



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

The Director-General

Brussels,
FISMA/IK/es/fisma.b.4(2025)8191297

Mr José Manuel Campa
Chair European Banking Authority
20 avenue André Prothin
92927 Paris
France

Dear Mr Campa,

On 13 June 2024, the European Banking Authority (EBA) sent to the Commission the draft Regulatory Technical Standards (draft RTS) regarding Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulation (EU) 1093/2010 and (EU) 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 ⁽¹⁾ (MiCA). The draft RTS specify the financial instruments that can be considered highly liquid and bearing minimal market risk, credit risk and concentration risk, in which a part of the reserve of assets can be invested, and to devise suitable limits to determine concentration requirements of those highly liquid financial instruments.

Based on the Commission's technical assessment of the draft RTS and the unintended consequences of some of the requirements laid down within, and considering the common understanding of the co-legislators' for the empowerment of the RTS, the Commission considered it necessary to re-examine some of the provisions in the draft RTS and propose substantive changes. This re-examination is put forward after interactions with your services and the reasons for these changes are summarised below:

Scope of the RTS

In accordance with Article 38(1) and (5) of MiCA, the RTS should only specify highly liquid financial instruments with minimal market risk, credit risk and concentration risk (HLFI) in which a part of the reserve of assets can be invested. Financial instruments that do not represent the investment of the reserve of assets and other reserve assets are outside the scope of these draft RTS.

The EBA draft RTS are premised on the interpretation that the reserve assets are composed either from the assets that the issuer receives and keeps as part of the reserve of assets when issuing the tokens (e.g. deposits with credit institutions, commodities, financial instruments) or by highly liquid financial instruments the issuer may invest in, which are specified by the draft RTS ⁽²⁾.

However, in the light of the objective for the management and composition of the reserve of assets set out in Article 36(1), point (a), of MiCA to cover the "risks associated to the

⁽¹⁾ OJ L 150, 9.6.2023, p. 40.

⁽²⁾ Paragraph 2 of the EBA Draft Final Report on Draft RTS to Specify the Highly Liquid Financial Instruments.

assets referenced by the asset-referenced tokens”, the Commission is of the view that reserve assets that reflect the referenced assets should not be considered as an “investment”. The optimal correlation between the reserve assets and referenced assets can be achieved by including the referenced assets in the reserve of assets, derivative instruments relating to the referenced assets are only the second best option.

As a result, the part of the reserve assets that is not invested and therefore outside the scope of the draft RTS can be composed of the assets that are referenced by the token, regardless of the manner of their obtention. Such referenced assets can be received and kept when issuing the token, purchased by the issuer, including from the proceeds of the sale of the token, or obtained in the context of tokenisation of existing assets.

Accordingly, Article 1(1), point (c)(iii), of the draft RTS has been amended to delete the classification of financial instruments that are referenced by the token as HLFIs, as such financial instruments do not represent investment of a reserve of assets and are thus outside the scope of the RTS.

Recital 3 of the draft RTS (recital 4 in the amended draft RTS), which justifies the inclusion of financial instruments tracking the referenced assets and derivatives relating to the referenced assets in the reserve assets as HLFIs, has been amended to reflect that inclusion of such financial instruments as HLFIs is an additional measure available to issuers to ensure the correlation between the reserve assets and referenced assets to comply with the issuers’ obligation to compose and manage the reserve of assets in a way to pursue the objective set out in Article 36(1), point (a), of MiCA.

Inclusion of money market funds as HLFIs

The Commission considers that money market funds (MMFs) authorised under Regulation (EU) 2017/1131 (MMFR) should be included as HLFIs, since that Regulation ensures that MMFs provide a “high degree of liquidity, diversification and stability of value” (recital 2 MMFR). As such, they should fall under “highly liquid financial instruments with minimal market risk, credit risk and concentration risk” referred to in Article 38(1) of MiCA. MMFR imposes strict rules to ensure that MMFs remain highly liquid investment vehicles. These include maintaining liquidity buffers and investing in high-quality, short-duration assets, with excellent credit quality as well as other constraints that ensure an effective management of the liquidity risks.

Therefore, the draft RTS has been amended to include MMFs authorised in accordance with Regulation (EU) 2017/1131 in Article 1 of the draft RTS (Article 2 in the amended draft RTS) as HLFIs, and consequently to exclude those MMFs from the look through approach in Article 3(3) of the draft RTS (Article 5(3) in the amended draft RTS). The amendment to Article 3(1) of the draft RTS (Article 5(1) in the amended draft RTS) subjects MMFs to the 10% concentration limit by the issuer taking into account the relevant thresholds laid down in Directive 2009/65/EC.

Deletion of the concentration limit by a single management company or with management companies with close links

Article 38(5), point (d)(i), of MiCA refers to concentration limits per issuer of HLFIs. The draft RTS, however, provides also for the concentration limit for units in undertakings for collective investment in transferable securities (UCITS) of 5% by a single management company or with management companies with close links, which is in the Commission’s view not based on the empowerment of Article 38(5) of MiCA. We also believe that such limit would be disproportionate, as it addresses no clear purpose or risk, and could

unnecessarily increase an operational burden of issuers. Notably, an asset manager does not have direct access to the assets of the funds, because these are held in custody by the depositary, and if the asset manager defaults, the assets remain safeguarded by the depositary on behalf of investors. Therefore, the provision on such concentration limits in Article 3(1), point (c), of the draft RTS has been deleted in the amended draft RTS.

These amendments aim to ensure that, in accordance with the second subparagraph of Article 10(1) of Regulation (EU) 1093/2010, the content of the RTS is delimited by the legislative act on which it is based.

In this context, it is essential to underline that the RTS must be in conformity with the legal mandate set out in the MiCA and must not go over the said mandate by imposing additional obligations.

In light of the above, I would like to inform you that the Commission, acting in accordance with the procedure set out in the sixth and seventh subparagraphs of Article 10(1) of Regulation (EU) 1093/2010, as amended, intends to adopt the RTS submitted by the EBA once the above-mentioned concerns are taken into account and the necessary modifications are made by the EBA.

As per the sixth subparagraph of Article 10(1) of Regulation (EU) 1093/2010, where the Commission intends to adopt draft RTS in part or with amendments, it must send the draft RTS back to the Authority, explaining the reasons for their amendments, and within a period of 6 weeks, the Authority can amend the draft RTS on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission.

It should be recalled that the procedure laid down in the sixth subparagraph of Article 10(1) of Regulation (EU) No 1093/2010 sets out that if, on the expiry of that six-week period, the Authority has not submitted an amended draft RTS, or has submitted a draft RTS that is not amended in a way consistent with the Commission's proposed amendments, the Commission can adopt the RTS with the amendments it considers relevant, or reject it.

I would like to express our appreciation for the work undertaken by the EBA to deliver the draft RTS and look forward to continuing our good cooperation on this legal act.

Yours sincerely,

Electronically signed

John BERRIGAN

Enclosure: Amended draft Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the highly liquid financial instruments with minimal market risk, credit risk and concentration risk

c.c.: Aurore Lalucq, MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Thérèse Blanchet, Secretary-General of the Council of the European Union