



2024/1503

30.5.2024

COMMISSION DELEGATED REGULATION (EU) 2024/1503

of 22 February 2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the fees charged by the European Banking Authority to issuers of significant asset-referenced tokens and issuers of significant e-money tokens

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937⁽¹⁾, and in particular Article 137(3) thereof,

Whereas:

- (1) An annual supervisory fee should be established to cover the actual and estimated costs to be incurred by the European Banking Authority (EBA) when performing supervisory tasks in the context of Regulation (EU) 2023/1114, including its overheads. The annual supervisory fee should also cover the costs incurred by competent authorities to whom tasks are delegated by the EBA.
- (2) The crypto-asset market is dynamic and often fast-evolving, therefore the estimate as to the number of issuers likely to fall within the scope of the EBA's supervisory tasks is inherently uncertain. Additionally, the supervisory priorities may change from time to time in light of events. Against this backdrop, it is of the highest importance for the EBA, and the competent authorities to whom tasks may be delegated by the EBA, to have the necessary flexibility to estimate their likely expenditure from year-to-year, including the possibility to reassess the fees to be levied in relation to the EBA's supervisory tasks from one year to another.
- (3) Fees charged for the EBA's activities related to issuers of significant asset referenced tokens (ARTs) and issuers of significant e-money tokens (EMTs) should be set at a level such as to avoid a deficit or a significant accumulation of surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.
- (4) The number of significant ARTs and significant EMTs under the supervision of the EBA will be identified only after the application of Titles III and IV of Regulation (EU) 2023/1114. It is therefore not possible to already determine fixed annual supervisory fees since neither the exact amount of supervision task expenditure nor the exact number of significant ARTs or significant EMTs will be known before the framework is fully established. Moreover, the number of issuers of significant tokens may change from time to time, and thus it is not possible to pre-determine the exact amount of fees in the delegated act.
- (5) In line with the principle of annuality and the principle of full cost recovery, the annual supervisory fees should be calculated on the basis of the estimated direct and indirect costs to be incurred by the EBA to perform its supervisory tasks. The annual supervisory fees should be adjusted every year to match the estimated costs. At entity level, the annual supervisory fee should be calculated based on a fully proportionate approach.

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

- (6) As the costs of the supervision tasks depend on the intensity of the supervision, the fees between issuers of significant ARTs and issuers of significant EMTs are not expected to be fully linear. Therefore, in accordance with the principle of proportionality, an activities-based estimates and monitoring system should be established that allows for the estimated costs to be attributed, respectively, to issuers of significant ARTs and issuers of significant EMTs,

HAS ADOPTED THIS REGULATION:

Article 1

Estimation of the expenditures of the EBA when performing its supervisory duties

1. In each year, the EBA shall estimate the overall annual costs that are expected to be incurred for the performance of its supervisory duties. The amount of the annual overall costs estimated shall be the basis for determining the overall amount of supervisory fees charged.
2. The fees charged to issuers of significant asset referenced tokens (ARTs) and to issuers of significant e-money tokens (EMTs) shall be established in accordance with the principle of full-cost recovery and following an activity-based management model elaborated by the European Banking Authority (EBA).
3. When estimating the annual overall costs, the EBA shall take into account the following direct and indirect costs:
 - (a) the annual estimate of all direct and indirect expenditure necessary for the supervisory tasks performed by the EBA relating to issuers of significant ARTs and issuers of significant EMTs, including staff resources directly involved in the defined tasks and the costs of the horizontal services like operational and administrative support provided to the staff directly involved;
 - (b) the annual estimate of expenditure necessary for the reimbursement of direct and indirect costs incurred by competent authorities to whom the EBA has delegated supervisory tasks in accordance with Article 138(1) of Regulation (EU) 2023/1114 relating to issuers of significant ARTs and issuers of significant EMTs, including staff resources of the competent authorities directly involved in the delegated supervisory tasks and the costs of the horizontal services like operational and administrative support provided to the directly involved staff.
4. The fees charged to issuers of significant ARTs and issuers of significant EMTs shall cover the staff expenditure, infrastructure and operating expenditure as follows:
 - (a) the EBA's expenditure for the execution of its supervisory tasks relating to issuers of significant ARTs and issuers of significant EMTs in accordance with Regulation (EU) 2023/1114 such as:
 - the determination of ARTs and EMTs as significant as referred to in Articles 43 and 56 of Regulation (EU) 2023/1114, including costs incurred in relation to data gathering and analysis, and engagement with the issuer, competent authorities, central banks and other relevant authorities,
 - the classification of ARTs and EMTs as significant based on voluntary basis as referred to in Articles 44 and 57 of Regulation (EU) 2023/1114, including all costs of a kind referred to in the classification process,
 - the supervision referred to in Article 117 of Regulation (EU) 2023/1114, including the establishment and functioning of the EBA crypto-asset committee referred to in Article 118 of Regulation (EU) 2023/1114, and the exercise of any powers and competences referred to in Title VII, Chapter 5 of Regulation (EU) 2023/1114,
 - the establishment and functioning of supervisory colleges as referred to in Article 119 of Regulation (EU) 2023/1114, including for significant EMTs issued by credit institutions;
 - (b) the reimbursement of competent authorities that have carried out work pursuant to Regulation (EU) 2023/1114 as a result of any delegation of tasks in accordance with Article 138 of Regulation (EU) 2023/1114.

Article 2

Method of calculation of the annual supervisory fee

1. The annual supervisory fee for a given issuer of significant ARTs shall be calculated as follows:
 - (a) expenditure relating to the supervision of issuers of significant ARTs and EMTs under Regulation (EU) 2023/1114 as included in the EBA's budget for that year;
 - (b) the costs referred to in point (a) assigned to issuers of significant ARTs shall be divided amongst all issuers of significant ARTs as follows:

$$\% \text{ of costs related to significant ART supervision paid by issuer} = \frac{\text{Reserve of significant ART}}{\text{Reserves of all significant ARTs}}$$

- (c) if applicable, expenditure that is directly assigned to individual issuers of significant ARTs will be added to the annual supervisory fee of those issuers of significant ARTs.
2. The annual supervisory fee for a given issuer of significant EMTs shall be calculated as follows:
 - (a) staff related and administrative expenditures, costs related to supervisory tasks carried out by competent authorities pursuant to Article 138 of Regulation (EU) 2023/1114, as well as costs related to IT development and maintenance for the EBA supervision assigned, respectively, to issuers of significant ARTs and issuers of significant EMTs;
 - (b) the costs referred to in point (a) assigned to issuers of significant EMTs shall then be divided amongst all issuers of significant EMTs as follows:

$$\% \text{ of costs related to significant EMT supervision paid by issuer} = \frac{\text{Size of issuance of significant EMT}}{\text{Size of issuance of all significant EMTs}}$$

- (c) if applicable, expenditure that is directly assigned to individual issuers of significant EMTs will be added to the annual supervisory fee of those issuers of significant EMTs.
3. For the calculation of the size of the reserve of assets of issuers of significant ARTs, the EBA shall use data from the latest available independent audit of the reserve of assets as referred to in Article 36(9) of Regulation (EU) 2023/1114.
 4. For the calculation of the size of the issuance of issuers of significant EMTs, the EBA shall use data from the latest available independent audit as referred to in Article 58 of Regulation (EU) 2023/1114.
 5. If the reported reserve of assets for significant ARTs or the size of the issuance of significant EMTs are expressed in a currency other than the euro, the EBA shall convert them into an amount in euro using the average euro foreign exchange reference rate applicable to the period during which the values were recorded. For that purpose, the euro foreign exchange reference rate published by the European Central Bank shall be used.
 6. By way of derogation from paragraphs 1, 2 and 3, the first-year fee shall be calculated with the following formula by lessening the supervisory fee referred to in paragraphs 1 and 2 with a factor that is equal to the days between the date of transfer of supervision takes effect and the end of the year divided by the total number of days in that year:

$$\text{Coefficient} = \frac{\text{Number of calendar days from the date of transfer of supervision until 31 December}}{\text{Number of calendar days in year (n)}}$$

The supervisory fee of the first year shall be paid after an issuer of significant ARTs or an issuer of significant EMTs has been classified by the EBA as significant, as referred to in Articles 43, 44, 56 or 57 of Regulation (EU) 2023/1114 and within 30 days from the date of issuance of the EBA's relevant invoice.

By way of derogation from the first sub-paragraph, where an issuer of significant ARTs or an issuer of significant EMTs is classified as significant, as referred to in Articles 43, 44, 56 or 57 of Regulation (EU) 2023/1114 during the month of December, it shall not pay a supervisory fee for that calendar year.

*Article 3***Adjustment of fees**

Annual supervisory fees charged to issuers of significant ARTs and issuers of significant EMTs shall be set at a level such as to cover the full cost of providing the services and to avoid a deficit or a significant accumulation of surplus.

*Article 4***Payment of annual supervisory fees**

1. The annual supervisory fee shall be paid in full to the EBA not later than 31 March of the calendar year for which it is due.
2. The EBA shall send the invoices to issuers of significant ARTs and issuers of significant EMTs at least 30 days before the payment is due. The annual supervisory fees shall be payable in euro.
3. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁾.
4. Communications between the EBA and issuers of significant ARTs or issuers of significant EMTs shall take place by electronic means.

*Article 5***Reimbursement to competent authorities**

1. In case of a delegation of tasks by the EBA to competent authorities in accordance with Article 138 of Regulation (EU) 2023/1114, only the EBA shall charge fees to issuers of significant ARTs and issuers of significant EMTs in respect of the costs incurred in relation to the performance of those tasks.
2. The EBA shall reimburse a competent authority for the estimated costs incurred as a result of carrying out tasks pursuant to Regulation (EU) 2023/1114 with an amount which fulfils the following conditions:
 - (a) the amount is agreed by the EBA and the competent authority before the delegation of tasks takes place;
 - (b) the amount is lower than or equal to the total amount of annual supervisory fee paid to the EBA by the relevant issuers of significant ARTs or issuers of significant EMTs.

*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*.

⁽²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1046/2022-12-14>).

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