



Brussels, 1.10.2024
C(2024) 6682 final

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

of 1.10.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, templates and procedures for the handling of complaints by the crypto-asset service providers

(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 71 of MiCA provides for complaints-handling requirements for crypto-asset service providers (CASPs), who are notably required to handle complaints promptly and fairly. They also have to inform clients of the possibility to file complaints and allow them to do so free of charge.

Pursuant to Article 71(5) of MiCA ESMA, in close cooperation with EBA, is required to develop draft RTS to further specify the requirements, templates and procedures for handling complaints and to submit these draft RTSs to the Commission by 12 months after the date of entry into force of MiCA.

This delegated act is to be adopted in accordance with Article 71 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 12 July 2023 and 20 September 2023¹. 50 responses were received from respondents with diverse profiles (around half of the respondents were from traditional financial institutions such as banking associations and traditional exchanges and the other half from crypto-asset market participants such as consumer associations and crypto-asset exchanges, crypto asset associations and blockchains). The responses are available on ESMA's website.

The feedback received was mostly positive with, however, some specific and more technical points raised by respondents relating to language requirements, analysis of complaints-handling data or use of the template. One more general point was raised by a few respondents regarding the alignment of ESMA's draft RTS on complaints handling by CASPs and EBA's draft RTS on complaints-handling by issuers of asset-referenced tokens.

Furthermore, most respondents agreed with ESMA's proposals on the requirements, templates and procedures for CASPs' handling of client complaints. Some respondents, however, suggested specific amendments to ESMA's proposed draft RTS, which were addressed.

¹ https://www.esma.europa.eu/sites/default/files/2023-07/ESMA74-449133380-425_MiCA_Consultation_Paper_1st_package.pdf

In addition, some respondents expressed concerns relating to the language requirements for the publication of CASPs' description of the complaints handling procedure and clients' filing of complaints. Considering ESMA's proposals as too burdensome. After further consideration, ESMA decided to amend the language requirements applicable to CASPs under the draft RTS and to, instead, require CASPs to publish the description of the complaints handling procedure and the standard template in all languages used by the CASP to market its services or communicate with clients.

Some respondents were also concerned that the template in the draft RTS was meant as a rigid method of filing complaints for clients. ESMA clarified that the inclusion of the template in the draft RTS should by no means be read as requiring its mandatory use by clients to file an admissible complaint with their CASP.

Some respondents were of the view that requiring ongoing analysis of complaints-handling data by CASPs to ensure consistent complaints-handling was disproportionate. After further consideration, Article 8 of the draft RTS was not amended as it was deemed important that CASPs be able to be aware at all times of complaints received and any issues in their handling.

EBA and ESMA have worked in close cooperation in finalising the respective Final Reports to further align the two draft RTSs and have reached common positions on a number of important points, including the language requirements, full alignment for the templates, the obligation for CASPs and issuers of asset-referenced tokens to provide a copy of the complaint where it is submitted through an online form, etc.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies the complaints-handling procedures.

Article 2 specifies the information to be submitted regarding the resources dedicated to complaints-handling.

Article 3 specifies the requirements on the submission means and language .

Article 4 specifies the procedure on the acknowledgment of receipt and verification of admissibility of the complaints.

Article 5 provides for the description of the requirements on the investigation of complaints.

Article 6 provides for the requirements on the decision of the complaints based on reasons for the outcome of the investigation.

Article 7 provides for the the requirements for the communication with clients.

Article 8 provides for the information to be submitted when following the procedures to ensure consistent complaints-handling.

Article 9 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 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937², and in particular Article 71(5), third subparagraph, thereof,

Whereas:

- (1) In the interests of protection of clients, crypto-asset service providers should provide their clients with easy access on their website to both a clear, understandable and up-to-date description of their complaints-handling procedure and the standard template set out in the Annex in the languages used by the crypto-assets service provider to market its services or in the languages they use to communicate with clients.
- (2) It is necessary to ensure that clients can file their complaints in the languages used by the crypto-assets service provider to market its services or communicate with clients, as well as in the official languages of the home Member State and host Member States, that are also official languages of the Union.
- (3) To avoid diverging complaints handling procedures among crypto-asset service providers across the Union, clients should be able to file their complaints using a harmonised template. However, to ensure maximum flexibility for clients to file their complaints, where clients have not filed their complaints using that template, that alone should not constitute a reason for the rejection of complaints.
- (4) To ensure a prompt and timely handling of complaints, crypto-asset service providers should acknowledge receipt of complaints and inform the complainant as to whether that complaint is admissible without undue delay. Upon acknowledgment of receipt of the complaint, the complainant should also receive the contact details of the person or department to be contacted for any queries related to the complaint, as well as an indicative timeframe within which a decision on the complaint can be expected. Where a complaint has been found to be inadmissible, the crypto-asset service provider should inform the complainant of its decision and provide the complainant with the reasons for the inadmissibility.

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

- (5) To ensure a prompt, timely and fair investigation of complaints, crypto-asset service providers should, upon receipt of a complaint, assess whether that complaint is clear, complete and contains all information necessary for handling it. Where appropriate, crypto-asset service providers should request additional information without undue delay. Crypto-asset services providers should gather and investigate all relevant information regarding the complaint. Complainants should be kept duly informed about the complaints handling process.
- (6) To ensure a fair and effective handling of complaints, it is necessary that decisions on complaints address all points raised by the complainant in his or her complaint. Moreover, to ensure compliance with the equality principle, complaints presenting similar circumstances should result in consistent decisions, unless the crypto-asset service provider is able to provide an objective justification for any possible deviation from a previously taken decision.
- (7) To ensure a prompt handling of complaints, crypto-asset service providers should communicate decisions on complaints to the complainant without undue delay within the timeframe determined by the crypto asset service provider in the complaints-handling procedure. This timeframe should not exceed 2 months from the date the complaint was received by the crypto-asset service provider. Only in exceptional circumstances where the crypto-asset service provider is not able to meet that timeframe, the complainant should be informed of the reasons for the delay and of the expected date by which a decision will be delivered.
- (8) In order to ensure efficient interactions between crypto-asset service providers and complainants, crypto-asset service providers should communicate with complainants in clear and plain language that is easily understandable. For the same reason, crypto-asset service providers should communicate in writing by electronic means or, upon the complainant's request, in paper form.
- (9) In order to achieve procedural and substantive consistency of complaints handling, crypto-asset service providers should analyse complaints-handling data on a continuous basis, including inter alia, the average processing time, per year (on a rolling basis), for each step of the complaints handling procedure. Such analysis should enable crypto-asset service providers to detect promptly inefficiencies, inconsistencies or deviations from the relevant policies and procedures for the handling of complaints by the crypto-asset service provider. The results of the analysis should enable the crypto-asset service provider to enhance its overall complaints handling processes.
- (10) To ensure that the complaints handling procedures are effective and meet their objective of a prompt, fair and consistent handling of complaints received from clients, it is of paramount importance to ensure that the relevant persons in charge of applying such procedures within the crypto-asset service provider are well aware and appropriately trained with regard to such procedures. Such communication and training should also contribute to effective policies and procedures and to ensure compliance with the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them, in accordance with Article 68(4) and (5) of Regulation (EU) 2023/1114. The training should be proportionate to the efficient handling of complaints and should not result in an excessive burden for crypto-asset service providers.
- (11) To ensure that complaints are investigated fairly and effectively, adequate resources should be dedicated by the crypto-asset service provider to their management. Such

resources should also ensure that complaints are handled without conflicts of interests. In accordance with Article 68(6) of Regulation (EU) 2023/1114, the management body of the crypto-asset service provider should assess and periodically review the effectiveness of policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of the same Regulation. As a requirement concerning the complaint handling policies and procedures and in order to ensure compliance with Article 68(6) of Regulation (EU) 2023/1114, crypto-asset service providers' management body should endorse and subsequently monitor the implementation of the complaints-handling policies and procedures.

- (12) Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulation (EU) 2016/679 of the European Parliament and of the Council³. This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), developed in close cooperation with the European Banking Authority.
- (13) ESMA 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 Council⁴. The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on 21 June 2024,

HAS ADOPTED THIS REGULATION:

Article 1

Information, template and description of complaints-handling procedures

1. For the purposes of this Regulation, 'complaint' means a statement of dissatisfaction addressed to a crypto-asset service provider by one of its clients relating to the provision of one or more crypto-asset services.
2. The complaints-handling procedures referred to in Article 71(1) of Regulation (EU) 2023/1114 shall include all the following:
 - (a) the conditions for the admissibility of complaints;
 - (b) information that complaints are filed and handled free of charge;
 - (c) a detailed description of how to file complaints, including:
 - (i) information that complaints may be filed using the template set out in the Annex;

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119 04.05.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>)

⁴ 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>).

- (ii) information to be provided by the complainant;
 - (iii) the identity and contact details of the person or department that complaints must be addressed to;
 - (iv) the electronic platform, system, email or postal address where complaints must be filed;
 - (v) the language or languages in which a client is allowed to file a complaint pursuant to Article 3;
- (d) description of the complaints-handling procedure , as specified in Articles 3 to 6;
 - (e) the timeframe applied by the crypto asset service provider to the complaint-handling procedure, including acknowledging receipt of the complaint in accordance with Article 4, requesting additional information, where appropriate, investigating a complaint and communicating the decision on the complaint;
 - (f) a short description of the arrangements for registering and keeping records of complaints and of measures taken in response thereto through a secure electronic system.
3. Crypto-asset service providers shall publish on their website an up-to-date description of the procedures for complaints-handling, as well as the standard template set out in the Annex, and ensure that both that description and that template are easily accessible on their website and on any other relevant digital device that may be used by clients to access the crypto-asset services. In addition, crypto asset service providers shall provide such description upon clients' request and at the time of acknowledging receipt of complaints.
 4. The description of the complaints handling procedure and the standard template set out in the Annex shall be published in all languages used by the crypto-assets service provider to market its services or communicate with clients.
 5. The crypto-asset service provider shall adequately document the procedures for complaints handling and shall communicate such procedures to all its staff in relevant posts, through an adequate internal channel and provide appropriate training to that staff.
 6. The crypto-asset service provider shall ensure that the procedures for complaints-handling are laid down and endorsed by its management body, which shall also be responsible for monitoring their proper implementation. The crypto-asset service provider shall ensure that the procedures for complaints handling are defined and endorsed by its management body, which shall also be responsible for monitoring their proper implementation.
 7. The crypto-asset service provider shall ensure that the conditions a complaint shall meet to be considered admissible and complete are fair, reasonable and do not unduly restrict the rights of natural or legal persons to file a complaint. Such conditions shall not include the mandatory use of the template provided in the Annex to this Regulation.

Article 2
Resources dedicated to complaints-handling

1. Crypto-asset service providers shall dedicate adequate resources to the management of complaints.
2. The dedicated resources referred to in paragraph 1 shall have access to all relevant information.
3. The person in charge of the dedicated resources referred to in paragraph 1 shall report directly to the management body on the implementation and effectiveness of the complaints handling procedures, including the data referred to in Article 8, and on any measures taken or to be taken in response thereto.

Article 3,
Means and language for filing complaints

1. Crypto-asset service providers shall ensure that clients are able to file complaints by electronic means or in paper form.
2. Crypto-asset service providers shall ensure that clients are able to file complaints in:
 - (a) the languages used by the crypto-assets service provider to market its services or communicate with clients;
 - (b) the official languages of the home Member State and host Member States that are also official languages of the Union.

Article 4
Acknowledgment of receipt of a complaint and verification of its admissibility

1. Crypto-asset service providers shall acknowledge receipt of a complaint and inform the complainant about whether the complaint is admissible without undue delay after having received the complaint.
2. Where a complaint does not fulfil the conditions of admissibility referred to in Article 1(2), point (a), crypto-asset service providers shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.
3. The acknowledgment of receipt of a complaint shall contain all of the following:
 - (a) The name, identity and contact details, including email address and telephone number, of the person to whom, or the department to which, complainants can address any query related to their complaint;
 - (b) the date of receipt of the complaint;
 - (c) a reference to the timeframe referred to in Article 1(2), point (e);
 - (d) where an electronic complaint form is filed, a copy of the complaint.

Article 5
Investigation of complaints

1. Upon receipt of an admissible complaint, crypto-asset service providers shall, without undue delay after acknowledging receipt of the complaint, assess whether the complaint is clear and complete. In particular, crypto asset service providers shall assess whether the complaint contains all information required. Where a crypto-asset

service provider concludes that a complaint is unclear or incomplete, it shall request any additional information necessary for the proper handling of the complaint.

2. Crypto-asset service providers shall seek to gather and examine all relevant information regarding a complaint. Crypto asset service providers shall not require from the complainant information that is already in their possession or that is legally required to be in their possession. Crypto-asset service providers shall keep the complainant duly informed about any additional steps taken to handle the complaint. Crypto asset service providers shall reply to reasonable information requests made by the complainant without any undue delay.

Article 6 Decisions

1. In its decision on a complaint, the crypto-asset service provider shall address all points raised in the complaint and shall state the reasons for the outcome of the investigation. That decision shall be consistent with any previous decision taken by the crypto-asset service provider in respect of similar complaints, unless the crypto-asset service provider is able to justify why a different conclusion is drawn.
2. Crypto-asset service providers shall communicate their decision on a complaint to the complainant without undue delay as soon as possible within the timeframe referred to in Article 1(2), point (e), and in any case within 2 months from the date the crypto-asset service provider has received the complaint.
3. Where, in exceptional situations, the decision on a complaint cannot be provided within the timeframe referred to in of Article 1(2), point (e) or within the 2 months of the date the complaint is received, crypto-asset service providers shall inform the complainant without undue delay about the reasons for that delay and specify the date of the decision.
4. Where the decision of the crypto-asset service provider does not satisfy the complainant's demand or only partly satisfies it, the crypto-asset service provider shall clearly set out the reasoning of its decision and contain information on available remedies.

Article 7 Communication with complainants

1. When handling complaints, crypto-asset service providers shall communicate with complainants in a clear and plain language that is easy for complainants to understand.
2. Any communication made by the crypto-asset service provider under Articles 4, 5 and 6 that is addressed to a complainant shall be made in the language in which the complainant filed its complaint provided that the language used by the complainant is one of the languages referred to in Article 3(2). The communication shall be made in writing by electronic means, or upon the complainant's request, in paper form.

Article 8 Procedures to ensure consistent complaints-handling

Crypto-asset service providers shall analyse on a continuous basis complaints-handling data. Such data shall include all of the following:

- (a) the average processing time, for the relevant period under consideration, for each step of the complaints handling procedure, including acknowledgement, investigation, response time;
- (b) the number of complaints received, for the relevant period under consideration, and for each step of the complaints handling procedure, the number of complaints where the crypto asset service provider did not comply with the maximum time limits set out in its complaints handling procedure;
- (c) the categories of the topics to which complaints relate;
- (d) outcomes of investigations.

Article 9
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, 1.10.2024

For the Commission
The President
Ursula VON DER LEYEN