



2024/1507

30.5.2024

COMMISSION DELEGATED REGULATION (EU) 2024/1507

of 22 February 2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the criteria and factors to be taken into account by the European Securities Markets Authority, the European Banking Authority and competent authorities in relation to their intervention powers

(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 ⁽¹⁾, and in particular Article 103(8), Article 104(8) and Article 105(7) thereof,

Whereas:

- (1) A list of criteria and factors to be taken into account by competent authorities, ESMA and the EBA in determining when there is a significant investor concern or threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union or of at least one Member State should be established to ensure a consistent approach while permitting appropriate action to be taken where unforeseen adverse events or developments occur. The competent authorities, ESMA and the EBA should identify the criteria and factors that are relevant for a specific case, and then perform an assessment of those criteria and factors determined to be most relevant to that case. That should not prevent the competent authorities, ESMA and the EBA from using a temporary intervention power where only one of the factors or criteria leads to such a concern or threat.
- (2) The provisions in this Regulation are closely linked, since they deal with the product intervention powers vested in the competent authorities, ESMA and the EBA. To ensure coherence between those provisions that should enter into force at the same time, and in order to facilitate a comprehensive view of the criteria for stakeholders and, in particular, for ESMA, the EBA and competent authorities exercising the intervention powers, it is necessary to include these provisions in a single Delegated Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Criteria and factors for the purposes of ESMA temporary intervention powers

ESMA shall take into account the following factors and criteria for the purpose of determining whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union:

- (a) the degree of complexity of the crypto-asset other than an asset-referenced token or e-money token or the type of activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens in relation to the type of client, as assessed in accordance with point (c), involved in the activity or practice, or to whom the crypto-asset other than an asset-referenced token or e-money token is marketed or sold, taking into account, in particular, the following:

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

- (i) the degree of transparency of costs and charges associated with the crypto-asset other than an asset-referenced token or e-money token, the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens and, in particular, the lack of transparency resulting from multiple layers of costs and charges;
 - (ii) the nature and scale of any risks;
 - (iii) whether the crypto-asset other than an asset-referenced token or e-money token or service is bundled with other products or services;
 - (iv) the complexity of any terms and conditions;
- (b) the size of potential detrimental effects, considering the following:
- (i) the number of clients, token holders or market participants involved;
 - (ii) the relative share of the product in investors' portfolios;
 - (iii) the probability, scale and nature of any detriment, including the amount of loss potentially suffered;
 - (iv) the anticipated duration of the detrimental consequences;
 - (v) the volume of the issuance;
 - (vi) the number of intermediaries involved;
 - (vii) the growth of the market or sales;
 - (viii) the average amount invested by each client in the crypto-asset other than an asset-referenced token or e-money token;
- (c) the type of clients involved in an activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens or to whom a crypto-asset other than an asset-referenced token or e-money token is marketed or sold, considering the following:
- (i) whether the client is a retail holder or a qualified investor;
 - (ii) clients' skills and abilities, including the level of education, experience with similar crypto-assets other than asset-referenced tokens or e-money tokens or selling practices;
 - (iii) clients' economic situation, including their income and wealth;
 - (iv) clients' core financial objectives, including pension saving and home ownership financing;
- (d) the degree of transparency of the crypto-asset other than an asset-referenced token or e-money token or the type of activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens, considering the following:
- (i) any hidden costs and charges;
 - (ii) the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the product or service;
 - (iii) the nature of risks and transparency of risks;
 - (iv) the use of product names or terminology or other information by implying a greater level of security or return than those which are actually possible or likely, or which imply product features that do not exist;
 - (v) the use of unfair, unclear or misleading information in communications;
- (e) the particular features or components of the crypto-asset other than an asset-referenced token or e-money token or the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens;
- (f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the crypto-asset other than an asset-referenced token or e-money token or the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens, taking into account, in particular, the following:
- (i) the structuring costs of such crypto-assets other than asset-referenced tokens or e-money tokens, activity or practice and other costs;
 - (ii) the disparity in relation to the issuer's risk retained by the issuer; or
 - (iii) the risk/return profile or risk/benefit profile;

- (g) the ease and cost with which investors are able to sell the relevant crypto-asset other than an asset-referenced token or e-money token or switch to another crypto-asset or product, taking into account, in particular, the following:
 - (i) the bid or ask spread;
 - (ii) the frequency of trading availability;
 - (iii) the issuance size and size of the secondary market;
 - (iv) the presence or absence of liquidity providers or secondary market makers;
 - (v) the features of the trading system;
 - (vi) any other barriers to exit;
- (h) the pricing and associated costs of the crypto-asset other than an asset-referenced token or e-money token or the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens, taking into account, in particular, either of the following:
 - (i) the use of hidden or secondary charges;
 - (ii) charges that do not reflect the level of service provided;
- (i) the selling practices associated with the crypto-asset other than an asset-referenced token or e-money token, taking into account, in particular, the following:
 - (i) the communication and distribution channels used;
 - (ii) the information, marketing or other promotional material associated with the investment;
 - (iii) the assumed investment purposes;
 - (iv) whether the decision to buy is secondary or tertiary following an earlier purchase;
- (j) the financial and business situation of the issuer or of a service provider of a crypto-asset other than an asset-referenced token or e-money token, taking into account, in particular, either of the following:
 - (i) the financial situation of the issuer or of the provider of services related to a crypto-asset other than an asset-referenced token or e-money token;
 - (ii) the transparency of business situation of the issuer or of the provider of services related to a crypto-asset other than an asset-referenced token or e-money token;
- (k) whether there is insufficient or unreliable information about a crypto-asset other than an asset-referenced token or e-money token, provided either by the issuer or the offeror or service provider, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the crypto-asset other than an asset-referenced token or e-money token;
- (l) whether the crypto-asset other than an asset-referenced token or e-money token or the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;
- (m) whether the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens would significantly compromise the integrity of the price formation process in the market concerned, such that the price or value of the crypto-asset other than an asset-referenced token or e-money token in question is no longer determined according to legitimate market forces of supply and demand, or such that market participants are no longer able to rely on the prices formed in that market or in the volumes of trading as a basis for their investment decisions;
- (n) whether the characteristics of a crypto-asset other than an asset-referenced token or e-money token make it particularly susceptible to being used for the purposes of financial crime and, in particular whether those characteristics could potentially encourage the use of the crypto-asset other than an asset-referenced token or e-money token for the following:
 - (i) any fraud or dishonesty;
 - (ii) misconduct in, or misuse of information in relation to a financial market;
 - (iii) handling the proceeds of crime;

- (iv) the financing of terrorism; or
- (v) facilitating money laundering;
- (o) whether the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens poses a particularly high risk to the resilience or smooth operation of markets and their infrastructure;
- (p) whether the crypto-asset other than an asset-referenced token or e-money token or the activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Union;
- (q) the relevance of the distribution of the crypto-asset other than an asset-referenced token or e-money token as a funding source for the issuer;
- (r) whether a crypto-asset other than an asset-referenced token or e-money token or an activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens poses risks to the market or its underlying infrastructure, including DLT networks used for their issuance, storage and transfer;
- (s) whether a crypto-asset other than an asset-referenced token or e-money token or an activity or practice related to crypto-assets other than asset-referenced tokens or e-money tokens could threaten investors' confidence in the financial system.

Article 2

Criteria and factors for the purposes of the EBA temporary intervention powers

The EBA shall take into account the following factors and criteria to determine whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union:

- (a) the degree of complexity of the asset-referenced token or e-money token or the type of activity or practice related to asset-referenced tokens or e-money tokens in relation to the type of clients, as assessed in accordance with point (c), involved in the activity, or practice, taking into account, in particular, the following:
 - (i) the degree of transparency of costs and charges associated with the asset-referenced token or e-money token, the activity or practice related to asset-referenced tokens or e-money tokens and, in particular, the lack of transparency resulting from multiple layers of costs and charges;
 - (ii) the nature and scale of any risks;
 - (iii) the size and the composition of the reserve of assets referred to in Article 36 of Regulation (EU) 2023/1114;
 - (iv) whether the asset-referenced token or e-money token or service is bundled with other products or linked to different services;
 - (v) the complexity of any terms and conditions;
- (b) the size of potential detrimental effects, considering, in particular, the following:
 - (i) the reference value of the asset-referenced token or e-money token;
 - (ii) the number of clients, token holders or market participants involved;
 - (iii) the relative share of the asset-referenced token or e-money token in investors' portfolios;
 - (iv) the probability, scale and nature of any detriment, including the amount of loss potentially suffered;
 - (v) the anticipated duration of the detrimental consequences;
 - (vi) the volume of the issuance;
 - (vii) the number of intermediaries involved;
 - (viii) the growth of the market or sales;
 - (ix) the average amount invested by each client in the asset-referenced token or e-money token;

- (c) the type of clients involved in an activity or practice related to asset-referenced tokens or e-money tokens or to whom an asset-referenced token or e-money token is marketed or sold, taking into account, in particular, the following:
 - (i) whether the client is a retail holder or a qualified investor;
 - (ii) clients' skills and abilities, including the level of education, experience with similar products or selling practices;
 - (iii) clients' economic situation, including their income and wealth;
 - (iv) clients' core financial objectives, including pension saving and home ownership financing;
- (d) the degree of transparency of the asset-referenced token or e-money token or the type of activity or practice related to asset-referenced tokens or e-money tokens, taking into account, in particular, the following:
 - (i) any hidden costs and charges;
 - (ii) the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the product or service;
 - (iii) the nature of risks and transparency of risks;
 - (iv) the use of product names or terminology or other information that is misleading by implying a greater level of security or return than those which are actually possible or likely, or which imply product features that do not exist;
 - (v) the use of unfair, unclear or misleading information in communications;
- (e) the particular features or components of the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens;
- (f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens, taking into account, in particular, the following:
 - (i) the structuring costs of such asset-referenced tokens, e-money tokens, activity or practice and other costs;
 - (ii) the disparity in relation to the issuer's risk retained by the issuer;
 - (iii) the risk/return profile or risk/benefit profile;
- (g) the costs and ease with which investors are able to sell the relevant asset-referenced token or e-money token or switch to another asset-referenced token or e-money token, taking into account, in particular, the following:
 - (i) the degree of liquidity in the market for the asset-referenced token or e-money token;
 - (ii) the frequency of trading availability;
 - (iii) the issuance size and size of the secondary market;
 - (iv) the presence or absence of liquidity providers or secondary market makers;
 - (v) the features of the trading system;
 - (vi) any other barriers to exit;
- (h) the pricing and associated costs of the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens, taking into account, in particular, either of the following:
 - (i) the use of hidden or secondary charges;
 - (ii) charges that do not reflect the level of service provided;
- (i) the selling practices associated with the asset-referenced token or e-money token, taking into account, in particular, the following:
 - (i) the communication and distribution channels used;
 - (ii) the information, marketing or other promotional material associated with the investment;
 - (iii) the assumed investment purposes;
 - (iv) whether the decision to buy is a secondary or tertiary following an earlier purchase;

- (j) the financial and business situation of the issuer or of the provider of services of an asset-referenced token or e-money token, taking into account, in particular, either of the following:
 - (i) the financial situation of the issuer or of the provider of services related to the asset-referenced token or e-money token;
 - (ii) the transparency of the business situation of the issuer or of the provider of services related to the asset-referenced token or e-money token;
- (k) whether there is insufficient or unreliable information about an asset-referenced token or e-money token, provided either by the issuer or the offeror or service provider, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the asset-referenced token or e-money token;
- (l) whether the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;
- (m) whether the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens would leave the Union economy vulnerable to risks;
- (n) whether the characteristics of an asset-referenced token or e-money token make it particularly susceptible to being used for the purposes of financial crime and, in particular whether those characteristics could potentially encourage the use of asset-referenced tokens or e-money tokens for the following:
 - (i) any fraud or dishonesty;
 - (ii) misconduct in, or misuse of information, in relation to a financial market;
 - (iii) handling the proceeds of crime;
 - (iv) the financing of terrorism;
 - (v) facilitating money laundering;
- (o) whether the activity or practice related to asset-referenced tokens or e-money tokens poses a particularly high risk to the resilience or smooth operation of markets, the payment system and their infrastructures;
- (p) whether the asset-referenced token or e-money token or the activity or practice related to asset-referenced tokens or e-money tokens poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Union;
- (q) the relevance of the distribution of the asset-referenced token or e-money token as a funding source for the issuer;
- (r) whether an asset-referenced token or e-money token or an activity or practice related to asset-referenced tokens or e-money tokens poses risks to the market or payment systems infrastructure;
- (s) whether an asset-referenced token or an activity or practice related to asset-referenced tokens or e-money tokens could threaten investors' confidence in the financial system.

Article 3

Criteria and factors for the purpose of intervention by competent authorities

Competent authorities shall take into account the following factors and criteria to determine whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system within at least one Member State:

- (a) the degree of complexity of the crypto-asset or the type of activity or practice related to crypto-assets in relation to the type of clients, as assessed in accordance with point (c), involved in the activity or practice, or to whom the crypto-asset is marketed or sold, taking into account, in particular, the following:
 - (i) the degree of transparency of costs and charges associated with the crypto-asset, the activity or practice related to crypto-assets, and, in particular, the lack of transparency resulting from multiple layers of costs and charges;
 - (ii) the nature and scale of any risks;

- (iii) the size and robustness of the reserve of assets as further specified by the regulatory technical standards issued pursuant to Article 36(4) of Regulation (EU) 2023/1114;
 - (iv) whether the crypto-asset or service is bundled with other products or services;
 - (v) the complexity of any terms and conditions;
- (b) the size of potential detrimental consequences, considering in particular, the following:
- (i) the notional value of the crypto-asset;
 - (ii) the number of clients, token holders or market participants involved;
 - (iii) the relative share of the product in investors' portfolios;
 - (iv) the probability, scale and nature of any detriment, including the amount of loss potentially suffered;
 - (v) the anticipated duration of the detrimental consequences;
 - (vi) the volume of the issuance;
 - (vii) the number of intermediaries involved;
 - (viii) the growth of the market or sales;
 - (ix) the average amount invested by each client in the crypto-asset;
- (c) the type of clients involved in an activity or practice related to crypto-assets or to whom a crypto-asset is marketed or sold, taking into account, in particular, the following:
- (i) whether the client is a retail holder or a qualified investor;
 - (ii) clients' skills and abilities, including the level of education, experience with similar crypto-assets or selling practices;
 - (iii) clients' economic situation, including their income and wealth;
 - (iv) clients' core financial objectives, including pension saving and home ownership financing;
- (d) the degree of transparency of the crypto-asset or the type of activity or practice related to crypto-assets, taking into account, in particular, the following:
- (i) any hidden costs and charges;
 - (ii) the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the product or service;
 - (iii) the nature of risks and transparency of risks;
 - (iv) the use of product names or terminology or other information that is misleading by implying a greater level of security or return than those which are actually possible or likely, or which imply product features that do not exist;
 - (v) the use of unfair, unclear or misleading information in communications;
- (e) the particular features or components of the crypto-asset or the activity or practice related to crypto-assets;
- (f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the crypto-asset or the activity or practice related to crypto-assets, taking into account, in particular, the following:
- (i) the structuring costs of such crypto-assets, activity or practice and other costs;
 - (ii) the disparity in relation to the issuer's risk retained by the issuer;
 - (iii) the risk/return profile or risk or benefit profile;
- (g) the costs and ease with which investors are able to sell the relevant crypto-asset or switch to another crypto-asset, taking into account, in particular, the following:
- (i) the bid or ask spread;
 - (ii) the degree of liquidity in the market for crypto-assets;
 - (iii) the frequency of trading availability;
 - (iv) the issuance size and size of the secondary market;
 - (v) the presence or absence of liquidity providers or secondary market makers;

- (vi) the features of the trading system;
- (vii) any other barriers to exit;
- (h) the pricing and associated costs of the crypto-asset or the activity or practice related to crypto-assets, taking into account, in particular, either of the following:
 - (i) the use of hidden or secondary charges;
 - (ii) charges that do not reflect the level of service provided;
- (i) the selling practices associated with the crypto-asset, taking into account, in particular, the following:
 - (i) the communication and distribution channels used;
 - (ii) the information, marketing or other promotional material associated with the investment;
 - (iii) the assumed investment purposes;
 - (iv) whether the decision to buy is secondary or tertiary following an earlier purchase;
- (j) the financial and business situation of the issuer or the service provider of a crypto-asset, taking into account, in particular, either of the following:
 - (i) the financial situation of the issuer or the service provider of a crypto-asset;
 - (ii) the transparency of the business situation of the issuer or the service provider of a crypto-asset;
- (k) whether there is insufficient or unreliable information about a crypto-asset, provided either by the issuer or the offeror or service provider, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the crypto-asset;
- (l) whether the crypto-asset or the activity or practice related to crypto-assets poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;
- (m) whether the activity or practice related to crypto-assets would significantly compromise the integrity of the price formation process in the market concerned such that the price or value of the crypto-asset in question is no longer determined according to legitimate market forces of supply and demand, or such that market participants are no longer able to rely on the prices formed in that market or in the volumes of trading as a basis for their investment decisions;
- (n) whether the crypto-asset or the activity or practice related to crypto-assets would leave the national economy vulnerable to risks;
- (o) whether the characteristics of a crypto-asset make it particularly susceptible to being used for the purposes of financial crime and, in particular whether the characteristics could potentially encourage the use of the crypto-asset for the following:
 - (i) any fraud or dishonesty;
 - (ii) misconduct in, or misuse of information, in relation to a financial market;
 - (iii) handling the proceeds of crime;
 - (iv) the financing of terrorism;
 - (v) facilitating money laundering;
- (p) whether a crypto-asset or the activity or practice related to crypto-assets poses a particularly high risk to the resilience or smooth operation of markets and their infrastructure;
- (q) whether the crypto-asset or the activity or practice related to crypto-assets poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Member State of the relevant competent authority;
- (r) the relevance of the distribution of the crypto-asset as a funding source for the issuer;
- (s) whether a crypto-asset or an activity or practice related to crypto-assets poses risks to the market or payment systems infrastructure, including trading, clearing and settlement systems;
- (t) whether a crypto-asset or an activity or practice related to crypto-assets could threaten investors' confidence in the financial system.

*Article 4***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, 22 February 2024.

For the Commission
The President
Ursula VON DER LEYEN