



EUROPEAN
COMMISSION

Brussels, 31.10.2024
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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 procedure for the approval of a crypto-asset white paper

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 17(8) of Regulation (EU) No 2023/1114 on Markets in Crypto-assets ('MiCA') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 establishing the EBA, regulatory technical standards (RTS) further specifying the procedure for the approval of crypto-asset white papers for asset-referenced tokens (ARTs) issued by credit institutions.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010, 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 17(8) of MiCA. A consultation paper was published on the EBA internet site on 20 October 2023, and the consultation closed on 22 January 2024. Moreover, the EBA organised a public hearing on the consultation paper on 11 January 2024. Moreover, the EBA worked in close cooperation with the European Securities and Markets Authority and the European Central Bank (ECB) and also requested the Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on the draft RTS. 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. Notably, the EBA has extended the deadline for competent authorities to inform the issuer of a request of changes of the crypto-asset white paper or, where applicable, of the decision on the approval of the crypto-asset white paper, and introduced a clarification that the competent authority's requests of changes to the crypto-asset white paper must be duly justified.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has submitted its impact assessment related to the draft technical standards submitted to the Commission. This analysis is available in the Final report on the draft RTS on the approval process for white papers for ARTs issued by credit institutions¹.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The RTS set out the different steps and timeframes of the procedure for the approval of crypto-asset white papers for ARTs issued by credit institutions. To that end, the RTS set out the procedure applicable to the assessment of completeness of the contents of the crypto-asset white paper by the competent authority, as well as to the substantive assessment of the crypto-asset white paper by the competent authority. With respect to those parts of the approval procedure, the RTS specify the practicalities and logistics of the exchange of information

¹ Available at: <https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/asset-referenced-and-e-money-tokens-micar/regulatory-technical-standards-procedure-approval-white-papers-arts-issued-credit-institutions?version=2023#activity-versions>, pages 13-16.

between the credit institution and the competent authority, as well as between the latter and the ECB and other relevant central banks.

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/1114 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 to Article 17(8), third subparagraph thereof,

Whereas:

- (1) The procedure for the approval of a crypto-asset white paper pursuant to Article 17(1), point (a), of Regulation (EU) 2023/1114 is closely linked to the procedure applicable for the notification of relevant information to the competent authority pursuant to Article 17(1), point (b), of that Regulation because the competent authority cannot approve the crypto-asset white paper in the case of a negative opinion from the European Central Bank (ECB) or, where applicable, the relevant central bank pursuant to Article 17(5), third subparagraph, of that Regulation. At the same time, according to Article 17(5) of that Regulation the information submitted to the ECB and, where applicable, the relevant central bank, based on which they are to issue an opinion, is required to be complete and to include the crypto-asset white paper submitted by the issuer to the competent authority in accordance with Article 17(1), point (a), of that Regulation. Therefore, the provisions further specifying the procedure for the approval of a crypto-asset white paper referred to in Article 17(1), point (a), of Regulation (EU) 2023/1114 should establish a similar process to the one set out in Article 17(3) of that Regulation. In particular, those provisions should provide for a completeness assessment with the same rules and timelines as those set out in Article 17(3) of Regulation (EU) 2023/1114.
- (2) In order to ensure the swift and efficient completion of the crypto-asset white paper approval process in the most proportionate way, the submission of the application for approval of the crypto-asset white paper and other communication or exchange of information between the credit institution and the competent authority as well as between the competent authority and the ECB or, as applicable, a relevant central bank, should be made via electronic means, which allow easier and faster communication and record-keeping. Given the high expectations of diligence on both public authorities and institutions, a high level of security should be expected to be achieved.

² OJ L 150, 9.6.2023, p. 40, ELI: <http://data.europa.eu/eli/reg/2023/1114/oj>.

- (3) Where, in the course of the completeness assessment, a competent authority finds that the crypto-asset white paper is missing some of the elements required by Article 19(1) of Regulation (EU) 2023/1114, and requests the credit institutions to resubmit the crypto-asset white paper with those additional elements, the credit institution should be able to demonstrate to the competent authority how the additional information in the revised white paper addresses that request. It is therefore necessary to provide that each revised version of the crypto-asset white paper submitted to the competent authority contains such an explanation, as well as a marked-up file of the crypto-asset white paper that clearly highlights all changes made since the previously submitted version, and a clean file where such changes are not highlighted.
- (4) In terms of the further specification of the procedure that is common to the approval of the crypto-asset white paper and the notification to the competent authority, and in particular with regard to that part of the procedure that relates to the competent authority's communication of the complete information to the ECB and, where applicable, the relevant central bank, it is necessary to specify the practicalities and logistics of that exchange of information so as to ensure its smooth and efficient running.
- (5) Article 17(5) of Regulation (EU) 2023/1114 sets out a timeline for the issuance of the ECB's and, as applicable, relevant central bank's opinion, but it does not specify the implications of the expiry of the timeline for the assessment of the crypto-asset white paper by the competent authority. Therefore, it should be clarified that the competent authority should commence substantive assessment of the crypto-asset white paper following a positive opinion or the expiry of the deadline for issuing the opinion. In case the ECB or the relevant central bank issues a delayed opinion, the competent authority could still consider it unless the deadline for the approval process of the crypto-asset white paper has expired.
- (6) In the course of the substantive assessment of the crypto-asset white paper by the competent authority, which aims to ensure compliance of the crypto-asset white paper with the requirements of Article 19 of Regulation (EU) 2023/1114, the competent authority should be able to request improvements to the crypto-asset white paper submitted by the credit institution to the competent authority. That is necessary to ensure that the crypto-asset white paper meets the requirements set out in that Regulation in the most efficient manner, i.e. without having to re-start anew the whole procedure for the crypto-asset white paper approval, which could disproportionately delay the launch of the asset-referenced token. It also gives a possibility to the competent authority to request the credit institution to address any comments or suggestions of the ECB or the relevant central bank in its positive opinion. To allow for a smooth and harmonised approach to the approval procedure, the timeline for the final decision of the competent authority on the crypto-asset white paper approval should be specified.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority. The European Banking Authority has developed these draft regulatory technical standards in close cooperation with the European Securities and Markets Authority and with the ECB.
- (8) 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 Council³,

HAS ADOPTED THIS REGULATION:

Article 1

Application for approval of a crypto-asset white paper

1. When a credit institution submits the crypto-asset white paper to the competent authority for the purpose of its approval in accordance with Article 17(1), point (a), of Regulation (EU) 2023/1114, the credit institution shall provide a contact point for the competent authority to submit all communications to it.
2. Competent authorities shall provide on their website contact details for the purposes of approvals of crypto-asset white papers.
3. The submission of the application for approval of a crypto-asset white paper as well as notifications or communications between the competent authorities, the European Central Bank (ECB) and other relevant central banks and credit institutions in accordance with this Regulation shall be made by electronic means.

Article 2

Acknowledgement of the receipt of an application for approval of a crypto-asset white paper

1. The competent authority shall acknowledge receipt of the application for approval of a crypto-asset white paper within 2 working days following the receipt of the application.
2. The acknowledgement referred to in paragraph 1 shall include the following information:
 - (a) the reference number of the application;
 - (b) the contact point within the competent authority to which queries regarding the application may be addressed.

Article 3

Assessment of completeness of the crypto-asset white paper

The competent authority shall, within 20 working days of receipt of the application for approval of a crypto-asset white paper, assess the completeness of the crypto-asset white paper with regard to the requirements referred to in Article 19(1) of Regulation (EU) 2023/1114.

Article 4

Request of missing information to a crypto-asset white paper

1. Where the competent authority concludes that the crypto-asset white paper is not complete with regard to the requirements of Article 19(1) of Regulation (EU) 2023/1114, the competent authority shall inform the credit institution of the missing

³ 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>).

information and shall set a deadline by which that credit institution is required to provide the missing information.

2. The deadline for providing any missing information referred to in paragraph 1 shall not exceed 20 working days from the date of the request. Until the expiry of the deadline referred to in paragraph 1, the period set in Article 3 shall be suspended. Any further requests by the competent authority for completion or clarification of the information for the assessment under Article 3 shall be at its discretion but shall not result in a suspension of the set period.
3. Following any request from the competent authority referred to in paragraph 1, the credit institution shall submit a revised crypto-asset white paper to the competent authority within the deadline set in the request. The submission by the credit institution shall include the following:
 - (a) the revised crypto-asset white paper in a clean, unmarked version;
 - (b) the revised crypto-asset white paper in a version with all the changes clearly marked, highlighting all supplementary information that is new compared to the original version of the crypto-asset white paper submitted in accordance with Article 1;
 - (c) an explanation as to how the supplementary information, reflected in the version referred to in point (b), addresses the competent authority's request pursuant to paragraph 1 for providing missing information.

Article 5

Notification of completeness of a crypto-asset white paper

1. Where, after the process set out in Article 4 is completed, the competent authority assesses the crypto-asset white paper as complete, it shall notify the credit institution of the completeness of the crypto-asset white paper. The notification shall set the date at which the crypto-asset white paper is deemed complete.
2. Where, after the process set out in Article 4 is completed, the competent authority assesses the crypto-asset white paper as incomplete, it shall reject the application for approval of the crypto-asset white paper and notify its decision to the credit institution.

Article 6

Information exchange between the competent authority and the ECB and the relevant central banks in relation to the crypto-asset white paper

1. The communication by the competent authority referred to in Article 17(5), first subparagraph, of Regulation (EU) 2023/1114 shall be made no later than 2 working days from the notification referred to in Article 5(1) of this Regulation.
2. The ECB and, where applicable, the relevant central bank as referred to in Article 17(5), first subparagraph, of Regulation 2023/1114, shall, within 2 working days of the receipt of the complete information, provide the competent authority with both of the following:
 - (a) acknowledgement of receipt of the information;
 - (b) the contact point to which queries regarding the application may be addressed.

Article 7

Substantive assessment of a crypto-asset white paper

Following a positive opinion by the ECB or, where applicable, the relevant central bank as referred to in Article 17(5), first subparagraph, of Regulation (EU) 2023/1114, or following the expiration of the period of 20 working days laid down in Article 17(5), second subparagraph, of that Regulation without any opinion issued by the ECB or the relevant central bank, the competent authority shall carry out a substantive assessment of the crypto-asset white paper with regard to the requirements referred to in Article 19 of that Regulation.

Article 8

Request of changes to a crypto-asset white paper

1. Within 10 working days of a positive opinion by the ECB or, where applicable, the relevant central bank as referred to in Article 17(5), first subparagraph, of Regulation (EU) 2023/1114, or following the expiration of the period of 20 working days laid down in Article 17(5), second subparagraph, of that Regulation without any opinion issued by the ECB or the relevant central bank, the competent authority may notify the credit institution of a duly justified request for changes of the crypto-asset white paper. The request shall set a deadline by which that credit institution is required to provide the updated crypto-asset white paper.
2. The deadline for the credit institution to provide the updated crypto-asset white paper requested by the competent authority as referred to in paragraph 1 shall not exceed 10 working days following the issuance of the request for changes by the competent authority.
3. Following any request from the competent authority referred to in paragraph 1, the credit institution shall submit a revised crypto-asset white paper to the competent authority within the deadline set out in the request. The submission by the credit institution shall include all of the following:
 - (a) the revised crypto-asset white paper in a clean, unmarked version;
 - (b) the revised crypto-asset white paper in a version with all the changes clearly marked, highlighting all changes made compared to the version of the crypto-asset white paper submitted either in accordance with Article 1, or, where additional information had been requested by the competent authority, in accordance with Article 4;
 - (c) an explanation as to how the changes made, reflected in the version referred to in point (b), address the competent authority's request, pursuant to paragraph 1, for making substantive changes to the crypto-asset white paper.

Article 9

Approval of the crypto-asset white paper

1. The competent authority shall notify the credit institution of its final decision regarding the approval of the crypto-asset white paper within 10 working days from the receipt of the new crypto-asset white paper referred to in Article 8(3) or, where no changes to the crypto-asset white paper are requested, 10 working days from a positive opinion by the ECB or, where applicable, the relevant central bank as referred to in Article 17(5), first subparagraph, of Regulation (EU) 2023/1114, or following the expiration of the period of 20 working days laid down in Article 17(5),

second subparagraph, of that Regulation without any opinion issued by the ECB or the relevant central bank.

2. The crypto-asset white paper shall not be published until the competent authority of the home Member State has approved it.

Article 10

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