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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 16.12.2024 supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the data necessary for the classification of crypto-asset white papers and the practical arrangements to ensure that such data is machine-readable

Delegations will find attached document C(2024) 8791 final.

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

of 16.12.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the data necessary for the classification of crypto-asset white papers and the practical arrangements to ensure that such data is machine-readable

(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 109 of MiCA provides for the creation of a register of crypto-asset white papers, of issuers of asset-referenced tokens and e-money tokens and of crypto-asset service providers. This register will be established and maintained by the European Securities and Markets Authority (ESMA).

Pursuant to Article 109(8) of MiCA, ESMA shall develop draft regulatory technical standards to further specify the data necessary for the classification, by type of crypto-asset, of crypto-asset white papers, including the legal entity identifiers of the issuer and crypto-asset service provider, in the register and specify the practical arrangements to ensure that such data is machine-readable. ESMA submitted to the Commission the draft regulatory standards on 4 July 2024.

Article 109(8) third subparagraph of MiCA empowers the Commission to supplement the Regulation by adopting regulatory technical standards to further specify the information referred to in Article 109(8) first subparagraph of MiCA, in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

This delegated act is to be adopted in accordance with Article 109(8) 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 15 October 2023 and 14 December 2023. ESMA received 141 responses, of which 47 were confidential. The non-confidential responses are available on ESMA's website.¹

Respondents suggested additional attributes deemed as relevant for the comparability of white papers, including provisions fostering comparability for investors; the governance structure and mechanisms; last update date and version number; auditing firm's name; tokenomics; the exchange ticker in addition to the market identifier code (MIC); the roadmap; the unique value proposition; the detailed consensus mechanism description; the risk management practices; the compliance status and developer and management team backgrounds.

¹ See: <https://www.esma.europa.eu/press-news/consultations/consultation-technical-standards-specifying-certain-requirements-mica-1st#responses>

The proposed requirement to mandate a legal entity identifier (LEI) for eligible entities, i.e. all legal persons, received very broad support from respondents to the consultation. A specific case of non-eligibility was mentioned: issuers are not identifiable in the case of “decentralized autonomous organisations”. ESMA recognises that the concept of “issuer” may not apply to this specific case and therefore alternative means of identification for this specific case may be appropriate.

Wide support was received on ESMA’s proposal regarding metadata elements. With regards to the metadata on the “industry sector of the economic activities”, it was suggested that the categorisation should be adapted to the digital assets sector and be more granular - e.g. yield farming, gaming, stablecoins, peer-to-peer, payments. However, since this metadata was originally introduced only for the purpose of the European Single Access Point Regulation (ESAP) and the final text on the ESAP does not require crypto-asset issuers and crypto-asset service providers to report an industry sector, this metadata, as well as the metadata regarding size, have finally been removed from the draft delegated regulation.

The sustainability indicators suggested by respondents to allow for comparability and classification between white papers should already be part of the white paper as per the Commission delegated regulation on content, methodologies, and presentation of sustainability indicators on adverse impacts on the climate and the environment.

One respondent noted that the exchange ticker would be more likely to be assigned than the MIC. This issue will be dealt under the Commission delegated regulation on record-keeping to be kept of all crypto-asset services, activities, orders and transactions undertaken by crypto-asset service providers.

Another respondent suggested adding the time and date of the latest update of the white paper. This is a data element included in field 21 of Table 2 of the Annex of this delegated regulation.

Finally, the remaining data elements suggested by respondents were not included in the delegated regulation either because they do not fall under the empowerment of ESMA under Article 109(8) MiCA or because they were deemed unnecessary for the purpose of the register.

In light of the comments received regarding the metadata elements, and of the ongoing work on the ESAs Joint Committee implementing technical standards on Article 5 and Article 7 of the ESAP Regulation, ESMA has proposed a number of changes to its original draft ITS in order to:

- Align the requirements in this delegated Regulation with those in the Joint Committee ITSs on ESAP currently under development.
- Ensure that all data necessary for the registers mandated by Article 109 and 110 of MiCA are made available to ESMA by competent authorities.

In addition to the public consultation, ESMA asked for the advice of the Securities and Markets Stakeholder Group (SMSG). Regarding the crypto-asset white papers and the disclosure of the expected use of funds, the SMSG commented that investors also need to know the actual use of the funds after the issuance (not only the expected use at the time of the white paper). They also highlighted the need to provide ongoing information to the holders of other crypto-assets and not only holders of ARTs (referring to the obligation for issuers of ARTs to disclose on their websites the amount of asset-referenced tokens in circulation and the value and composition of the reserve assets). As regards the format of the white papers, the SMSG supported the proposal to use a standalone iXBRL file with a simple

“closed” taxonomy, having considered that such a format would reduce costs and also allow greater comparability across crypto-assets, with positive implications for the information set available to prospective holders.

In light of the public consultation carried out by ESMA as well as the advice from the SMSG, the Commission is proposing the adoption under Article 109(8) of MiCA of this delegated act further specifying the data necessary for the classification, by type of crypto-asset, of crypto-asset white papers, including the legal entity identifiers of the issuer and crypto-asset white paper, in the register and the practical arrangements to ensure that such data is machine-readable.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 provides for the accompanying data for the classification of white papers.

Article 2 provides for the Legal Entity Identifiers.

Article 3 provides for the identification of the crypto-asset and the related white paper.

Article 4 lays down the date of entry into force of the delegated act.

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

of 16.12.2024

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the data necessary for the classification of crypto-asset white papers and the practical arrangements to ensure that such data is machine-readable

(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 Regulation (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937², and in particular Article 109(8), third subparagraph, thereof,

Whereas:

- (1) In accordance with Regulation (EU) 2023/1114, the register of crypto-asset white papers, of issuers of asset-referenced tokens and e-money tokens, and of crypto-asset service providers ('register') established in accordance with Article 109 of Regulation (EU) 2023/1114 is to contain information allowing the register to facilitate the accessibility of white papers classified on the basis of the types of crypto-assets set out in that Regulation. The data necessary for the classification of crypto-asset white papers should support national competent authorities in their task of verifying that the requirements of Regulation (EU) 2023/1114 are applied consistently.
- (2) To ensure the most efficient operation of the register, competent authorities should submit the data to the European Securities and Markets Authority (ESMA) in the same format as the white paper. Furthermore, to minimise costs, ESMA and competent authorities should be able to derive the relevant data for the classification of white papers in the register from the information disclosed in crypto-asset white papers. To minimise the changes in the data required as of the date of application of Article 110 of Regulation (EU) 2023/1114, the data used to classify crypto-asset white papers should comprise the data that competent authorities will provide to the European Single Access Point (ESAP) in accordance with Article 5(1), point (e), of Regulation (EU) 2023/2859 of the European Parliament and of the Council³.
- (3) To ensure efficient processing of data, legal persons drawing up the crypto-asset white paper and identified therein by an ISO 17442 legal entity identifier (LEI) should ensure that such LEI is valid and duly renewed. Where the person drawing up the

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

³ Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L, 2023/2859, 20.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2859/oj>).

white paper does not have a LEI, the register should contain an identifier that ensures similar characteristics for the purposes of the register.

- (4) Crypto-assets that are not financial instruments cannot at present be described by using the ISO Classification of Financial Instruments (CFI) code. A standard universal method of classification is being developed. However, this method of classification will not be finalised before the application of this Regulation. Hence, to identify the crypto-asset white papers consistently in the register referred to in Article 109(1) of Regulation (EU) 2023/1114, an international standard identifier for digital tokens, the Functionally Fungible Group Digital Token Identifier (FFG DTI) should be used. Furthermore, to identify the crypto-assets and to allow users to retrieve the main characteristics of the crypto-assets, including their technology-specific features, and to group tokens issued on several blockchains that are pertaining to the same crypto-asset white paper, the ISO 24165 Digital Token Identifiers (DTI) should be used. The FFG DTI and the DTI are appropriate for the purposes of the register since they respect the principles of uniqueness, neutrality, reliability, open source, scalability, accessibility on a cost-recovery basis and they are offered under an appropriate governance framework.
- (5) Since this Regulation concerns the classification of crypto asset white papers and is therefore linked to Commission Implementing Regulation (EU) 2024/XXX⁴ which concerns standard forms, formats and templates for the white paper, it is necessary to align the dates of application of the two Regulations. The deferred application is also necessary to enable persons drawing up crypto-asset white papers and competent authorities to adapt to the requirements laid down in this Regulation.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (7) 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 Council⁵,

HAS ADOPTED THIS REGULATION:

Article 1

Data for the classification of crypto-asset white papers

1. The data necessary for the classification of crypto-asset white papers is set out the Annex.
2. The data set out in the Annex shall be provided in a common format in accordance with the ISO 20022 standard.

⁴ Commission Implementing Regulation (EU) 2024/XXX laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regards to forms, formats and templates for the crypto-asset white papers (JO L, 2024/xxx, ELI: xxx) [OP please insert reference to C(2024)6900]

⁵ 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>).

3. By way of derogation from paragraph 2 of this Article, where the data set out in the Annex is included in the crypto-asset white paper referred to in Article 6, Article 19 or Article 51 of Regulation (EU) 2023/1114, the data set out in the Annex to this Regulation may be provided in the same machine-readable format in which the crypto-asset white paper was prepared in accordance with Commission Implementing Regulation (EU) 2024/xxx [C(2024)6900].

Article 2
Legal Entity Identifiers

When using the ISO 17442 Legal Entity Identifier, persons drawing up a crypto-asset white paper referred to in Articles 6, Article 19 or Article 51 of Regulation (EU) 2023/1114 shall ensure that the identifier is:

- (a) valid and issued in accordance with the terms of any of the Local Operating Units of the Global Legal Entity Identifier System;
- (b) included in the Global Legal Entity Identifier database maintained by the Central Operating Unit appointed by the Regulatory Oversight Committee.

Article 3
Identification of the crypto-asset and the related white paper

1. When the ISO 24165 Digital Token Identifier is provided, the crypto-asset white paper shall be identified with a valid identifier of type 3 pertaining to the group of crypto-assets to which the white paper relates.
2. When the ISO 24165 Digital Token Identifier is provided, the crypto-asset or crypto-assets to which the crypto-asset white paper relates shall be individually identified with a valid identifier assigned to each of the crypto-assets to which the white paper relates.
3. When the ISO 24165 Digital Token Identifier is not available, the crypto-asset white paper shall identify the crypto-assets to which the crypto-asset white paper relates, by using a digital token identifier approved by ESMA at Union level, which meets all of the following characteristics:
 - (a) unique;
 - (b) neutral;
 - (c) reliable;
 - (d) open source;
 - (e) scalable;
 - (f) accessible;
 - (g) available at a reasonable cost basis, and
 - (h) is subject to an appropriate governance framework.

Article 4
Entry into force and application

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 apply from [OP please insert same application date as the Commission Implementing Regulation on standard forms, formats and templates for the white paper].

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

Done at Brussels, 16.12.2024

For the Commission
The President
Ursula VON DER LEYEN