

Brussels, 26.9.2024
C(2024) 6649 final

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

of 26.9.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries

(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 107 of MiCA requires the competent authorities of Member States to conclude where necessary cooperation arrangements with supervisory authorities of third countries concerning the exchange of information and the enforcement of obligations arising under that regulation in third countries. To facilitate cooperation and exchange of information with supervisory authorities of third countries, Article 107(3) of MiCA mandates ESMA to develop draft regulatory technical standards establishing a template document setting out the structure of cooperation arrangements concluded with third countries. Article 107(3) of MiCA empowers the Commission to supplement the regulation by adopting the regulatory technical standards drafted by ESMA.

This delegated act is to be adopted in accordance with Article 107(3) 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 has not carried out a public consultation on the draft RTS as the standards relate to cooperation agreements between supervisory authorities and as such do not create obligations for market participants. Consequently, they are of limited market impact. ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) set up in accordance with Article 37 of Regulation (EU) No 1095/2010. The SMSG expressed support for the adoption of the proposed technical standards without making further comments.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies that the template document to be used where possible for cooperation arrangements is set out in the annex.

Article 2 provides for the administrative arrangements governing transfer of personal data to third country authorities to be annexed to cooperation agreements.

Article 3 provides for the date of entry into force of the regulation.

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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) 2019/1937¹, and in particular Article 107(3), third subparagraph, thereof,

Whereas:

- (1) Article 107(1) of Regulation (EU) 2023/1114 requires the competent authorities of Member States to conclude, where necessary, cooperation arrangements with supervisory authorities of third countries concerning the exchange of information and the enforcement of obligations arising under that Regulation in third countries.
- (2) In concluding new cooperation arrangements and updating existing cooperation arrangements with third-country authorities, the competent authorities should, where possible, use the template document set out in this Regulation.
- (3) Any transfer of personal data to supervisory authorities of third countries should be undertaken in full compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council². Appropriate safeguards for the exchange of personal data between competent authorities of Member States and supervisory authorities of third countries may be provided for, among other things, by administrative arrangements referred to in Article 46(3), point (b), of Regulation (EU) 2016/679, which include enforceable and effective data subject rights.
- (4) This Regulation is based on the draft regulatory technical standards developed by the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority and submitted to the Commission.

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

² 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 (OJ L 119, 04.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

- (5) ESMA has not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor has it analysed the potential related costs and benefits of introducing such standards, as to have done so would have been disproportionate in relation to the scope and impact of those standards, taking into account the fact that the addressees of the standards would only be the competent authorities of the Member States and not market participants.
- (6) ESMA has 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.
- (7) 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 27 May 2024,

HAS ADOPTED THIS REGULATION:

Article 1
Cooperation arrangements

The template document to be used by competent authorities of Member States, where possible for cooperation arrangements pursuant to Article 107(1) of Regulation (EU) 2023/1114 is set out in the Annex to this Regulation.

Article 2
Transfers of personal data

Where competent authorities rely on an administrative arrangement pursuant to Article 46(3), point (b), of Regulation (EU) 2016/679 for the transfer of personal data to supervisory authorities of third countries, that arrangement shall be annexed to the cooperation arrangement entered into in accordance with Article 107(1) of Regulation (EU) 2023/1114.

Article 3
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, 26.9.2024

For the Commission
The President
Ursula VON DER LEYEN

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>).