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COMMISSION DELEGATED REGULATION (EU) .../...

of 28.11.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the manner in which crypto-asset service providers operating a trading platform for crypto-assets are to present transparency data

(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 76 of the Markets in Crypto-Assets Regulation (MiCA) sets out the operating conditions of trading platforms for crypto-assets operated by crypto-assets service providers (CASPs). In particular, Article 76(9) of MiCA requires trading platforms to make public any bid and ask prices and the depth of trading interests at those prices which are advertised through such platforms (pre-trade transparency requirements). Furthermore, Article 76(10) of MiCA requires trading platforms to make public the price, volume and time of the transactions executed in respect of crypto assets traded on such platforms (post-trade transparency requirements). They are required to make details of all such transactions public as close to real-time as technically possible.

Pursuant to Article 76(16)(a) of MiCA, the European Securities and Markets Authority (ESMA) has been mandated to develop draft regulatory technical standards to further specify the manner in which pre- and post-trade transparency data made publicly available is to be presented, including the level of disaggregation of that data.

Article 76(16) of MiCA empowers the Commission to supplement the regulation by adopting the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) 1095/2010.

This delegated act is to be adopted in accordance with Article 76(16) of MiCA and Article 290 of the Treaty on the Functioning of the European Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA prepared the draft regulatory technical standards and conducted an open public consultation between 5 October 2023 and 14 December 2023.¹ Among the 141 stakeholders that responded to the consultation which covered also other technical standards, there was an average of 14 responses across 15 questions relating to the consulted draft technical standards. Responses came from a range of stakeholders, including traditional exchanges, crypto firms, trade associations, and asset managers.

On the general approach in the draft technical standards to further define how transparency data is to be presented, while ensuring it is aligned to the extent possible with standards

¹ https://www.esma.europa.eu/sites/default/files/2023-10/ESMA75-453128700-438_MiCA_Consultation_Paper_2nd_package.pdf

applicable on traditional markets, the feedback has been broadly supportive. Nonetheless, the respondents highlighted a number of specific points discussed below.

On pre-trade transparency, most respondents considered the types of trading systems listed in Table 1 of Annex 1 of the draft technical standards sufficient to capture the range of systems used in crypto-asset trading. Furthermore, an overwhelming majority of the respondents agreed with the proposed standardisation of pre-trade information to be disclosed. Nevertheless, some of the respondents noted that implementing the proposed format may lead to higher compliance costs. Despite the potential for higher compliance costs, the retained format was deemed proportionate as it ensures a high level of market transparency and consistency across different trading platforms. This standardisation facilitates better comparison and aggregation of data which is important for market participants to make informed decisions.

With regards to post-trade transparency, in general the respondents agreed with the approach taken in the draft technical standards, however a few important remarks were made. In particular, certain respondents proposed to include the order-type in the post-trade transparency disclosure. However, ESMA considered that this information should be considered as pre-trade data and sensitive information for traders that would exponentially increase the level of information to be made public. Furthermore, when queried about the difficulties in obtaining all the data fields that trading platforms would have to publish, overall, the respondents did not foresee any particular challenges for trading platforms. Regarding the obligation to publish post-trade information as close to real-time as is technically possible, and in any case within 30 seconds after execution, the vast majority of respondents agreed that this information could indeed be published within the specified delay. Nevertheless, they called for the alignment of the delay with that applicable to traditional instruments (shares), amounting to 1 minute. ESMA argued that it is considering reducing the timespan required to publish a transaction for traditional instruments. In view of the technological developments in the markets and the ability, confirmed by the responses received, of trading platforms to publish within 30 seconds, ESMA ultimately retained the specified timeframe.

On data disaggregation, most respondents supported the proposal, confirming that the level of disaggregation proposed in Article 5 of the draft technical standards is sufficient to meet transparency requirements. There was also broad support for disaggregation on a crypto-asset basis when available. Several respondents called for additional clarity around the concept of data being available for ‘minimum periods of one week’ as per Article 5(3) of the consulted version of the technical standards (and ‘access to historic series on a per-week basis’ in Recital 7). The consensus view is that this parameter may not be feasible to provide for regular or heavy users of the trading platform (for cost reasons). Based on the consultation feedback, ESMA removed the specified paragraph and the corresponding recital from the draft technical standards.

In addition to the public consultation, ESMA asked for the advice of the Securities and Markets Stakeholder Group (MSG), which was delivered on 13 December 2023. Notably, as regards pre-trade transparency, the MSG supported the requirement in the draft technical standards to require the publication of the mathematical equation for price and quantity of the so-called automated market maker (AMM) trading systems, and suggested to disclose details to enable market participants to understand the difference between price discovery in AMMs compared with more widely understood (traditional) methods for price formation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 lays down the general principles of presentation regarding the information on operating rules for trading platforms.

Article 2 provides for pre-trade transparency obligations for crypto-asset trading platforms.

Article 3 provides for post-trade transparency obligations for crypto-asset trading platforms.

Article 4 specifies the requirement for crypto-asset trading platforms to publish transaction details as close to real-time as possible.

Article 5 specifies the requirements regarding data disaggregation of pre-trade and post-trade data.

Article 6 lays down the date of entry into force of the delegated act.

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(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) 2019/1937², and in particular Article 76(16), third subparagraph, thereof,

Whereas:

- (1) A high degree of transparency is essential to ensure that investors are adequately informed of the true level of actual and potential transactions in crypto-assets traded on a trading platform operated by a crypto-asset service provider. This high degree of transparency should also ensure a level playing field between trading platforms so that the price discovery process in respect of an individual crypto-assets is not impaired by the fragmentation of liquidity, and investors are not thereby disadvantaged.
- (2) In order for investors to be adequately informed about access, costs, scope, functioning of trading platforms they use or intend to use, it is important for trading platforms to make available their operating rules in a transparent and non-discriminatory manner. Investors should have easy access to this information.
- (3) To enable investors to take informed decisions on orders or transactions on crypto-assets and to help maintain market integrity, trading platforms for crypto-assets should publicly disclose all orders and transactions as close to real-time as is technically possible on their platforms. In relation to that, it is also important to harmonise the information to be published so as to enable investors to use, compare and aggregate the information published from different trading platforms for crypto-assets.
- (4) To ensure fair conditions for all types of investors, both qualified investors and retail holders, regarding the access to order management facilities, trading platforms for crypto assets may offer reserve and stop orders directly through their trading platform when certain conditions are met.
- (5) Distributed ledger technology has given rise to innovative structures in crypto-asset trading platforms. Crypto-asset trading platforms are often differentiated as either off-chain Centralised Exchanges (CEXs) or on-chain Decentralised Exchanges (DEXs),

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

such as those operated under an automated market maker model. CEXs are characterised by centralised control over trading operations and custodial practices. CEXs typically use mechanisms which are common in traditional finance, including central limit order books. DEXs, by contrast, operate without a central operator and facilitate trading directly on distributed ledgers through smart contracts, while allowing users to trade using their non-custodial wallets. In addition, the evolving landscape that includes hybrid models that combine features of both CEXs and DEXs necessitates a regulatory approach that is both precise and adaptable. In view of these developments, it is appropriate to clarify the transparency data requirements applicable to those trading systems that facilitate trading directly on distributed ledgers through smart contracts, in as much as they are not operated in a fully decentralised manner without intermediary and hence subject to Regulation (EU) 2023/1114.

- (6) Information which is required to be made available as close to real time as possible should be made available as instantaneously as technically feasible, assuming a reasonable level of efficiency of the systems of the crypto-asset service providers operating a trading platform for crypto-assets. The publication of the information close to the maximum time limit should occur only in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
- (7) Specifying the level of disaggregation by which trading platforms can sell data is important to meet the diverse needs of market participants that contribute to efficient markets. To ensure that users of data can purchase or access only data that meets their specific needs, crypto-asset service providers operating a trading platform for crypto-assets should disaggregate data by, as a minimum, the type of crypto-asset (asset-referenced tokens, e-money tokens, crypto-assets other than asset-referenced tokens and e-money tokens), the currency in which the crypto-assets are traded, and the type of trading system. Those data should be provided to users on a crypto-asset basis where possible.
- (8) To ensure that pre-trade and post-trade data offered for purchase appropriately match the demand from market participants, crypto-asset service providers operating a trading platform should offer any combination of disaggregation criteria on a reasonable commercial basis.
- (9) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (10) The European Securities and Markets 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 Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³,

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: <http://data.europa.eu/eli/reg/2010/1095/oj>).

HAS ADOPTED THIS REGULATION:

Article 1

General principles of presentation of the information on operating rules for trading platforms

1. Crypto-asset service providers operating a trading platform for crypto-assets shall publish the information on the operating rules for their trading platform free of charge and in a manner that is easily accessible, non-discriminatory, prominent, comprehensible, fair, clear, not misleading and facilitates understanding.
2. Crypto-asset service providers operating a trading platform for crypto-assets shall publish the operating rules for their trading platform in a single document on the crypto-asset service provider's website.

Article 2

Pre-trade transparency

1. Crypto-asset service providers operating a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interest at those prices, as referred to in Article 76(9) of Regulation (EU) 2023/1114, in accordance with the type of trading systems they operate as listed in Table 1 of Annex I to this Regulation.
2. When the objective market conditions referred to in point (a) occur, crypto-asset service providers operating a trading platform for crypto-assets shall make public the orders that meet all of the following conditions:
 - (a) the orders are contingent on the occurrence of objective market conditions which are pre-defined by the trading system's protocol;
 - (b) the orders cannot interact with other trading interests prior to the disclosure to the order book operated by the trading platform;
 - (c) once disclosed to the order book, the orders interact with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure
3. Crypto-asset service providers operating a trading platform for crypto-assets shall make public the details of each order for crypto-assets as set out in Tables 2 and 3 of Annex I.

Article 3

Post-trade transparency

1. Crypto-asset service providers operating a trading platform for crypto-assets shall make public the details of each transaction as referred to in Article 76(10) of Regulation (EU) 2023/1114 as set out in Tables 1 and 2 of Annex II.
2. Where a previously published trade report is cancelled, crypto-asset service providers operating a trading platform for crypto-assets shall make public a new trade report which contains all the details of the original trade report and the cancellation flag specified in Table 3 of Annex II.
3. Where a previously published trade report is amended, crypto-asset service providers operating a trading platform for crypto-assets shall make the following information public:

- (a) a new trade report that contains all the details of the original trade report and the cancellation flag specified in Table 3 of Annex II;
- (b) a new trade report that contains all the details of the original trade report with all necessary details corrected, and the amendment flag specified in Table 3 of Annex II.

Article 4

Real time publication of transactions

For transactions executed on their crypto-asset trading platforms, crypto-asset service providers operating a trading platform for crypto-assets shall make public the details of each transaction as set out in Tables 1, 2 and 3 of Annex II as close to real-time as is technically possible and in any case within thirty seconds after the execution of the transaction.

Article 5

Disaggregation of pre-trade and post-trade data

1. Crypto-asset service providers operating a trading platform for crypto-assets shall make the information published in accordance with Articles 2 and 3 available to the public by publishing pre-trade and post-trade transparency data separately.
2. Crypto-asset service providers operating a trading platform for crypto-assets shall upon request by any interested party make the data published in accordance with Articles 2 and 3 available to the public by presenting pre-trade and post-trade data disaggregated for each crypto-asset.
3. In addition to presenting the data in accordance with paragraph 2, crypto-asset service providers operating a trading platform may present the data referred to in paragraph 2 in bundles of crypto-assets.
4. Paragraphs 2 and 3 shall not apply where the information referred to in Articles 2 and 3 is made available free of charge.

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.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28.11.2024

For the Commission

The President

Ursula VON DER LEYEN