



Brussels, 30.9.2024  
C(2024) 6670 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 30.9.2024**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, templates and procedures for the handling of complaints relating to asset referenced tokens**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 31(5) of Regulation (EU) No 2023/1114 on Markets in Crypto-assets ('the MiCAR') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying the requirements, templates and procedures for handling complaints.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10 (1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 31(5) of Regulation (EU) No 2023/1114 on Markets in Crypto-assets ('the MiCAR'). A consultation paper was published on the EBA internet site on 12 July 2023, and the consultation closed on 12 October 2023.

Eight responses were received, of which seven were published on the EBA website while one was submitted as a confidential response and therefore not published on the EBA website. Having assessed the responses, the EBA made 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 Crypto Assets Service Provider developed by the European Securities and Markets Authority (ESMA). The changes included 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.

Moreover, the EBA also requested advice from the Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its impact assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The final regulatory technical standards ('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 asset-referenced tokens and other interested parties. The RTS continue with requirements on templates and recording of complaints and measures taken in response, 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.

# COMMISSION DELEGATED REGULATION (EU) .../...

of 30.9.2024

## **supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, templates and procedures for the handling of complaints relating to asset referenced tokens**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council 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<sup>1</sup>, and in particular Article 31(5), third subparagraph, thereof,

Whereas:

- (1) In the interest of consumer protection, and in accordance with Article 31 of Regulation (EU) 2023/1114, issuers of asset-referenced tokens, and, where applicable, the third-party entities as referred to in Article 34(5), first subparagraph, point (h), of that Regulation, should provide holders of asset-referenced tokens and other interested parties with information on the complaints handling procedures. Furthermore, those issuers and third-party entities should make available to them a harmonised template in the languages that those issuers and third-party entities use to market their services or in the languages that they use to communicate with the holder of asset-referenced tokens.
- (2) In order to ensure transparency for complainants and enable them to effectively access and use complaint procedures, 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 in the languages they use to 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.
- (3) 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 in the complaints-handling procedures with those issuers, and, where applicable, the third-party entities, irrespective of where those issuers or third-party entities are established or where the token was distributed within the Union. However, even if the complainant files the complaint in a format other than the template, the issuer, and the third party entity, should still handle the complaint and not reject it for that reason.

---

<sup>1</sup> OJ L 150, 9.6.2023, p. 40, ELI: <http://data.europa.eu/eli/reg/2023/1114/oj>.

- (4) 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 of asset-referenced tokens, and where applicable, third-party entities, 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. Furthermore, the issuer of asset-referenced tokens should assess whether the complaint is admissible and contains all relevant information necessary for the complaints investigation and promptly request from the holders of asset-referenced tokens and other interested parties any additional information needed for the prompt and effective investigation and handling of the complaint.
- (5) In order to ensure equal treatment in the Union, it should be specified what would constitute a 'reasonable period' for an issuer of asset-referenced tokens 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 and in any event within the time limits set at national level to address complaints filed by complainants, where applicable. The issuer should assess all complaints, identifying shortcomings that may be recurring.
- (6) In accordance with the data minimisation principle, only personal data that is necessary for handling the complaint, should be requested.
- (7) This Regulation is based on the draft regulatory technical standards, developed in close cooperation with the European Securities and Markets Authority, submitted to the Commission by the European Banking Authority.
- (8) The European Banking Authority 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<sup>2</sup>.
- (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<sup>3</sup> and delivered an opinion on 21 June 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 establish and maintain procedures for handling of complaints, where a complaint is:

---

<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>).

<sup>3</sup> 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>).

- (a) a statement of dissatisfaction addressed to them 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, the offer or seeking admission to trading of asset-referenced tokens under 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 and where that person, or any other interested party, purports to be eligible to submit a complaint to an issuer of asset-referenced tokens or a third-party entity that have been distributing, totally or partially, asset-referenced tokens.
- 2. Issuers of asset-referenced tokens shall establish and maintain complaints-handling procedures that include all of the following:
  - (a) a ‘complaints management policy’, which shall be:
    - (i) defined and endorsed by the issuer of asset-referenced tokens’ senior management, that shall also be responsible for the implementation of that policy and for monitoring compliance with it;
    - (ii) set out in a written document available in electronic or paper format;
    - (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 shall:
    - (i) enable complaints to be investigated fairly;
    - (ii) identify and mitigate possible conflicts of interest.

## *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 complainant. The information provided by the issuer shall include the following:
  - (a) the conditions for the admissibility of complaints as referred to in Article 5(1), point (a);
  - (b) details of the procedure to file a complaint, including the type of information to be provided by the complainant and the identity and contact details of the person or department to which the complaint is directed;
  - (c) the procedure that will be followed when handling a complaint including when the receipt of the complaint will be acknowledged, indicative handling timelines and the availability of a competent authority, an ombudsman or alternative dispute resolution mechanisms;
  - (d) information that complaints are filed and handled free of charge with the issuers or, where applicable, with the third-party entities;
  - (e) a mention of the issuer’s obligation to keep the complainant informed about the further handling of the complaint.

2. Issuers of asset-referenced tokens shall publish an up-to-date description of the complaints-handling procedure as well as the template for filing 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:

- (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;
- (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 that complaint;
- (d) record, internally, complaints and measures taken in response thereto in an appropriate manner, such as through a secure electronic register, and for a reasonable period of time and in any event no longer than permitted under national timing requirements, where applicable;
- (e) accept and handle a complaint even if the complainant files the complaint in a format other than the template set out in the Annex;
- (f) provide the complainant with a privacy notice to accompany the template provided in the Annex to this Regulation, in accordance with Articles 13 and 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>.

### *Article 4* *Languages*

Issuers of asset-referenced tokens and, where applicable, third-party entities shall:

- (a) publish the description of the complaints-handling procedure and the template set out in the Annex in the languages they use to market their services or in the languages they use to communicate with the holder of asset-referenced tokens;
- (b) ensure that complainants are able to file complaints in:
  - (i) the languages those issuers and third-party entities use to market their services or in the languages they use to communicate with the holder of asset-referenced tokens;

---

<sup>4</sup> 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) (OJ L 119, 4.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

- (ii) the official languages of the home Member State and the 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. Issuers of asset-referenced tokens shall:
  - (a) upon receipt of a complaint, without undue delay, assess whether the complaint is clear and complete and, in particular, assess whether the complaint contains all relevant information and evidence and inform the complainant about whether the complaint fulfils the conditions of admissibility, which shall be fair, reasonable and shall not unduly restrict the rights of natural or legal persons to file a complaint;
  - (b) where they conclude that a complaint is unclear or incomplete, 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, provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible;
  - (d) seek to gather and investigate all relevant information and evidence regarding a complaint;
  - (e) where they are not competent in relation to the subject matter contained in the complaint, inform the complainant thereof and give the contact details of the entity responsible for handling the complaint, where known;
  - (f) 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 identify and address any recurring or systemic problems, and potential legal and operational risks. In particular, issuers of asset-referenced tokens shall:
  - (a) analyse the causes of individual complaints so as to identify root causes common to different types of complaints;
  - (b) consider whether such root causes may also affect other processes or products, including those not directly complained about;
  - (c) address such root causes.
3. Issuers of asset-referenced tokens shall communicate to the complainants the outcome of the investigations on filed complaints:
  - (a) in plain language that is easy to understand for complainants;
  - (b) by providing a response without undue delay and in any event within the time limits set at national level to address complaints filed by complainants, where applicable; 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, including the availability of an ombudsman, alternative dispute resolution mechanisms, and national competent authorities.

For the purposes of point (b), where an answer cannot be provided within the expected time limits, issuers of asset referenced token shall inform the complainant about the causes of the delay indicating when their investigation is likely to be completed.

For the purposes of point (c), such decision shall be provided in writing.

## *Article 6*

### *Specific provisions for complaints handling involving third-party entities*

1. Where the tokens have been distributed, totally or partially, 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 that shall assess such complaints;
  - (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 those tokens.
2. The third-party entities shall:
  - (a) allow complainants to:
    - (i) submit complaints by electronic means or in paper form;
    - (ii) file complaints free of charge;
  - (b) 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;
  - (c) provide the contact details of issuers of asset-referenced tokens to the complainant, to allow the complainant to have the option to file complaints directly with issuers of asset-referenced tokens;
  - (d) 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 template set out in the Annex;
  - (e) record internally, in an appropriate manner through a secure electronic register, all complaints received and any measures taken in response thereto for a reasonable period of time and in any event no longer than permitted under national timing requirements, where applicable;
  - (f) provide the complainant with a privacy notice to accompany the template set out in the Annex to this Regulation, in accordance with Articles 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, 30.9.2024

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*