



EUROPEAN
COMMISSION

Brussels, 31.10.2024
C(2024) 6911 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 conditions for the establishment and functioning of consultative supervisory colleges

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2023/1114 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 (MiCA) was published in the Official Journal of the European Union on 9 June 2023 and entered into force on 29 June 2023. MiCA starts applying on 30 June 2024 as regards Titles III and IV on issuers of asset-referenced tokens (ARTs) and e-money tokens (EMTs) respectively and is fully applicable as of 30 December 2024.

MiCA regulates issuers of crypto-assets that are not already covered by other financial services acts as well as providers of services in relation to such crypto-assets (crypto-asset service providers). Its objective is to promote safe and sustainable innovation while addressing the risks to consumers, market integrity, financial stability as well as the risks to monetary policy transmission and monetary sovereignty arising from this new class of assets.

Article 119 of MiCA provides for the establishment and managing of consultative supervisory colleges for each issuer of significant asset-referenced token or of significant e-money token, to facilitate the exercise of supervisory tasks and act as a vehicle for the coordination of supervisory activities under MiCA.

Article 119(8) of MiCA empowers the European Banking Authority (EBA), in cooperation with the European Securities and Markets Authority (ESMA) and the European Central Bank (ECB) to develop draft regulatory standards specifying:

- (a) the conditions under which the entities referred to Article 119(2), points (d), (e), (f) and (h) of MiCA are to be considered “the most relevant”;
- (b) the conditions under which it is considered that asset-referenced tokens (ARTs) or e-money tokens (EMTs) are “used at large scale”, as referred to in Article 119(2)(l); and
- (c) the details of the practical arrangements referred to in Article 119(6) of MiCA.

Article 119(8) of MiCA empowers the Commission to supplement the Regulation by adopting regulatory technical standards to further specify: (i) the conditions under which the entities referred to Article 119(2), points (d), (e), (f) and (h) of MiCA are to be considered “the most relevant”; (ii) the conditions under which it is considered that asset-referenced tokens (ARTs) or e-money tokens (EMTs) are “used at large scale”, as referred to in Article 119(2)(l); and (iii) the details of the practical arrangements referred to in Article 119(6) of MiCA.

This delegated act is to be adopted in accordance with Article 119(8) of MiCA and Article 290 of the Treaty on the Functioning of the European Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 10(1), third subparagraph, 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 119(8) of MiCA. A consultation paper was published on the EBA website on 8 November 2023, and the consultation closed on 8 February 2024. 3 responses were received, 2 of which are published on the EBA’s website. Moreover, the EBA worked in close cooperation with ESMA and the ECB 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 technical standards submitted to the Commission. Comments received, in general focused on the ability to determine “the most relevant” player in each case (the trading platform, the PSPs providing payment services, the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients). The EBA noted that the collection of the data necessary to determine the composition of a college is not part of the mandate in Article 119(8) and therefore is out of scope of the delegated regulation. This being said, the EBA expects that the issuer in each case will obtain the information relevant for identifying the most relevant player.

One respondent suggested an alternative approach for the identification of the most relevant entities referred to in Article 119(2) of MiCA, whereby the importance of a third-party service provider would be assessed based on its services in relation to not only one significant ART/EMT, but in relation to several tokens. The EBA noted that such an approach would not adequately reflect the relevance of an entity for the purpose of Article 119(2)(d), (e), (f) and (h) of MiCA. Also, the approach suggested may not ensure an adequate representation of the relevant competent authorities in colleges.

Together with the draft technical standards, and in accordance with Article 10(1), third subparagraph, of Regulation No (EU) 1093/2010 of the European Parliament and of the Council, 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. This analysis is available on EBA’s website¹. Very briefly, any costs are mainly born by the EBA, as it is the authority charged with the task to establish, manage and chair the supervisory colleges. These costs however are expected to be limited, as the additional clarifications in the delegated regulation aim to facilitate the process of establishing and chairing a college. Competent authorities may bear some indirect costs through their involvement in the establishment and functioning of supervisory colleges. The delegated regulation does not create any additional costs to the stakeholders (issuers, CASPs, trading platforms, PSPs).

The benefits of the delegated regulation relate to the clarity of the definitions and criteria applied to assess which competent authorities should be included in the supervisory colleges and striking a good balance between ensuring an appropriate representation in colleges of relevant competent authorities, and the need to ensure an effective functioning of colleges, taking into account that an excessive number of members of the college could pose practical challenges for its effective functioning.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The final regulatory technical standards (‘RTS’) specify:

- (i) the criteria to be used for determining “the most relevant” custodians of the reserve of assets, trading platforms, payment service providers providing payment services in relation to the significant EMTs and crypto-assets service providers providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2)(d), (e), (f) and (h) of MiCA; and
- (ii) the conditions under which it is considered that ARTs and EMTs are “used at large scale” in a Member State, as referred to in Article 119(2)(l), for the purpose of determining the composition of a supervisory college under MiCA.

¹ <https://www.eba.europa.eu/regulatory-technical-standards-supervisory-colleges-under-micar?version=2023>, pages 18 – 27 of the Final Report on the draft regulatory technical standards.

The regulatory technical standards also specify the general conditions for the functioning of supervisory colleges under MiCA, including aspects related to participation in the college meetings, the voting procedures for the adoption of a non-binding opinion by the college, and aspects related to the exchange of information and the entrustment of tasks among college members.

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 conditions for the establishment and functioning of consultative supervisory colleges

(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) 2019/1937², and in particular Article 119(8), third subparagraph, thereof,

Whereas:

- (1) Under Article 119(1) of Regulation (EU) 2023/1114, the European Banking Authority ('EBA') is to establish, manage and chair a consultative supervisory college ('the college') for each issuer of a significant asset-referenced token or of a significant e-money token, to facilitate the carrying out of supervisory tasks and to allow for the coordination of supervisory activities under that Regulation. Article 119(2) thereof lists the entities that comprise the core membership of the college.
- (2) In order to ensure a consistent and coherent functioning of such colleges across the European Union, the EBA is to determine, under Article 119(8), first subparagraph, of Regulation (EU) 2023/1114, which of the entities referred to in Article 119(2), points (d), (e), (f), (h), of that Regulation are deemed to be the most relevant and, under Article 119(2), point (l), of that Regulation, in which Member States an asset-referenced token or an e-money token is deemed to be used at large scale. For that purpose, EBA should take into account the entities that rank highest based on suitable criteria, the particularities of each case and the balance between the need to ensure an appropriate representation of the relevant competent authorities in the college and the need to ensure the effective functioning of the college.
- (3) EBA should also be able to decide to invite to become a member of the college the competent authorities of only some of the entities deemed as most relevant under Article 119(2), points (d), (e), (f) and (h), of Regulation (EU) 2023/1114, where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college.

² 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>).

- (4) EBA should reassess, at least every 2 years, which authorities qualify to be members of the college under Article 119(2), points (d), (e), (f), (h) and (l), of Regulation (EU) 2023/1114. The frequency of the reassessment should be determined taking into account the need to ensure an appropriate representation of the relevant competent authorities in the college, as these may change over time, notably as a result of market developments affecting the asset-referenced token or e-money token, as well as the need to ensure the college's stability.
- (5) In accordance with Article 119(6) of Regulation (EU) 2023/1114, the establishment and functioning of the college should be based on a written agreement between its members. Taking into account the timeline set out in Article 119(1) of that Regulation for the establishment of the college, it is appropriate to specify in this Regulation the practical arrangements for the conclusion of the written agreement.
- (6) The members of the college should discuss any possible entrustment of tasks among the college members under Article 119(5), point (c), of Regulation (EU) 2023/1114. Where a college is established for a credit institution issuing a significant e-money token, for which the supervisory responsibility under Regulation (EU) 2023/1114 remains with the competent prudential supervision authority and is not transferred to EBA, the latter should be able to entrust its tasks as chair of the college referred to in Article 119(7), points (b) to (e), of Regulation (EU) 2023/1114 to, or share them with, the prudential supervision authority competent to supervise that credit institution. Such entrustment or sharing of tasks might be necessary to ensure a more efficient coordination of the college, since that authority is in a better position to coordinate and communicate with other authorities relevant for the credit institution in question and has a better knowledge of the situation of that credit institution. Nevertheless, EBA should remain in charge of establishing written arrangements and procedures for the functioning of the college, after consulting the other members of the college, as required by Article 119(7), point (a), of Regulation (EU) 2023/1114, to ensure that it retains oversight of the chairing of the college. The written agreement referred to in Article 119(6) of that Regulation should also describe the arrangements on the voluntary entrustment of tasks among its members under Article 119(5), point (c), of that Regulation, where such entrustment takes place.
- (7) The chair of the college should have the possibility to invite other authorities, that are not members of the college, to attend a college meeting, or a particular agenda item. This might include authorities related to the issuer of significant asset-referenced token or a significant e-money token, or to the group it belongs to, on the basis of other sectoral legislation, such as the consolidating supervisor of a credit institution, as defined in Article 4(1), point (41), of Regulation (EU) No 575/2013³, or the lead supervisor of the relevant anti-money laundering and countering the financing of terrorism supervisory college, as the case may be. The chair of the college should decide what information is relevant for those authorities and involve them in the relevant college meeting or activity accordingly.
- (8) The members of the college who are involved in a particular meeting or activity of the college should exchange documents and contributions to working documents with sufficient time in advance to enable all participants in the college meeting to actively

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/575/oj>).

contribute to the discussions. The minimum timeframes for the assessment of the relevant documentation by the members of the college should be specified in the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114, taking into account the complexity of the work and the size of the college, the topic at hand and any relevant timelines set out in that Regulation.

- (9) In order to facilitate the cooperation and information exchange among the members of the college, it is appropriate to further specify the general framework for the exchange of information between the members of the college.
- (10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.
- (11) 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁴,

HAS ADOPTED THIS REGULATION:

Article 1

Determination of the most relevant entities referred to in Article 119(2), points (d), (e), (f) and (h) of Regulation 2023/1114

- 1. For the purpose of determining the most relevant entities referred to in Article 119(2), point (d) of Regulation 2023/1114, EBA shall take into account, in particular, all of the following:
 - (a) where a consultative supervisory college ('college') is established for an issuer of a significant asset-referenced token or for an electronic money institution issuing a significant e-money token, the three crypto-asset service providers, credit institutions or investment firms that held in custody the highest value of the reserve assets referred to in Article 37 of Regulation (EU) 2023/1114 during the reference period, as defined in Article 3 of this Regulation;
 - (b) where a college is established for a credit institution issuing a significant e-money token, the three crypto-asset service providers, credit institutions or investment firms that held in custody the highest percentage of the funds received in exchange of the e-money tokens, during the reference period, as defined in Article 3 of this Regulation.
- 2. For the purpose of determining the most relevant entities referred to in Article 119(2), point (e) of Regulation 2023/1114, EBA shall take into account, in particular, all of the following:
 - (a) the three crypto-asset service providers ensuring the operation of a trading platform for crypto-assets that have executed the highest average number of transactions per day with the significant asset-referenced token or the significant e-money token, during the reference period defined in Article 3 of this Regulation;

⁴ 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>).

- (b) the three crypto-asset service providers ensuring the operation of a trading platform for crypto-assets that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the reference period defined in Article 3 of this Regulation.
- 3. For the purpose of determining the most relevant entities referred to in Article 119(2), point (f) of Regulation 2023/1114, EBA shall take into account, in particular, all of the following:
 - (a) the three payment service providers that have executed the highest average number of payment transactions, as defined in Article 4, point (5) of Directive (EU) 2015/2366, in relation to the significant e-money token per day, during the reference period defined in Article 3 of this Regulation;
 - (b) the three payment service providers that have executed the highest average aggregate value of payment transactions, as defined in Article 4, point (5) of Directive (EU) 2015/2366, in relation to the significant e-money token per day, during the reference period defined in Article 3 of this Regulation.
- 4. For the purpose of determining the most relevant entities referred to in Article 119(2), point (h) of Regulation 2023/1114, EBA shall take into account, in particular, all of the following:
 - (a) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average number of transactions per day with the significant asset-referenced token or the significant e-money token, during the reference period defined in Article 3 of this Regulation;
 - (b) the three crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients that have executed the highest average aggregated value of transactions per day with the significant asset-referenced token or the significant e-money token, during the reference period defined in Article 3 of this Regulation.
- 5. EBA may decide to invite the competent authorities of only some of the entities referred to in paragraphs 1 to 4 to be a member of the college where the EBA is of the view that those entities are the only ones relevant in their category for the work of the college.

Article 2

Conditions under which an asset-referenced token or an e-money token is deemed to be used at large scale as referred to in Article 119(2), point (l) of Regulation 2023/1114

- 1. For the purpose of Article 119(2), point (l) of Regulation 2023/1114, a significant asset-referenced token or a significant e-money token shall be deemed to be used at large scale in a Member State, where:
 - (a) the number of holders of the significant asset-referenced token or of the significant e-money token located in that Member State, on at least one day during the applicable reference period, is of at least 20% of the population of that Member State; or
 - (b) the average number and average aggregate value of transactions per day with the significant asset-referenced token or the significant e-money token during

the reference period defined in Article 3 of this Regulation, where at least one party to the transactions is located in that Member State, is higher than 1 250 000 transactions and 250 000 000 EUR respectively.

2. For the purpose of paragraph 1, point (a), the holder of the significant asset-referenced token or of the significant e-money token means the holder of that token that benefits of a right of redemption under Regulation 2023/1114.
3. For the purpose of paragraph 1, the location of a holder of the significant asset-referenced token or of the significant e-money token, or of a party to a transaction with such tokens, refers to any of the following:
 - (a) for natural persons, their habitual residence;
 - (b) for legal persons, the registered office address.
4. A competent authority requesting to become a member of the college based on point (l) of Article 119(2) of Regulation 2023/1114 shall submit a reasoned request to EBA and provide data showing that the criteria mentioned in paragraph 1 are met.

Article 3

Reference period and transactions

1. The reference period referred to in Articles 1 and 2 shall be the most recent six-month period covered by the reporting obligation referred to in Article 22(1) of Regulation 2023/1114.
2. For the purpose of Article 1(2) and (4), and of Article 2(1), point (b), ‘transaction ’ shall mean any change of the natural or legal person entitled to an asset-referenced token or an e-money token as a result of the transfer of that token from one distributed ledger address or account to another.

Article 4

Reassessment of the college composition

1. EBA shall reassess, at least every 2 years, which competent authorities qualify to be members of the college under Article 119(2), points (d), (e), (f), (h) and (l) of Regulation (EU) 2023/1114.
2. For the purpose of the reassessment referred to in paragraph 1, each competent authority that is a member of the college under Article 119(2), point (l) of Regulation 2023/1114 shall provide EBA, upon request and without undue delay, with the information necessary to assess whether those authorities continue to qualify to be a member of the college based on the criteria specified in Article 2 of this Regulation.

Article 5

Conclusion of the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114

1. EBA shall communicate its proposal on the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114 to the members of the college determined in accordance with Article 119(2) of that Regulation, inviting them to provide their views within 10 calendar days.
2. For the purposes of finalising the written agreement referred to in paragraph 1, EBA shall take into account any views and reservations expressed by the members of the

college. EBA shall provide reasons for not incorporating such views or reservations in the written agreement.

3. Upon finalising the written agreement referred to in paragraph 1, EBA shall communicate the written coordination and cooperation arrangements to the members of the college.

Article 6

Participation in the college

1. Each member of the college shall designate one participant, selected as the most appropriate taking into account the topics discussed and objectives pursued, to attend the meetings or activities of the college and to represent that member of the college in the college meetings. Each member of the college may designate one alternate, with the exception of EBA, which shall designate one representative and may ask additional participants to attend, without voting rights, in college meetings or activities.
2. Where a competent authority has the right to be a member of the college in two or more of the cases referred to in Article 119(2), points (c) to (h), (j), and (l), of Regulation (EU) 2023/1114, or where several authorities from the same third country have the right to be members of the college under Article 119(2), point (m), of that Regulation, those authorities may designate one additional participant to attend, without voting rights, the meetings or activities of the college and may designate one alternate for that participant.
3. Where there are several members of the college per Member State, those college members shall inform the chair of the college which one of them will be the voting member.
4. Based on the agenda, or particular item thereof, topics and objectives of a college meeting or activity, the chair of the college may invite other authorities that are not members of the college to attend that meeting or activity. The chair of the college shall decide what information is relevant for those authorities and involve them in the college meeting or activity accordingly. These authorities shall have no voting rights. The chair of the college shall inform all members of the college accordingly, without undue delay.
5. For the adoption of an opinion of the college or of a recommendation included in an opinion of the college in accordance with Article 120(1) and (2) of Regulation (EU) 2023/1114, a quorum of half of the voting members of the college shall be required. If such quorum is not reached, the chair of the college may convene an extraordinary meeting at which decisions may be taken without quorum.
6. The majority referred to in Article 120(3) of Regulation (EU) 2023/1114 shall consist of a simple majority of the members of the college who have a voting right in a meeting of that college. A simple majority shall also be deemed to have been achieved where more members who have a voting right vote in favour of a proposal than those who vote against it. Abstentions shall not be counted as approvals or as objections, and shall not be considered when calculating the number of votes cast.

Article 7
Establishment and update of a contact list

1. The chair of the college shall maintain a contact list of the members of the college, including full contact details, and communicate it to the members of the college.
2. The members of the college shall provide their contact details to the chair of the college and shall inform the chair of any changes in those details without undue delay.
3. Any updated version of the contact list shall be communicated by the chair of the college to the members of the college without undue delay.

Article 8
Operational aspects of college meetings

1. The chair of the college shall determine the frequency of the college meetings having regard to the tasks of the college as set out in Article 120 of Regulation (EU) 2023/1114, and potential requests by college members.
2. The chair of the college shall convene at least one meeting of the college per year. The chair of the college shall decide if a meeting is convened in physical or in virtual format, based on the objectives the chair of the college sets for that meeting.
3. The members of the college may request the chair of the college to hold a meeting of the college. The chair of the college shall provide reasons for any rejection of such request.
4. The chair of the college shall send the proposed agenda of the college meeting to all the members of the college, and shall invite them to propose any additional agenda items. The chair of the college shall take into account any proposals on agenda items made by the members and shall explain, if requested, the reason for not incorporating them.
5. The members of the college who are involved in a particular meeting or activity of the college shall exchange documents and contributions to working documents with sufficient time in advance to enable all participants in that meeting or activity to actively contribute to the discussions in question.

Article 9
Exchange of information between college members

1. Each member of a college shall provide, upon request and without undue delay, to EBA and, where applicable, to the competent authority entrusted with the tasks referred to in Article 119(7), points (b) to (e), of Regulation 2023/1114 in accordance with Article 10 of this Regulation, any information necessary in order to facilitate the exercise of the EBA's supervisory powers under Article 117 of Regulation 2023/1114 and exchange information when required by that Regulation.
2. EBA and, where applicable, the competent authority entrusted with the tasks referred to in Article 119(7), points (b) to (e), of Regulation 2023/1114 in accordance with Article 10 of this Regulation shall receive all information exchanges between the members of the college.
3. EBA and, where applicable, the competent authority entrusted with the tasks referred to in Article 119(7), points (b) to (e), of Regulation 2023/1114 in accordance with

Article 10 of this Regulation may decide to share the information referred to in paragraphs 1 and 2 with other members of the college where it deems that information to be relevant for those members.

4. Where an issuer offers more than one significant asset-referenced token or significant e-money token, EBA may decide to organise several colleges, one for each significant asset-referenced token or significant e-money token, or group of significant asset-referenced tokens or significant e-money tokens.
5. Where several colleges are organised pursuant to paragraph 4, the chair of each college shall keep all the members of its college fully informed, in a timely manner, on the actions taken or the measures carried out in the other colleges that deal with other significant asset-referenced tokens or significant e-money tokens of the same issuer.
6. The members of the college shall agree on the means for the exchange of information among them and shall specify such means in the written agreement referred to in Article 119(6) of Regulation (EU) 2023/1114.
7. The transmission of confidential information between the members of the college shall be done by secure channels of communication.

Article 10

Entrustment of tasks among the college members

1. The members of the college shall exchange views on a possible voluntary entrustment of tasks among them under Article 119(5), point (c), of Regulation (EU) 2023/1114.
2. The entrustment of the tasks referred to in paragraph 1 may also include all or some of the tasks mentioned in Article 119(7), points (b) to (e), of Regulation (EU) 2023/1114.
3. The agreement referred to in Article 119(6) of Regulation (EU) 2023/1114 shall specify a description of the arrangements on entrustment of tasks referred to in paragraph 1, where relevant.

Article 11

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