

Brussels, 31.10.2024  
C(2024) 6910 final

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

**of 31.10.2024**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens and of e-money tokens denominated in a currency that is not an official currency of a Member State as a means of exchange**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

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

Article 22(6) of Regulation (EU) 2023/1114 on Markets in Crypto-assets (MiCA) empowers the Commission to adopt, following submission of draft regulatory technical standards (RTS) by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 establishing the EBA, a delegated act specifying the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an asset-referenced token (ART) as a means of exchange within a single currency area. In accordance with Article 58(3) of MiCA, the provisions of Article 22, including the delegated act referred to in Article 22(6), are also to apply to e-money tokens (EMTs) denominated in a currency that is not an official currency of a Member State.

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

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

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out public consultations on the draft RTS. A consultation paper was published on the EBA website on 8 November 2023, and the consultation closed on 8 February 2024. Moreover, the EBA worked in close cooperation with the European Central Bank and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft RTS submitted to the Commission.

The key concerns and requests for clarifications that were raised by respondents to the consultation related to the scope of transactions associated to uses of ARTs and of EMTs denominated in a non-EU currency as a means of exchange, the geographical scope of transactions covered and the reconciliation by the issuer of the data received from crypto-asset service providers (CASPs) for the purpose of the reporting in Article 22(1), point (d), of MiCA. The EBA reviewed the draft RTS in the light of the comments received and made a number of changes. The main changes include providing more clarity on the scope of transactions covered, clarifying the geographical scope of the transactions so that they are limited to transactions where both the payer and the payee are located in the same single currency area, and streamlining the reconciliation process by the issuer of the data reported by CASPs to the issuer.

Together with the draft RTS, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has submitted its impact assessment, including its analysis of the costs and benefits, related to the draft RTS submitted to the Commission. This analysis is provided in the EBA Final Report on the draft RTS<sup>1</sup>.

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<sup>1</sup> Pages 21-49, available at: <https://www.eba.europa.eu/regulatory-technical-standards-use-arts-and-emts-denominated-non-eu-currency-means-exchange-micar>.

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

The RTS specify the methodology to be applied by issuers of ARTs and of EMTs denominated in a non-EU currency for estimating the number and value of transactions associated to uses of such tokens ‘as a means of exchange’, for the purpose of the reporting in Article 22(1)(d) of MiCA. This includes provisions on the scope of the transactions to be reported by issuers under Article 22(1)(d) of MiCA, including the geographical scope of such transactions, and on how issuers should estimate the number and value of such transactions.

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

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**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens and of e-money tokens denominated in a currency that is not an official currency of a Member State as a means of exchange**

(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 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>2</sup>, and in particular Article 22(6), third subparagraph, thereof,

Whereas:

- (1) The concept of a ‘transaction’ in Article 22(1) of Regulation (EU) 2023/1114 is indifferent as to the type of wallets used by the payer or by the payee for initiating or receiving a transaction associated to the use of an asset-referenced token as a means of exchange. Accordingly, for specifying the methodology referred to in Article 22(6) of Regulation (EU) 2023/1114, it is necessary to consider that the reporting in Article 22(1), point (d), of that Regulation should include transactions between custodial wallets as well as transactions between a custodial wallet, on the one hand, and a non-custodial wallet or other types of distributed ledger addresses that are not controlled by a holder of an asset-referenced token or by a crypto asset service provider, on the other hand. Transactions between non-custodial wallets, or between non-custodial wallets and other types of distributed ledger addresses that are not controlled by a holder of an asset-referenced token or by a crypto asset service provider, should not be included in the scope of the reporting in Article 22(1), point (d), of Regulation (EU) 2023/1114, taking into account that issuers may not have the necessary information to report such transactions under those provisions. That should be without prejudice to the reporting obligations of issuers in respect of such transactions under Article 22(1), point (c), of Regulation (EU) 2023/1114 and Commission Implementing Regulation (EU) 2024/xxx [C(2024) 6912]<sup>3</sup>.

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<sup>2</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40–205, ELI: <http://data.europa.eu/eli/reg/2023/1114/oj>).

<sup>3</sup> Commission Implementing Regulation (EU) 2024/xxx laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to reporting related to asset-referenced tokens and to e-money tokens denominated in a currency

- (2) According to Article 22(1), second subparagraph, of Regulation (EU) 2023/1114, transactions associated to uses as a means of exchange are only transactions that lead to a change in the natural or legal person entitled to the asset-referenced token. That applies even where the beneficial owner within the meaning of Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>4</sup> remains the same, and irrespective of whether those transactions are settled on the distributed ledger ('on-chain') or outside the distributed ledger ('off-chain'). Accordingly, for the purpose of the reporting under Article 22(1), point (d), of Regulation (EU) 2023/1114, the data to be reported by the issuer to the competent authority should not include transfers of an asset referenced token between different addresses or accounts of the same person.
- (3) Article 22(1), third subparagraph, of Regulation (EU) 2023/1114 provides that certain transactions are not to be considered as associated to uses of asset-referenced tokens as a means of exchange. In particular, as clarified in recital 61 of that Regulation, transactions associated to uses of asset-referenced tokens as a means of exchange are those transactions associated with payments of debts including in the context of transactions with merchants and should not include transactions associated with investment functions and services, such as a means of exchange for funds or other crypto-assets, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets. Therefore, it is necessary to further specify the type of transactions that are to be reported under Article 22(1), point (d), of Regulation (EU) 2023/1114.
- (4) The issuer should estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange as referred to in Article 22(1), point (d), of Regulation (EU) 2023/1114 by deducting from the total number and value of transactions settled in the asset referenced token, during the relevant quarter, transactions where the asset-referenced token is exchanged for funds or other crypto-assets with the issuer or with a crypto-asset service provider, transactions where the asset-referenced token is used as collateral for the purpose of conducting transactions with financial instruments and transactions where the asset-referenced token is used to settle a derivative contract. In addition, the issuer may also deduct other transactions with the asset-referenced token where the issuer has reasonable grounds to assume that the purpose of the respective transactions is not to pay for goods or services, provided that the issuer is able to demonstrate to the competent authority, upon request, that it had reasonable grounds to assume that those transactions do not relate to the use of the asset-referenced token to pay for goods or services.
- (5) Transactions associated to uses of an asset-referenced token as a means of exchange should also include transactions where one or several crypto-assets that are different from the asset-referenced token are used to pay for goods and services, provided that those transactions are settled in the asset-referenced token. That can include, for example, cases where an asset-referenced token is used as a bridge asset to settle

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that is not an official currency of a Member State (JO L, xxx/xxx, ELI: xxx .) [OP please insert reference to C(2024) 6912].

<sup>4</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73, ELI: <http://data.europa.eu/eli/dir/2015/849/oj>).

transactions with a crypto-asset different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services, and cases where an asset-referenced token is used as a bridge asset to settle a transaction involving two crypto-assets different from the asset-referenced token, where the purpose of that transaction is to pay for goods or services. By contrast, transactions where the parties wish to trade or exchange two distinct crypto-assets different from the asset-referenced token and agree to settle the transaction using an asset-referenced token, without the purpose of the underlying transaction being to pay for goods or services, should not fall within the scope of the reporting in Article 22(1), point (d), of Regulation (EU) 2023/1114.

- (6) The issuer should determine for each transaction in scope of Article 22(1), point (d), of Regulation (EU) 2023/1114 the single currency area for which that transaction should be reported. The transactions referred to in Article 22(1), point (d), of that Regulation should cover transactions where both the payer and the payee are located in the same single currency area within the Union.
- (7) To ensure that the quarterly average number and the average aggregate value of transactions per day are estimated on the basis of reliable and sound data and to enhance the quality of reporting, the issuer should have systems and procedures in place that allow it to reconcile the data received from the crypto-asset service provider of the payee or, in the case of transactions from a custodial wallet to a non-custodial wallet, the data received from the crypto-asset service provider of the payer, pursuant to Article 22(3) of Regulation (EU) 2023/1114 and Implementing Regulation (EU) 2024/xxx [C(2024) 6912] with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.
- (8) In accordance with Article 58(3) of Regulation (EU) 2023/1114, the provisions of Articles 22 and 23, and Article 24(3) of that Regulation are to apply also to e-money tokens denominated in a currency that is not an official currency of a Member State. Accordingly, this Regulation should also apply *mutatis mutandis* to such e-money tokens.
- (9) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (10) 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010<sup>5</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter*

1. This Regulation specifies the methodology to estimate the quarterly average number and average aggregate value of transactions per day that are associated to uses of an

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<sup>5</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>).

asset-referenced token as a means of exchange within a single currency area, in accordance with Article 22(1), point (d), of Regulation (EU) 2023/1114.

2. In accordance with Article 58(3) of Regulation (EU) 2023/1114, this Regulation also applies *mutatis mutandis* to e-money tokens denominated in a currency that is not an official currency of a Member State.

## *Article 2* *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘single currency area’ means one or several countries that have the same official currency;
- (2) ‘custodial wallet’ means a crypto-asset wallet address where a crypto-asset service provider ensures the safekeeping or controlling, on behalf of its client, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;
- (3) ‘non-custodial wallet’ means a crypto-asset wallet address where the user controls the means of access to the crypto-assets, where applicable in the form of private cryptographic keys.

## *Article 3* *Transactions associated to uses of an asset referenced token as a means of exchange*

1. The issuer shall estimate the number and value of transactions associated to uses of an asset-referenced token as a means of exchange, as referred to in Article 22(1), point (d), of Regulation (EU) 2023/1114, by deducting from the total number and value of transactions with that token during the relevant quarter the following:
  - (a) transactions where the asset-referenced token is exchanged for funds or other crypto-assets with the issuer or with a crypto-asset service provider;
  - (b) transactions where the asset-referenced token is used as collateral for the purpose of conducting transactions with financial instruments;
  - (c) transactions where the asset-referenced token is used to settle a derivative contract;
  - (d) other transactions with the asset-referenced token where the issuer has reasonable grounds to assume that the purpose of the respective transactions is not to pay for goods or services.

In order to exclude from the estimate referred to in the first subparagraph the transactions referred to in point (d) of the first subparagraph, the issuer shall be able to demonstrate to the competent authority, upon request, that it had reasonable grounds to assume that those transactions do not relate to the use of the asset-referenced token to pay for goods or services.

2. Transactions associated to uses of an asset-referenced token as a means of exchange shall include transactions where one or several crypto-assets that are different from the asset-referenced token are used to pay for goods and services, provided that those transactions are settled in the asset-referenced token.
3. The transactions referred to in paragraph 1 shall include the following:

- (a) transactions settled on a distributed ledger;
  - (b) transactions settled outside a distributed ledger;
  - (c) transactions between custodial wallets;
  - (d) transactions between a custodial wallet and a non-custodial wallet or other type of distributed ledger addresses that is not controlled by a holder of the asset-referenced token or a crypto-asset service provider.
4. The transactions referred to in paragraph 1 shall not include transfers between different accounts or addresses of the same person.
5. The transactions referred to in paragraph 1 shall only include transactions where both the payer and the payee are located in the same single currency area within the Union. The location of a payer or a payee refers to their habitual residence, for natural persons, and to the registered office address, for legal persons.

#### *Article 4*

##### *Calculation of the average number and average aggregate value of transactions*

1. The issuer shall calculate the quarterly average number and average aggregate value of transactions per day referred to in Article 22(1), point (d), of Regulation (EU) 2023/1114 for each single currency area, as this information stands on the following reporting reference dates: 31 March, 30 June, 30 September and 31 December.
2. The value of the transactions referred in paragraph 1 shall be reported in the official currency of the home Member State of the issuer.
3. The issuer shall determine the value of the transactions referred to in paragraph 1 as follows:
  - (a) where the basket of assets referenced by the asset referenced token includes one or more official currencies that are different from the official currency referred to in paragraph 2 of this Article, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), point (c), of Regulation (EU) 2023/1114;
  - (b) where the basket of assets referenced by the asset referenced token includes assets other than an official currency, the issuer shall determine the value of the respective transactions per day by using market prices calculated at the end of each calendar day during the applicable reporting period, whenever possible, in accordance with the valuation, or the principles of valuation, of the asset referenced token referred to in Article 39(2), point (c), and Article 36(11) and (12) of Regulation (EU) 2023/1114;
  - (c) with respect to e-money tokens denominated in a currency that is not an official currency of a Member State, the issuer shall determine the value of the respective transactions per day by using the relevant exchange rates applicable at the end of each calendar day during the applicable reporting period.



*Article 5*  
*Data quality*

1. The issuer shall have systems and procedures in place to ensure that the data submitted to the competent authority pursuant to Article 22(1), point (d), of Regulation (EU) 2023/1114 is correct, complete and submitted within the timeframe set out in Implementing Regulation (EU) 2024/xxx [C(2024) 6912].
2. The systems and procedures referred to in paragraph 1 shall allow the issuer to reconcile the data received from the crypto-asset service provider of the payee, or, in the case of transactions from a custodial wallet to a non-custodial wallet, the data received from the crypto-asset service provider of the payer pursuant to Article 22(3) of Regulation 2023/1114 and Implementing Regulation (EU) 2024/xxx [C(2024) 6912] with the data available to the issuer from other sources, including, where applicable, transactional data available on the distributed ledger.

*Article 6*  
*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, 31.10.2024

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