



EUROPEAN
COMMISSION

Brussels, 16.12.2024
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COMMISSION DELEGATED REGULATION (EU) .../...

of 16.12.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the procedure and timeframe for an issuer of asset-referenced tokens or of e-money tokens to adjust the amount of its own funds

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 45(7)(c) of Regulation (EU) 2023/1114 ('the Regulation') 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, a delegated act specifying the procedure and timeframe for an issuer of a significant asset-referenced token to adjust the amount of its own funds to 3% of the average amount of the reserve assets.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission is to decide within three months of receipt of the draft RTS whether to endorse the draft 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 a public consultation on the draft RTS submitted to the Commission in accordance with Article 45(7)(c) of Regulation (EU) 2023/1114 ('the Regulation'). A consultation paper was published on the EBA internet site on 8 November 2023, and the consultation closed on 8 February 2024. Moreover, the EBA worked in close cooperation with ESMA. Together with the draft RTS, 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 EBA received feedback on the draft RTS from two main areas: concerns about the foundational text (level 1 text) and specific feedback on the provisions. Industry stakeholders called for greater consideration of industry perspectives to enhance understanding of the challenges and regulatory interactions for issuers of asset-referenced tokens. They also raised concerns about the potential for abrupt changes (cliff effects) that could force issuers to drastically restructure their business models when their tokens become significant. As for the draft RTS, although there was general agreement on the procedures for issuers to adjust their own funds when a token becomes significant, the suggested timelines for planning and implementing these adjustments were seen as potentially too stringent. Stakeholders advised the EBA to take into account the full range of regulatory requirements affecting issuers in such situations. Moreover, most respondents opposed business restrictions, like banning new issuances, during the period of adjusting to higher own fund requirements, arguing that such measures could harm the issuers' business and financial stability.

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.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

These RTS specify the procedure to be followed by the competent authority and the issuer of asset-referenced tokens or e-money tokens that have been classified as significant pursuant to Article 43(6), 44(3), 56(5) or 57(3) of the Regulation, and the issuer of non-significant asset-referenced tokens or e-money tokens that is requested by the competent authority to comply with Article 45(5) of the Regulation pursuant to Article 35(4) or 58(2) of that Regulation.

These RTS establish the process for the competent authority to notify the relevant issuer of the timeframe to increase its own funds and for the relevant issuer to submit to the competent authority a detailed plan on how the own funds will be adjusted to meet the requirement in Article 45(5) of the Regulation. These RTS also provide provisions for the competent authority and relevant issuer to monitor the implementation of the plan to ensure a timely completion.

These RTS also set the maximum timeframe that the competent authority may provide to the relevant issuer to implement the plan to increase its own funds, having regard to the potential impact on the issuer, its specificities, and risks to the financial stability of the wider financial system.

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(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 Directive (EU) 2019/1937¹, and in particular Article 45(7), fourth subparagraph, thereof,

Whereas:

- (1) The requirement set out in Articles 45(5) of Regulation (EU) 2023/1114 also applies to electronic money institutions issuing significant e-money tokens, in accordance with Article 58(1), point (b), of that Regulation, where required by the competent authority under Article 35(4) of that Regulation, to issuers of asset-reference tokens that are not significant, and, where required by the competent authority under Article 58(2) of that Regulation, to electronic money institutions issuing e-money tokens that are not significant.
- (2) Issuers of significant asset-referenced tokens or significant e-money tokens, as well as issuers of asset-referenced tokens or e-money tokens that are not significant, but are subject to Article 45(5) of Regulation (EU) 2023/1114 in accordance with Article 35(4) or Article 58(2), respectively, of that Regulation, should elaborate a plan to adjust the level of own funds to the required level within the timeframe required. Those issuers should discuss and agree the feasibility of such plan with the relevant competent authorities. Implementation of such plan should be closely monitored by competent authorities and, for that purpose, the relevant issuers should notify to the competent authority steps taken, including a final notification of the adjustment completion.
- (3) Competent authorities of the home Member State should determine the timeframe for the issuers to adjust their own funds. Any such timeframe should have a maximum deadline and be as short as possible and based on a case-by-case assessment and determined after a dialogue with that issuer, having regard to the potential impact on

¹ 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, ELI: <http://data.europa.eu/eli/reg/2023/1114/oj>).

that issuer, its specificities and risks to the financial stability of the wider financial system.

- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (5) 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 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1 *Scope of application*

This Regulation applies to the following issuers of asset-referenced tokens or e-money tokens:

- (a) issuers of significant asset-reference tokens;
- (b) electronic money institutions issuing significant e-money tokens;
- (c) issuers of asset-reference tokens that are not significant, where required by the competent authority under Article 35(4) of Regulation (EU) 2023/1114;
- (d) electronic money institutions issuing e-money tokens that are not significant, where required by the competent authority under Article 58(2) of Regulation (EU) 2023/1114.

Article 2 *Timeframe*

- 1. The competent authority of the home Member State shall notify the timeframe within which an issuer of asset-referenced tokens or e-money tokens referred to in Article 1 shall adjust its own funds, within 25 working days from the notification of a decision to classify an asset-referenced token or e-money token as significant, or from the notification to the issuer to comply with the requirement of Article 45(5) of Regulation (EU) 2023/1114. That timeframe shall be set after a dialogue with the relevant issuer.
- 2. The competent authority shall grant to the relevant issuer no more than 6 months after the notification referred to in paragraph 1 to adjust its own funds, having regard to the potential impact on the relevant issuer, its specificities and risks to the financial stability of the wider financial system.
- 3. Within 25 working days from receipt of the notification on the timeframe referred to in paragraph 1, the relevant issuer shall submit to the competent authority a detailed plan on how its own funds are to be adjusted to meet the requirement of Article 45(5) of Regulation (EU) 2023/1114.

² 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>).

The plan shall include time-bound steps and procedures to carry out the own funds' adjustment within the set timeframe.

The plan shall ensure that the own funds items and instruments that will be used to comply with the increased and adjusted requirement fulfil all the conditions set out in Article 35(2) of Regulation (EU) 2023/1114.

4. The relevant issuer shall inform the competent authority immediately and in writing in case any step or procedure of the plan cannot be achieved in a timely manner. In such a case, the relevant issuer shall submit to the competent authority an update of the plan, including alternative steps or procedures that allow the issuer to adjust its own funds in the set timeframe.
5. The competent authority shall closely monitor the implementation of the plan.
6. The relevant issuer shall inform the competent authority of the completion of the steps provided in the plan, including a final notification to the competent authority when the required own funds adjustment has been completed, within 20 working days from the completion.

Article 3 *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, 16.12.2024

For the Commission
The President
Ursula VON DER LEYEN