RTS, while reciprocally also modifying the EBA's RTS where strong arguments could be established to do so, with a view to bring about greater consistency requested by responded. To that end, the EBA has amended its draft RTS on the following three points, namely:

   - Adding new requirements on languages (Recital 1 – Article 4 New). Compared to the financial products covered in the JC Guidelines, which were originally sold via branches in a given jurisdiction, crypto-assets will only be issued and sold over the internet and are therefore particularly suitable and amendable for cross-border selling within the EU. This suggests that the right of consumers may need to be strengthened such that, when submitting a complaint that inevitably will contain some moderate linguistic formality, they are not required to only articulate it in a language of the issuer's chosen language. Also, given recent evolutions in automated translation algorithms, the EBA considers the

additional compliance cost arising for IARTs from this alignment to be limited. EBA therefore suggests including a new Article 4 entitled 'languages' and update Recital 1 accordingly, using similar wording as the ESMA draft RTS, as follows: "Issuer of assets-referenced tokens, and where applicable, the third-party entities, shall publish the description of the complaints handling procedure and the standard template set out in the Annex, in the languages they use to market their services or communicate with the holder of asset-referenced tokens and ensure complainants may file complaints, in the languages they use to market their services or communicate with the holder of asset-referenced tokens, and in the official languages of the home Member State and host Member States, that are also official languages of the European Union.

- Turning towards the end of the complaint submission process, including a new requirement regarding the provision of a copy of the complaint to the complainant where an electronic complaint form is filed (Recital 3, Article 3(c) (new) and Article 6(c) (ii) (new)). The draft RTS subject to public consultation did not require the IARTs and third-party entities to provide the complainant with a copy of the complaint where an electronic complaint form is filed. It means that that when submitting its complaint via an electronic complaint form, the complainant will not have any proof of the content of the complaint, which could create an issue for future litigations. In the interest of consumer protection and to allow the complainant to keep a proof of the content of the complaint submitted via an electronic form and ensure a better traceability of the complaint, EBA proposes to include a specific requirement for the IART and the third-party entities in Recital 3, Article 3(c) (new) and Article 6(c) (ii) (new). It includes for the IARTs and third-party entities to acknowledge receipt of a complaint clearly mentioning the date of its receipt and, where an electronic complaint form is filed, provide the complainant with a copy of the complaint.
- Furthermore, adding a new section in the template related to 'complainant/legal representative' which is present in ESMA draft RTS and exists in the RTS on complaints handling under ECSPR the ESMA draft RTS leverage on. The aim is to ensure a full consistency between the ESMA and EBA templates to the benefit of consumers which could submit a complaint.

3.2.2 Alignment with the EU General Data Protection Regulation following the informal advice the EBA received from the European Data Protection Supervisor

18. On 21 November 2023, in compliance with Article 57(1)(g) of the Regulation (EU) 2018/1725 (EUDPR), and akin to other consultation papers that the EBA has recently developed, the EBA also consulted the EDPS on the Consultation Paper on the EBA draft RTS on complaints handling under MiCAR. Consulting the EDPS about the content of Technical Standards is a responsibility of the EU Commission, not the EBA, but the EBA considered it desirable to 'frontload' this step with a view to smoothen the subsequent adoption process of the RTS. For the RTS on hand, the consultation of the EDPS was needed in particular in relation, but not limited, to the implications of personal data collected via the template for the submission of complaints and the recording of complaints.

19. In its response, the EDPS suggested for the EBA to add a recital to refer explicitly to the applicability of the GDPR to the processing of personal data and include a requirement for the IART and, where applicable, third-party entities, to publish a privacy notice to accompany the publication of the template in the Annex of the draft RTS.

20. In addition to the EDPS advice, one respondent mentioned that it would be beneficial to add a paragraph stating that "Any processing of personal data under this Regulation, with regards to complaints handling procedures, should be carried out in accordance with applicable Union law on the protection of personal data".

21. The EBA assessed this issue and arrived at the view that there is indeed merit in referring explicitly to the applicability of the GDPR to the processing of personal data in a recital. Consequently, the EBA amended the draft RTS by adding a new Recital 6 and included in Article 3(f) (new) and Article 6(c)(vi) (new) of the draft RTS, respectively, a requirement for the IARTs and third-party entities to provide a privacy notice which shall accompany the template provided in Annex of the RTS.

4. Draft Regulatory Technical Standards specifying the requirements, templates and procedures for handling complaints under article 31 of Regulation (EU) 2023/1114 on Markets in Crypto-assets

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing MiCA Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards to further specify the requirements, templates and procedures for handling complaints

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 on Markets in Crypto-assets amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and 2019/1937[6], and in particular Article 31(5) thereof, third subparagraph,

Whereas:

(1) In the interest of consumer protection, issuers of asset-referenced tokens (or the third-party entities acting on their behalf as explained therein) should provide to the holders of the asset-referenced tokens and other interested parties information about the complaints handling procedures and the standard template set out in the Annex, in the languages they use to market their services or communicate with the holder of asset-referenced tokens. Such information should include that their complaints are filed and handled free of charge in the languages used by the issuers of asset-referenced tokens and, where applicable, the third-party entities, to market their services or communicate with the holder of asset-referenced tokens, and in the official languages of the home Member State and host Member States, that are also official languages of the Union.

[6] OJ L 150, 9.6.2023, p. 40, ELI: http://data.europa.eu/eli/reg/2023/1114/oj

(2) In order to avoid diverging complaints handling procedures among issuers of asset-referenced tokens and third-party entities, complainants should be able to file their complaints using a harmonised template valid for complaints handling procedures with issuers of asset-referenced tokens irrespective of where the issuer is established or where the token was distributed.

(3) To ensure effective and transparent procedures for the prompt, fair and consistent handling of complaints by holders of asset-referenced tokens and other interested parties, the issuer should acknowledge receipt of a complaint clearly mentioning the date of its receipt and, where an electronic complaint form is filed, provide the complainant with a copy of the complaint; assess whether the complaint is admissible and contains all relevant information necessary for the investigation and request immediately to the holders of asset-referenced tokens and other interested parties any additional information needed.

(4) In order to ensure a level playing field in the Union, it should be necessary to specify what would constitute a 'reasonable period' for an issuer to communicate the outcome of its investigations. The issuer should keep the complainant informed about the progress of the complaints handling procedure and provide a response without undue delay or at least within the time limits set at national level to address complaints filed by complainants, where applicable. The issuer should also assess all complaints, identifying possible recurring shortcomings.

(5) Asset-referenced tokens can be distributed, totally or partially, by third-party entities as referred to in Article 34(5) first subparagraph, point (h), of Regulation (EU) 2023/1114. In such cases, the issuer should ensure that procedures are in place to also facilitate the handling of complaints between holders of the asset-referenced tokens and other interested parties, and such third-party entities. In those cases, where applicable, the third-party entities should allow holders of asset-referenced tokens and other interested parties to file a complaint free of charge and should make available to holders of asset-referenced tokens and other interested parties a template to file complaints which is the same as the one provided by the issuers, keeping a record of all complaints and of any measures taken in response to it.

(6) Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulation (EU) 2016/679 of the European Parliament and of the Council.

(7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA), in close cooperation with the European Securities and Markets Authority.

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

(9) [The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council (7) and delivered an opinion on [XX XX 2024].]

HAS ADOPTED THIS REGULATION:

Article 1

Handling of complaints and complaints management policy and function

1. Issuers of asset-referenced tokens and, where applicable, third-party entities shall be required to handle a complaint when the complaint is:

(a) a statement of dissatisfaction addressed to an issuer of asset-referenced tokens or a third-party entity that distributed partially or totally tokens, by a natural or legal person or any other interested party, including consumer associations that represent holders of asset-referenced tokens relating to the issuance, offer or seeking of admission to trading of an asset-referenced tokens under the Regulation (EU) 2023/1114;

(b) submitted by a 'complainant' which is a natural or legal person or any other interested party, including consumer associations that represent holders of asset-referenced tokens who is presumed to be eligible to have a complaint considered by an issuer of asset-referenced tokens or a third-party entity that distributed, partially or totally, the token and who has already lodged a complaint.

2. Issuers of asset-referenced tokens shall establish and maintain complaints handling procedures that include all the following:

(a) a 'complaints management policy', which shall be:

(i) defined and endorsed by the issuer of asset-referenced tokens' senior management, who shall also be responsible for its implementation and for monitoring compliance with it;

(ii) set out in a written document available in electronic or paper format as part of a 'general fair treatment policy';

(iii) made available to all relevant staff of the issuer of asset-referenced tokens through an adequate internal channel.

(b) a 'complaints management function', which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

[7] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj.

Article 2

Provision of information to the holder of asset-referenced tokens and other interested parties

1. Issuers of asset-referenced tokens shall provide, on request or when acknowledging receipt of a complaint, clear, accurate and up-to-date written information about the complaints-handling procedure to the complainants. The information provided by the issuers shall include, in particular all the following:
    (a) the conditions for the admissibility of complaints as stated in Article 5(1)(a);
    (b) details of how to complain including the type of information to be provided by the complainant and the identity and contact details of the person or department to whom the complaint should be directed;
    (c) the procedure that will be followed when handling a complaint including when the complaint will be acknowledged, indicative handling timelines and the availability of a competent authority, an ombudsman or alternative dispute resolution mechanism;
    (d) information that complaints are filed and handled free of charge in accordance with Article 31 of Regulation (EU) 2023/1114 for holders of asset-referenced tokens and, where applicable, even where the asset-referenced tokens are distributed by third-party entitites;
    (e) communication to the complainant of the issuer's obligation to keep informed the complainant about the further handling of the complaint.

2. Issuer of asset-referenced tokens shall publish an up-to-date description of the complaints-handling procedures as well as the template for filling complaints set out in the Annex, in an easily accessible manner, including via brochures, pamphlets, contractual documents or via their website.

Article 3

Templates and recording

Issuers of asset-referenced tokens shall ensure all of the following:

(a) develop and make available to holders of asset-referenced tokens and other interested parties, including consumer associations that represent holders of asset-referenced tokens, a template for filing complaints as set out in the Annex to this Regulation.

(b) ensure that holders of asset-referenced tokens and any other interested parties are able to:

    (i) submit complaints by electronic means or in paper form;

    (ii) file complaints free of charge;

(c) acknowledge receipt of a complaint clearly mentioning the date of its receipt and, where an electronic complaint form is filed, provide the complainant with a copy of the complaint;

(d) record, internally, in an appropriate manner through a secure electronic register, complaints and measures taken in response thereto within a reasonable period of time or in accordance with national timing requirements where applicable;

(e) accept and process a complaint even if the complainant has not used the template provided in the Annex to this Regulation to file the complaint;

(f) provide the complainant with a privacy notice to accompany the template provided in the Annex, in accordance with Article 13 and 14 of Regulation (EU) 2016/679.

Article 4

Languages

Issuers of asset-referenced tokens and, where applicable, the third-party entities, shall do all the following:

(a) publish the description of the complaints handling procedure and the standard template set out in the Annex in the languages they use to market their services or communicate with the holder of asset-referenced tokens; and

(b) ensure complainants may file complaints in:

(i) the languages they use to market their services or communicate with the holder of asset-referenced tokens;

(ii) the official languages of the home Member State and host Member States, that are also official languages of the Union.

Article 5

Procedure to investigate complaints and communicate the outcome of the investigations to complainants

1. In order for issuers of asset-referenced tokens to assess all complaints in a timely and fair manner, they shall apply all of the following:

(a) upon receipt of a complaint, they shall, without undue delay, assess whether the complaint is clear and complete. In particular, they shall assess whether the complaint contains all relevant information and evidence and inform the complainant about whether the complaint is admissible. The conditions a complaint shall meet to be considered admissible and complete by the issuer of asset-referenced tokens shall be fair, reasonable and shall not unduly restrict the rights of natural or legal persons to file a complaint;

(b) where issuers of asset-referenced tokens conclude that a complaint is unclear or incomplete, they shall promptly request from the complainant any additional information or evidence necessary for the proper handling of the complaint;

(c) where a complaint does not fulfil the conditions of admissibility referred to in Article 5(1)(a), issuers of assets-referenced tokens shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible;

(d) issuers of asset-referenced tokens shall seek to gather and investigate all relevant information and evidence regarding a complaint;

(e) in case the issuer of asset-referenced tokens is not competent in relation to the subject matter contained in the complaint, it should inform the complainant about it and give the contact details of the entity responsible for handling the complaint, if known; and

(f) the issuer of asset-referenced tokens shall keep the complainant duly informed about any additional steps taken to handle the complaint and reply to information requests made by the complainant without undue delay.

2. Issuers of asset-referenced tokens shall analyse, on an on-going basis, complaints handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks. In particular issuers shall carry out all of the following:

   (a) analyse the causes of individual complaints so as to identify root causes common to types of complaint;

   (b) consider whether such root causes may also affect other processes or products, including those not directly complained of;

   (c) correct, such root causes.

3. Issuers of asset-referenced tokens shall communicate to the complainants the outcome of investigations on filed complaints in accordance with all of the following:

   (a) in plain language that is easy to understand for complainants;

   (b) by providing a response without undue delay or at least within the time limits set at national level to address complaints filed by complainants, where applicable. When an answer cannot be provided within the expected time limits, the issuer of asset-referenced tokens shall inform the complainant about the causes of the delay and indicate when its investigation is likely to be completed; and

   (c) by including a thorough explanation of their position on the complaint where the final decision does not fully satisfy the complainant's demand (or any final decision, where national law requires it), and by setting out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute resolution mechanism, national competent authorities, etc. Such decision shall be provided in writing where national law requires it.

Article 6

Specific provisions for complaints handling involving third-party entities

Where the tokens have been distributed, partially or totally, through third-party entities, issuers of asset-referenced tokens shall ensure that:

(a) the third-party entities notify them in a timely manner of any complaints received regarding the distribution of such tokens and transfer them to the issuer of asset-referenced tokens;

(b) they notify the third-party entities distributing such tokens in a timely manner of any complaints received by the issuer of asset-referenced tokens regarding the distribution of said tokens;

(c) the third-party entities shall comply with all of the following:

(i) allow complainants to:

(a) submit complaints by electronic means or in paper form;

(b) file complaints free of charge.

(ii) acknowledge receipt of a complaint regarding the distribution of such tokens clearly mentioning the date of its receipt and, where an electronic complaint form is filed, provide the complainant with a copy of the complaint.

(iii) provide the contact details of issuers of asset-referenced tokens to the complainant, to allow the complainant to file complaints directly with issuers of asset-referenced tokens;

(iv) develop and make available to holders of asset-referenced tokens the same template for filing complaints as the issuer of asset-referenced tokens, using the standard template set out in the Annex to this Regulation;

(v) record internally, in an appropriate manner through a secure electronic register, all complaints received and any measures taken in response thereto within a reasonable period of time or in accordance with national timing requirements where applicable;

(vi) provide the complainant with a privacy notice to accompany the template provided in the Annex, in accordance with Article 13 and 14 of Regulation (EU) 2016/679.

Article 7

Entry into force

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

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

ANNEX

Template that issuers of asset-referenced tokens and, where applicable third-party entities, shall make available to holders of asset-referenced tokens the submission of complaints

SUBMISSION OF A COMPLAINT

1.a. Personal data of the complainant

LAST NAME/LEGAL ENTITY	FIRST NAME	REGISTRATION NUMBER	LEI (IF AVAILABLE)	CUSTOMER REFERENCE (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	

1.b Contact details (if different from 1.a)

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	

2.a Personal data of the legal representative (if applicable) (a power of attorney or other official document as proof of the appointment of the representative)

LAST NAME	FIRST NAME/LEGAL ENTITY NAME	REGISTRATION NUMBER	LEI (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	

2.b Contact details (if different from 2.a)

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (In case the complainant is a legal entity, address of the complainant's registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	

3. Information about the complaint

3.a Full reference of the issuance, offer or seeking of admission to trading of an asset-referenced tokens or agreement to which the complaint relates (i.e. name of the issuers of asset-referenced tokens, Asset-Referenced Tokens reference number, or other references of the relevant transactions…)

3.b Description of the complaint's subject-matter

Please provide documentation supporting the facts mentioned.

3.c Date(s) of the facts that have led to the complaint

3.d Description of damage, loss or detriment caused (where relevant)

3.e Other comments or relevant information (where relevant)

In _____(place) on _____(date)

SIGNATURE

COMPLAINANT/LEGAL REPRESENTATIVE

Documentation provided (please check the appropriate box):

Power of attorney or other relevant document	
Copy of the contractual documents of the investments to which the complaint relates	
Other documents supporting the complaint:	

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

As per Article 10(1) and Article 15(1) of Regulation (EU) No 1093/2010 (EBA Regulation), regulatory technical standards and implementing technical standards shall be accompanied by an Impact Assessment (IA), which analyses "the potential related costs and benefits". This section presents the IA of the main policy options included in this draft RTS to further specify the requirements, templates and procedures for complaint handling under Article 31 of MiCAR, applicable to issuers of asset reference tokens and, where applicable, third-party entities, when the ARTs are distributed, totally or partially, by third-party entities.

MiCAR sets out a new legal framework for issuers of ART, requiring such issuers to establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of ART and other interested parties, including consumer associations that represent holders of ART. To ensure consistency across the EU and the financial sector, the issuers should follow consistent requirements, templates and procedures for handling complaints of holders of ART.

A. Problem identification and background

Complaints are an important way for the management of an organisation to be accountable to the public, as well as providing valuable prompts to review organisational performance and the conduct of people that work within and for it. Inconsistent regulatory treatment of consumer-handling practices in the banking, investment and insurance sectors may be detrimental to the EU internal market. Consumers and the services they receive may be subject to different rules although the risks associated with these services are similar. This may create gaps in consumer protection and may deteriorate consumer confidence in the sector. Similarly, firms operating in one or more of these sectors and providing consumer services of comparable risk are subject to different regulatory rules. This may then undermine the level playing field in the single market.

Currently, complaints handling is harmonised across the financial sector (including credit institutions, non-credit institution creditors and credit intermediaries) via the Joint ESAs Guidelines complaints-handling. This harmonisation across these sectors was done to address the lack of consistency in the application of the regulatory rules related to handling consumer complaints. This harmonisation should be extended to the IART and, where applicable, third-party entities, as well.

B. Policy objective

The general objective of this RTS is to enhance consumer protection by providing efficient and transparent complaints handling procedures for holders of ART or other interested parties, including consumer associations that represent holders of ART across the EU and clear requirements for IARTs and third-party entities, when the ARTs are distributed, totally or partially, by third-party entities.

The more specific objectives of the RTS on complaints handling procedures include making available to EU consumers as much as possible, a single set of complaints handling arrangements, irrespective of the type of market, type of sector (banking, insurance, investments), type of product or service, type of financial institutions, and of the geographical location (of the financial institution and the complainant).

Another specific objective is to ensure efficiency and a reduction of compliance costs for financial institutions and other entities in the financial sector via the alignment as much as possible to the content of the already existing JC Guidelines on complaints handling already applicable across the three sectors. This would allow those IART that also provide other financial services to streamline and standardise their complaints handling arrangements and national regulators to supervise the same requirements across all sectors of financial services.

C. Baseline scenario

In a baseline scenario no harmonisation of the templates and procedures for handling complaints would be made, and the issuers would conduct the complaint handling each in their own way and use their own templates in line with Article 31 of the MiCAR. As a result, the specific documentation and information requested may diverge significantly across entities, sectors and MSs.

D. Options considered, assessment of the options and preferred options

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

Policy issue: Approach to fulfil the mandate

In light of existing JC Guidelines on complaints handling developed by the JC of ESAs, as well a similar mandate for an RTS on complaints handling for CASPs under MiCAR being developed by ESMA, the EBA has considered several approaches to fulfilling the mandate.

Option A: Follow JC Guidelines, and only deviate by inserting additional requirements that are needed to fulfil elements that are required in the MiCAR mandate.

Option B: Follow the ESMA MiCAR RTS on complaints handling procedures which leverage on the ECSPR and include additional and more prescriptive requirements.

Option C: Follow the content of the JC Guidelines but, where the mandate under MiCAR requires the EBA to develop additional requirements that are not covered in the JC Guidelines, align the RTS with ESMA's emerging RTS under MiCAR on complaints handling for crypto-asset service providers.

Following Option A would contribute to a consistent approach to complaints handling. It will lead to the same regulatory burden for IARTs as for all other financial entities that applied these guidelines for many years, and with all the benefits it entails. Moreover, according to the latest report, the JC guidelines are fit for purpose and do not need further updates. However, given that ESMA is developing its own RTS on complaints handling for CASPs and followed mainly the RTS on complaints handling procedures under the ECSPR, this option may lead to divergences within the complaints handling by IARTs compared to CASPs.

Following Option B would lead to greater consistency between the two MiCAR RTS for CASPs and for the IART. However, it would impose additional requirements which are stricter compared to the JC Guidelines. These additional requirements among others, include for CASPs to provide training, requirements on languages, on the acknowledgment of receipt and verification of admissibility, on a standard template for the submission of complaints, on resources dedicated to complaints handling, and requirements to analyse continuously complaints-handling data (e.g. average processing time, per year (on a rolling basis), for each step of the complaints handling procedure, review complaints handling procedures periodically and at least on an annual basis), as well as to adopt consistent decisions for complaint presenting similar circumstances and communicate the decision within a timeframe of 2 months. Similarly to Option A, Option B may lead to divergences within the complaints handling by IARTs compared to CASPs.

Finally, Option C combines Options A and B, by using the content of the established and tested JC Guidelines as a basis for the text of the new RTS, while using the ESMA RTS as a guidance for the additional requirements only, i.e. those requirements that are not covered in the JC Guidelines. Such an approach would allow leveraging the benefits of both the JC Guidelines and the ESMA RTS and ensure the harmonisation of complaints handling procedures.

As a result Option C was chosen as the preferred one.

E. Cost-benefit analysis

The table below summarizes the cost and benefits of the RTS on the main stakeholders affected by its implementation. Overall, the benefits are assessed as significantly larger than the costs. The costs are incremental to the costs that would have been incurred anyway due to the setup of the complaints handling procedures due to MiCAR requirements, but without the additional requirement for harmonization of templates and procedures.

Stakeholders affected	Costs	Benefits
Consumers	None	Improving consumer confidence in financial services, by being able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it within the EU
Issuers	Limited incremental costs related to: (i) the initial one-off costs related to the development of complaints-handling procedures, the complaints management function and the arrangements for internal follow-up on handled complaints; (ii) ongoing costs of ensuring compliance with the various requirements related to the receipt, investigation and response to complaints from clients	Harmonization of complaints handling procedures, especially for firms selling products across several sectors Consistent approach to complaints handling with the same regulatory burdens for all actors no matter where they are registered.
NCAs	None	Need to supervise only one set of guidelines in their respective jurisdiction

5.2 Views of the Banking Stakeholder Group

The EBA's Banking Stakeholder Group, too, submitted its views on the EBA's Consultation Paper. It welcomed the EBA's approach to the mandate as [it] consider that having complaints handling procedures and standardized forms for it [to be] an essential piece of the architecture for provision of financial services. As such, the proposed approach of considering the current joint complaints handling guidelines seems adequate. [It] also agrees with the additional point in the rationale to resort to the ESMA's Crowdfunding [under the ECSPR] and emerging MiCAR RTS, acknowledging the benefits listed in the CP, especially the consistency objective.

BSG members particularly indicated that 'for consumers as investors in this market, it is key to have complaints handling processes which follow established rules and definitions. Moreover, it is essential to ensure that complaints handling procedures are provided free of charge, irrespective of the distributor'.

5.3 Feedback on the public consultation and the BSG submission

5.3.1 Summary of key issues raised by respondents and EBA feedback

The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for 3 months and ended on 12 October 2023. 8 responses were received, of which 7 were published on the EBA website while 1 was submitted as confidential response and therefore not published on the EBA website.

Having assessed the responses, the EBA decided to make a small number of targeted amendments with the aim to provide greater clarity for a small number of provisions, and to further align with the related RTS on complaints handling for CASPs developed by ESMA. The changes include amendments on language requirements, the requirement to provide the complainant with a copy

of the complaint where an electronic complaint form is filed by the complainant and a new section in the template related to 'complainant/legal representative'. Some provisions have also been added in relation to data protection. Further details on the EBA's assessment of the consultation responses are provided in the feedback table in section 5.3.3 below.

5.3.2 The EBA's response to the Banking Stakeholder Group's submission

As described in section 5.2, the BSG made a number of comments on the draft RTS which are addressed below.

With regard to the general approach of the EBA for the development of the draft RTS, the EBA acknowledged the support of the BSG for EBA approach in the Consultation Paper, in particular regarding the consistency objective and the importance for consumers as investors in crypto-asset market to have complaints handling processes which follow established rules and definitions.

EBA arrived at the view to maintain the approach proposed in the CP but the EBA saw some merit to have further alignment across ESMA and EBA draft RTS and agreed with ESMA for them to amend their own RTS, while reciprocally also modifying the EBA's RTS through a small number of targeted amendments, with a view to bringing about the greater consistency requested.

With regards to the importance for complaints handling procedures to be provided free of charge, irrespective of the distributor, EBA recalls that Article 2(1)(d) already states that the holder of ARTs and any other interested parties should be provided with information about complaints procedure, including the information that complaints are filed and handled free of charge even if the ARTs were distributed by third-party entities. There is therefore no need to repeat this requirement in the draft RTS.

5.3. 3 Summary of responses to the consultation and the EBA's analysis

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Feedback on responses to Question 1 - Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.			
1	EBA approach proposed in the consultation paper is appropriately balanced	Several respondents saw the approach proposed by the EBA to be appropriately balanced and supported the current proposal, in particular because the approach: - provided an adequate level of protection for consumers, in particular holders of ARTs; - made available to EU consumers, as much as possible, a single set of complaints handling arrangements, irrespective of the type of product or service and of the geographical location of the provider; - allowed those IARTs that also provide other financial services to streamline and standardise their complaints handling arrangements; - allowed national regulators to supervise the same requirements across all sectors of financial services; - reduced compliance costs for financial institutions, compared to an alternative scenario where complaints handling procedures would have deviated across markets, sectors, or financial institutions.	The EBA acknowledges that many respondents supported the approach articulated in the consultation paper.	None
2	Complaints handling procedures that are free of charge	One respondent indicated that it is essential to ensure that complaints handling procedures are provided free of charge, irrespective of the distributer.	The EBA acknowledges that complaints handling procedures should be provided free of charge, irrespective of the distributer. The article 2(1)(d) of the RTS already states that the holder of ARTs and any other interested parties should be provided with	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	irrespective of the distributer		information about complaints procedure, including for the issuer to provide the information that complaints are filed and handled free of charge even if the ARTs are distributed by third-party entities. There is therefore no need to repeat the requirement in the RTS.	
3	Further alignment across EBA and ESMA RTS is needed	Among the respondents that supported the EBA approach, two of these respondents indicated that they would welcome a more harmonized approach across EBA and ESMA RTS which should deliver a uniform set of complaints handling RTS applying across the financial sectors (in particular ESMA to align with the JC Guidelines). As reasons, they argued that it would go against a uniform approach across the EU, it would be detrimental to all stakeholders (holders, issuers and providers of crypto-asset services as well as competent authorities) also because it can be assumed that some companies act both as IARTs and CASPs and in that case would need to comply with different requirements and finally would represent a failure to respond to crypto-asset markets particularities which deliver services in an horizontally integrated value chains ecosystem.	The EBA acknowledges the responses requesting a closer alignment between the RTS of ESMA and the EBA's RTS. The EBA arrived at the view to maintain the approach proposed in the Consultation Paper of aligning nearly verbatim with the JC Guidelines but, where the RTS mandate under MiCAR requires to develop something additional that is not covered in the JC Guidelines, to read across the requirements from ESMA's emerging RTS under MiCAR, with a view to bring about a desired degree of consistency. However, the EBA sees some merit in the arguments presented by respondents to have further alignment across ESMA and EBA draft RTS and has therefore agreed with ESMA for them to amend their own RTS, while reciprocally also modifying the EBA's RTS where strong arguments could be established to do so, with a view to bring about greater consistency requested by respondents. To that end, the EBA decided to introduce changes to the RTS with regard to i) language requirements, ii) the requirement to provide the complainant with a copy of the complaint filed by the complainant where an electronic complaint form is filed and iii) a new section in the template related to 'complainant/legal representative' which is in ESMA draft RTS and already exists in the RTS on complaints handling under ECSPR, the ESMA draft RTS leverage on.	Amendments to Recital 1 and new Article 4 added stating that: *Issuers of asset-referenced tokens and, where applicable, the third-party entities, shall do all of the following:* *(a) publish the description of the complaints handling procedure and the standard template set out in the Annex in the languages they use to market their services or communicate with the holder of asset-referenced tokens; and* *(b) ensure complainants may file complaints in:* *(i) the languages they use to market their services or communicate with the holder of asset-referenced tokens;* *(ii) the official languages of the home Member State and host*

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			▪ on languages requirements: compared to the financial products covered in the JC Guidelines, which were originally sold via branches in a given jurisdiction, crypto-assets will only be issued and sold over the internet and are therefore particularly suitable and amendable for cross-border selling within the EU. This suggests that the right of consumers may need to be strengthened such that, when submitting a complaint that inevitably will contain some moderate linguistic formality, they are not required to only articulate it in a language of the issuer's chosen language. Also, given recent evolutions in automated translation algorithms, the EBA considers the additional compliance cost arising for IARTs from this alignment to be limited. EBA therefore suggests including a new Article 4 entitled 'languages' and update Recital 1 accordingly, using similar wording as the ESMA draft RTS. ▪ on the requirement to provide the complainant with a copy of the complaint filed. The draft RTS subject to public consultation did not require the IARTs and third-party entities to provide the complainant with a copy of the complaint where an electronic complaint form is filed. It means that that when submitting its complaint via an electronic complaint form, the complainant will not have any proof of the content of the complaint, which could create an issue for future litigations. In the interest of consumer protection and to allow the complainant to keep a proof of the content of the complaint submitted via electronic form and ensure a better traceability of the complaint, EBA proposes to include a specific requirement for the IART and the third-party entities in Recital 3, Article 3(c) (new) and Article 6(c) (ii) (new). ▪ on adding a new section 'complainant/legal representative' in the template in the Annex: this section	*Member States, that are also official languages of the Union.* Amendments to Recital 3, Article 3(c) and Article 6(c)(ii) 'acknowledge receipt of the complaint clearly mentioning the date of its receipt and, where an electronic complaint form is filed, provide the complainant with a copy of the complaint; New section related to 'complainant/legal representative' including: "Documentation provided (please check the appropriate box): Power of attorney or other relevant document Copy of the contractual documents of the investments to which the complaint relates Other documents supporting the complaint"

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			has been involuntarily omitted in the draft RTS submitted to public consultation. This section is present in ESMA draft RTS and in the RTS on complaints handling under ECSPR, the ESMA draft RTS leverage on. The aim is to ensure a full consistency between the ESMA and EBA templates to the benefit of consumers which would submit a complaint.	
4	Preference to follow JC Guidelines, and only deviate by inserting additional requirements that are explicitly required in the MiCAR mandate	Two respondents were of the view that preference should be given to option A, without any alignment with ESMA's RTS, i.e. to follow the JC Guidelines, and only deviate by inserting additional requirements that are needed to fulfil elements that are explicitly required in the MiCAR mandate. According to the respondent option A was justified, for the following reasons: - many companies provide financial services that fall under several European standards on complaint management, and further harmonisation and unification of the rules on complaint management should be undertaken. - the JC Guidelines establish uniform guidelines and following a review conducted in 2021 (Joint Committee Report - 18 February 2021, JC 2021 24) no need for change was identified. - it can be assumed that some companies act both as IART and as CASPs. Many existing regulated entities that have already effectively established complaint handling procedures in accordance with the JC Guidelines could issue crypto-assets and provide crypto-asset services, as in fact only Capital	The EBA acknowledges that following the JC Guidelines, and only deviating by inserting additional requirements that are explicitly required in the MiCAR mandate would contribute to a consistent approach to complaints handling with the same regulatory burden for IART than what has successfully been applied to the remainder of the industry for many years, and with many benefits for holders of crypto-assets and competent authorities. However, Article 31 of MiCAR required the EBA to develop the RTS in close cooperation with ESMA and Article 71 of MiCAR required ESMA to develop its own RTS on complaints handling for CASPs. The EBA therefore had to acknowledge that the desire to create requirements that are consistent has to be made compatible with the interest of the co-legislators for the EBA and ESMA RTS to be coordinated. A pure option A was therefore not feasible.	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		Requirements Regulation (CRR) credit institutions and e-money institutions are eligible to issue EMTs. - the notification procedure for crypto-asset services also facilitates market entry for already regulated institutions, which are also covered by the JC Guidelines. - ESMA's proposed RTS on Article 71 MiCAR are closely aligned with the RTS for Crowdfunding Providers (EU) 2022/2117, which are subject to Crowd Funding Regulation EU 2020/1503. However, it is not expected that many of the Crowd Funding Service Providers will also provide crypto-asset services.		
5	Costs incurred to NCAs	One respondent explained that the cost-benefit analysis neglects the costs increase that will result from NCAs having to hire personnel with specific crypto expertise to supervise the implementation of the new rules (even if new responsibilities would not necessarily result in higher costs).	The EBA believes there is no need for NCAs to hire resources with crypto expertise as suggested by the respondent, because the complaints handling procedures articulated in this RTS are, as explained on a number of occasions, not specific to crypto-assets. Rather, they are identical, or very similar, to those applicable to tens of thousands of other financial institutions. And if there was a need for resources, an NCA might also decide to re-allocate existing resources. The EBA therefore does not agree with this particular response and has not made any amendments.	None
6	Creation of a separate regime for professional and retail investors	One respondent proposed the creation of a separate regime for professional and retail investors, in order to create, in line with the values of proportionality and fair competition a fairer distribution of customer protection and issuer duties.	The EBA is uncertain how to interpret this response, which this table column on the left is reproducing nearly verbatim. The particular suggestions also do not provide a sound reasoning for the proposal by articulating what the problem is that such differentiated requirements would address. At any rate, the mandate conferred on the EBA in Article 31 MiCAR does not allow the EBA to make such a differentiation.	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			Finally, the reviews of the implementation of the JC Guidelines that the ESAs carried out separately in 2020 did not suggest that there was an issue that would require such a differentiation. The EBA therefore arrived at the view that the RTS should retain its current wording	
	Feedback on responses to Question 2 - Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?			
7	Amendment of third-party entities definition	One respondent indicated that it is unclear whether "other persons" in Article 34(5)(i) of MiCAR refers to the same entities covered by "third-party entities" in Article 34(5)(h) of MiCAR and if the draft RTS should only be limited to IART and third-party entities or it should also cover other types of entities. The same respondent also mentioned that it is unclear whether the exemption in Article 16(2) only targets the authorisation requirement (as implied by Recital (43) MiCAR) or if the exemption also concerns the requirement for the public offer to only be made by the issuer of the ART. The respondent therefore suggests including "other persons" in the definition of "third-party entity".	Article 16(1) of MiCAR provides that, upon the written consent of an issuer of the ART, other persons may offer to the public that ART and in that case, those persons shall comply with Articles 27, 29 and 40 of MiCAR. Article 31 of MiCAR refers expressly to 'third-party entities as referred to in Article 34(5) first subparagraph, point (h)' and does not make any reference to 'other persons' as defined in Article 16 of MiCAR. The EBA therefore arrived at the view that MiCAR allows "other persons" to offer ARTs to the public, upon the written consent of the issuer of those ARTs but does not foresee under Article 31 any obligation for them to have in place a procedure for allowing complainants to submit their complaints, keep a record of them and the measures taken to address them. The EBA is therefore of the view that the draft RTS does not need to be amended. However, the respondent might wish to consider using the EBA's Q&A tool to obtain clarification on the interpretation of this particular concern.	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
8	Article 2 (new Article 1) Further alignment across EBA and ESMA RTS on complaints management policy and function	Two respondents indicated that further harmonisation and unification of the rules on complaint management should be undertaken, as many companies provide financial services that fall under several European standards on complaint management.	The draft RTS is based on the JC Guidelines on complaints handling which were developed to provide a consistent approach for handling complaints across the banking, insurance and investment sectors, as well as to provide a consistent and clear regulatory framework for firms for handling complaints. The EBA therefore arrived at the view that the draft RTS already fulfil the objective of harmonisíng rules on complaints handling management and the current approach should be retained.	None
9	Article 2 (new Article 1) Complaints management policy	According to one respondent, it may be beneficial for certain actors to have the possibility to incorporate complaints handling management policy for such products into a broader general complaints management policy. This consideration arises from the recognition that issuers may be subject to multiple sets of rules and additional obligations. This overarching policy would encompass a wide range of activities, including, but not limited to, the issuance of ART. A management policy encompassing these aspects might prove more efficient and practical.	The EBA considers that both a more restrictive application (requiring the set-up of a separate complaints-handling function) and less restrictive application (allowing the complaints-handling function to be incorporated within another function of the firm) would be considered consistent with the draft RTS, and that therefore no further specification is required.	None
10	Article 2 (new Article 1) Complaints management function	According to one respondent, it is unclear whether the complaints management function should be a separate function which handles only complaints or whether it should be fully integrated into the "compliance function". This respondent suggests specifying that, depending on the size of the IART, the compliance department may be held responsible for handling complaints and therefore incorporate the "complaints management function".	The EBA considers that both a more restrictive application (requiring the set-up of a separate complaints-handling policy) and less restrictive application (allowing the complaints-handling policy to be incorporated within the general corporate complaints management policy) would be considered consistent with the draft RTS, and that therefore no further specification is required.	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
11	Recital 5, Article 1 (a) and Annex, Article 3(1) (new Article 2(1))	Some respondents spotted some spelling mistakes	EBA acknowledges the changes proposed and arrived at the view to amend the draft RTS.	Amendment to: Article 2(1) 'tokens shall' Recital 5 'third-party' Article 1 (a) and Annex 'Asset-referenced tokens'
12	Article 3(1)(a) (new Article 2(1)(a)) Removal of conditions for the admissibility of complaints	According to one respondent, the reference to the 'admissibility' of complaints is not needed in Article 3 (1) (a) as both Guideline 6 in the JC Guidelines and Articles 2 and 5 of the proposed RTS specify the information to be provided to the complainant.	In developing the draft RTS under MiCAR on hand, the EBA followed the content of the JC Guidelines nearly verbatim but, where the mandate under MiCAR requires the EBA to develop additional requirements that are not covered in the JC Guidelines, aligned the RTS with ESMA's emerging RTS under MiCAR on complaints handling for crypto-asset service providers, with a view to bring about a desired degree of consistency across the EBA and ESMA RTS. The reference to the 'admissibility of complaints' in the new Article 2 (1) (a)) aims at aligning the wording with the ESMA RTS and clarifying the reference to 'admissible complaint' in Article 5 (1) (a). Indicating conditions for a complaint to be considered admissible and complete is essential to ensure a fair treatment of consumers. Keeping in mind the suggestions of some respondents to align EBA and ESMA RTS, the EBA arrived at the view that the draft RTS should retain the wording 'conditions for the admissibility of complaints' in the new Article 2 (1) (a).	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
13	Article 4 (new Article 3) Add a new section in the template to outline the objective of the complaint	One respondent suggested adding a specific section to the template to outline the underlying objectives of the complaint because this could facilitate a quick understanding of the complaint's ultimate goal by the recipient, whether it pertains to financial matters or other objectives.	EBA arrived at the view that section 3. B 'Description of the complaint's subject-matter' in the proposed template also provides an opportunity for the complainant to insert objective of the complaint. Consequently, the EBA is of the view to retain the current approach.	None
14	Article 4(b) (new Article 3(b)) Submission of complaints by electronic means only	According to several respondents, due to the nature of crypto-assets, which are by default provided by electronic means, submission of complaints should be limited to electronic means (not also in paper form/by post) as paper form will become ever less relevant over time.	The EBA arrived at the view that the draft RTS should be aligned as much as possible with the JC Guidelines to help ensure a consistent approach to complaints-handling across the financial services sectors and that the option for consumers to submit their complaints also in paper form should therefore be preserved. In addition, the draft RTS does not require consumers to use the paper format for filing a complaint but only provides this as an option, and that one does not result in additional significant compliance costs for issuers. Consequently, the EBA is of the view to retain the current approach.	None
15	Article 4(d) (new Article 3(e)) Receipt of complaints without using the prescribed template	According to one respondent, if this proposal were to become a requirement, implementing the requirement would be infeasible and dis-proportionate, as it will create excessive burdens on IARTs. The respondent suggests deleting Article 4 (d).	The EBA was of the view that the complaints-handling process should be made easily accessible for consumers and processing complaints outside of the proposed template would enhance consumer protection. The objective of consumer protection should be of utmost importance to all market participants and any proportionate application of the RTS should not dilute that objective.	None

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			With regard to the above, the EBA arrived at the view that the draft RTS should retain its current approach.	
	Feedback on responses to Question 3 - Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?			
16	Article 5(1)(c) Removal of conditions for the admissibility of complaints	According to one respondent, the reference to the 'admissibility' of complaints is not needed in Article 5 as it goes beyond the requirements of the JC Guidelines which are sufficient.	In developing the draft RTS under MiCAR on hand, the EBA followed the content of the JC Guidelines nearly verbatim but, where the mandate under MiCAR requires the EBA to develop additional requirements that are not covered in the JC Guidelines, aligned the draft RTS with ESMA's emerging draft RTS under MiCAR on complaints handling for crypto-asset service providers, with a view to bring about a desired degree of consistency across the draft EBA and ESMA RTS. Indicating conditions for complaint to be considered admissible and complete is essential to ensure a fair treatment of consumers. With the aim to ensure consistency across the draft EBA and ESMA RTS, the EBA arrived at the view that the draft RTS should retain the reference to conditions of admissibility in Article 5(1)(a) and Article 5(1)(c) and decided to amend Article 5(1)(c) by referring to Article 5(1)(a) which specify the conditions a complaint shall meet to be considered admissible and complete but delete the circular legal reference to Article 3(1)(a).	Amendment to Article 5(1)(c): […] '(c) where a complaint does not fulfill the conditions of admissibility referred to in ~~Article 3 (1)(a)~~ ~~and~~ Article 5 (1) (a)'
17	Article 5(3)(a) Clearly understood	According to one respondent the wording 'clearly understood' is ambiguous and the following wording should be preferred: '[...] with information that is complete, fair, clear and not misleading, using clear and plain language'.	The EBA acknowledges the suggestion and is of the view that the RTS should be aligned, as much as possible with the JC Guidelines to help ensure a consistent approach to complaints-handling across the financial services sectors and in order to limit costs to firms and to more easily facilitate common supervisory oversight.	Amendment to Article 5(3)(a) '~~clearly understood~~' 'easy to understand'

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			The EBA believes that there is however some merit in the arguments presented by the respondent, also with the aim to ensure further alignment across ESMA and EBA RTS and bring greater consistency with the ESMA RTS, the EBA amended the wording used in the draft ESMA RTS to refer to 'easy to understand'.	
18	Article 5(3)(a) Language requirements	According to several respondents' language requirements (using 24 languages) represent a challenge from budgetary and operational perspective for the IARTs. According to one of them, the description of the procedure and templates should be published only in the languages used in the contractual documentation. According to one respondent, the approach of the Consumer Rights Directive to leave to Members states' discretion to maintain or introduce national law language requirements should be followed (see in particular provisions in Recital (15) and Article 6 and 7). The respondent suggests including the following new paragraph in the RTS: 'Member States may maintain or introduce in their national law language requirements regarding written information about the complaints-handling procedure, so as to ensure that such information is easily understood by the complainants'.	Compared to the financial products covered in the JC Guidelines, which were originally sold via branches in a given jurisdiction, crypto-assets will only be issued and sold over the internet and are therefore particularly suitable and amendable for cross-border selling within the EU. This suggests that the right of consumers may need to be strengthened such that, when submitting a complaint that inevitably will contain some moderate linguistic formality, they are not required to only articulate it in a language of the issuer's chosen language. Also, given recent evolutions in automated translation algorithms, the EBA believes the additional compliance cost arising for IARTs from this alignment to be limited. The EBA acknowledges the comments, but considering the above arrived at the view to amend the draft RTS by including new provisions in Recital 1 and Article 4 (new) which is aligned with ESMA draft RTS wording;	Amendment to Recital 1 and new article 4 added, stating: *Issuers of asset-referenced tokens and, where applicable, the third-party entities, shall do all of the following:* *(a) publish the description of the complaints handling procedure and the standard template set out in the Annex in the languages they use to market their services or communicate with the holder of asset-referenced tokens; and* *(b) ensure complainants may file complaints in:* *(i) the languages they use to market their services or communicate with the holder of asset-referenced tokens;* *(ii) the official languages of the home Member State and host*

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				Member States, that are also official languages of the Union.
19	Article 6(c)(i)(a) Submission of complaints by electronic means only	According to several respondents the submission of complaints in paper form should be removed. Respondents indicated that relevant complaints should be submitted exclusively by electronic means to ensure investigation and subsequent handling is carried out in a prompt manner.	EBA acknowledges the comments received but arrived at the view that the draft RTS should be aligned, as much as possible with the JC Guidelines to help ensure a consistent approach to complaints-handling across the financial services sectors. EBA is of the view that the option for consumers to submit their complaints in a paper form should be preserved as it could enhance consumer protection. In addition, the draft RTS does not require consumers to use the paper format for filing a complaint but only provides this as an option, and that one does not result in additional significant compliance costs for issuers. In consequence, the EBA is of the view to retain the current approach.	None
20	Article 4(c) (new Article 3(d)), Article 5(3)(b) and (c) and Article 6(c)(iv) Reference to national provisions should be avoided	According to several respondents, the reference to national provisions should be avoided in Article 4(c), Article 5(b) and (c) and Article 6(c)(iv), since in the case of cross-border provision of services, the nationally applicable law must be determined. For those respondents, a uniform regulation is desirable, otherwise issuers and crypto-asset service providers would have to comply with many different national regulations for the deadlines, which is unreasonable. One respondent suggested referring to 'national law' in Article 5(3)(b) and (c) and Article 6(c)(iv) instead of 'rules'. One respondent explained that the specification of exact deadlines is however not necessary, as the	The proposed RTS does not set out any specific timeframe to record internally complaints and measures taken in response thereto. Instead, the draft RTS refers to the need to respect national timing requirements when applicable. The EBA arrived at the view that the argument has merit but that, conversely, the draft RTS should be aligned, as much as possible with the JC Guidelines, to help ensure a consistent approach to complaints-handling across the financial services sectors regarding the time limit to record internally complaints taken, to limit costs to firms and to more easily facilitate common supervisory oversight. Consequently, EBA is of the view to retain the approach proposed in the consultation paper.	Amendment to Article 5(3)(c) (c) by including a thorough explanation of their position on the complaint where the final decision does not fully satisfy the complainant's demand (or any final decision, where national ~~rules~~ law requires it), and by setting out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute resolution mechanism, national competent authorities, etc. Such

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		communication of the outcome of investigations to the complainants on filed complaints should be done "undue delay" anyway.	The EBA however arrived at the view that there is merit in introducing some amendments, such as referring to 'national law' instead of 'national rules' in Article 5(3)(c).	decision shall be provided in writing where national law ~~rules~~ requires it.'
21	Article 5(1)(b) Article 6(b)	Some respondents spotted some spelling mistakes	EBA acknowledges the comments received and arrived at the view that the draft RTS should be amended accordingly.	Article 5(1)(b) 'request from the complainant' Article 6(b) 'third-party'
22	New provision – Obligation to request additional information about the identity of the complainant	According to one respondent it would be beneficial to add an article which provides an obligation for complainant to provide additional information about its identity to allow the IART to verify the identity of the complainant. For instance, if the holder' complaint relates to a specific acquisition of ARTs by a specific individual (quantities, conditions, etc.) or where the IARTs has reasonable doubts concerning the identity of the person making the complaint.	The template provided in Annex of the RTS already foresees the complainant to provide the following personal data to fill-in a complaint: 'last name/legal entity, first name, registration number, LEI (if available) customer reference (if available) address: street, number, floor (in case the complainant is a legal entity, address of the complainant's registered office), postcode, city, country, telephone and email'. Considering such requirements, and in line with data minimization requirements in application of the GDPR, the EBA arrived at the view that the personal data requested to fill in the template should be sufficient to identify the complainant. Consequently, EBA considers unnecessary to add an article providing an obligation for complainant to provide additional information about its identity.	None
23	Clarify means of communication	According to one respondent, means of communication in the proposed RTS should be clarified.	It is unclear what the respondent means by clarifying the 'means of communication'. If the respondent means that specific technology or channel should be specified, the EBA is of the view that the RTS introduce requirements that do not prescribe any specific organisational approaches or technological solutions also to ensure that the RTS remains technology neutral.	Amendment Article 1 (2) (a) (ii) set out in a written ~~or electronic~~ document available in electronic or paper format as part of a 'general fair treatment policy'.

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			The EBA suggests however to amend the draft RTS by referring to 'written document available in electronic or paper format' in the new Article 1 (2) (a) ii) related to complaint management policy and function.	
24	Add a definition of personal data and a paragraph referring to GDPR	According to one respondent, it would be beneficial to add a definition of "personal data" to the RTS, and a paragraph stating that "Any processing of personal data under this Regulation, with regards to complaints handling procedures, should be carried out in accordance with applicable Union law on the protection of personal data".	The EBA acknowledged the comment provided and arrived at the view to amend the draft RTS to refer explicitly to the applicability of the GDPR to the processing of personal data in a recital.	Amendment Recital 6 (new): "Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulation (EU) 2016/679 of the European Parliament and of the Council."