



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

The Director-General

Brussels, 29 November 2024
FISMA/IK/es/fisma.b.4(2024)9559575

Ms Verena Ross
Chair European Securities and
Markets Authority - ESMA
201-203 rue de Bercy
75012 Paris -France

Dear Ms Ross,

On 31 May 2024, the European Securities and Markets Authority (“ESMA”) sent to the Commission the draft Regulatory Technical Standards (“RTS”) on 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 ⁽¹⁾ (hereinafter “MiCA Regulation”). The draft RTS specifies the requirements for policies and procedures on conflicts of interest for crypto-asset service providers (‘CASP’) as mandated under Article 72(5) of Regulation (EU) 2023/1114.

With this letter I would like to inform ESMA that the Commission intends to endorse the proposed RTS once changes are introduced as set out in the annex. The reasons for these changes can be summarised as follows:

Provisions on personal transactions

- The draft RTS introduces in Articles 6 and 7 provisions on personal transactions, including their definition and the procedure to be followed by the CASP and associated persons where personal transactions involving the CASP are carried out.
- These provisions and their related recitals, do not make it clear how these personal transactions and the policies and procedures to be followed by the CASP where such transactions occur, are linked to the specification of policies and procedures applicable to conflicts of interest between the CASPs and persons specified in Article 72(1) of MiCA Regulation and as such, they appear to be outside of the applicable mandate laid down in Article 72(5) MiCA Regulation.
- To address these concerns, the Commission proposes to adopt the RTS as amended in the attached, which cover only personal transactions that are specifically linked to conflicts of interest, making this set of rules closely and clearly linked to the mandate of the RTS.

Remuneration policies, resources and arrangements with third parties

- The Commission proposes additional limited amendments to the draft RTS to make it clear that obligations specified with regards to remuneration policies and

⁽¹⁾ OJ L 150, 9.6.2023, p. 40

procedures relate to the requirements applicable in the context of policies and procedures on conflict of interest, and do not represent standalone obligations. Similarly, the proposed amendments relating to the provision on resources and arrangements with third parties, aim to clarify that these obligations are to be considered within the identification, prevention and management of conflicts of interests. Therefore, these obligations are to be considered as part of the policies and procedures on conflict of interest. This ensures that the draft RTS remains within the limits of the applicable mandate

General proportionality of compliance burden

- Finally, the Commission proposes several amendments aiming to ensure the overall proportionality of compliance requirements established by the RTS, including by specifying more narrowly the set of persons whose transactions should be monitored closely for potential conflicts of interest.

These amendments aim to ensure that, in accordance with Article 10(1) subparagraph 2 of Regulation (EU) 1095/2010, the content of RTS is delimited by the legislative act on which it is based.

In this context, it is essential to underline that the RTS shall be in conformity with the legal mandate set out in the MiCA Regulation and shall not go over the said mandate by imposing additional obligations.

In light of the above, I would like to inform you that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) 1095/2010, as amended, intends to adopt the RTS submitted by ESMA once the above-mentioned concerns are taken into account and the necessary modifications are made by ESMA.

As per Article 10(1), subparagraph 5 of Regulation (EU) 1095/2010, where the Commission intends to adopt a draft RTS in part or with amendments, it shall send the draft RTS back to the Authority, explaining the reasons for its amendments, and within a period of 6 weeks, the Authority may amend the draft RTS on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission.

It should be recalled that the procedure laid down in Article 10(1), subparagraph 6 of Regulation (EU) No 1095/2010, sets out that if, on the expiry of that six-week period, the Authority has not submitted an amended draft RTS, or has submitted a draft RTS that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the RTS with the amendments it considers relevant, or reject it.

I would like to express our appreciation for the work undertaken by ESMA to deliver the draft RTS and look forward to continuing our good cooperation on this legal act.

Yours sincerely,

Electronically signed

John BERRIGAN

Enclosure: Amended draft to the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers

c.c.: Aurore Lalucq, MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Thérèse Blanchet, Secretary-General of the Council of the European Union

