

6.5 Annex V – Draft RTS pursuant to Article 62(5) of MiCA

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

of XXX

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be included in an application for authorisation as crypto-asset service provider

(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) 2019/1937¹⁸, and in particular Article 62(5), third subparagraph, thereof,

Whereas:

- (1) The information to be provided in an application for authorisation as crypto-asset service provider should be sufficiently detailed and comprehensive to enable competent authorities to assess whether an applicant meets the applicable requirements laid down in Title V and, where relevant, Title VI of Regulation (EU) 2023/1114.
- (2) The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Regulation (EU) 2023/1114.
- (3) The application for authorisation as crypto-asset service provider should contain personal data about the identity of the applicant seeking authorisation as a crypto-asset service provider, the governance arrangements and internal control mechanisms, the suitability of the members of the management body and the sufficiently good repute of the shareholders or members with qualifying holdings. In compliance with the principle of data minimisation, such information should be necessary and sufficient to enable the competent authority to carry out a comprehensive assessment of the applicant issuer, of its ability to comply with the relevant requirements of Regulation (EU) 2023/1114, and that it does not fall into any ground of refusal of the authorisation set out in points (a) to (d) of Article 63(10) of that Regulation. When assessing the application and processing the personal data included therein, competent authorities should comply with the relevant provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁹, and the ECB, ESMA and the EBA should comply with Regulation (EU) 2018/1725.

¹⁸ OJ L 150, 9.6.2023, p. 40-205.

¹⁹ 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) (OJ L 119, 4.5.2016, p. 1).

- (4) To ensure that the competent authority's assessment is based on accurate information, it is essential that an applicant provides copies of its corporate documents, including its legal entity identifier, the articles of association, a copy of registration of the applicant in the national register of companies and, where the applicant intends to operate a trading platform, the commercial name used.
- (5) An application for authorisation as crypto-asset service provider should contain a programme of operations, describing the applicant's organisational structure, strategy in providing crypto-asset services to its targeted clients and its operational capacity for the three years following authorisation. Where describing the strategy used to target clients, the applicant should describe the marketing means that it intends to use such as, for instance, websites, mobile phone applications, face-to-face meetings, press releases, or any form of physical or electronic means, including social media campaign tools, internet advertisements or banners, retargeting of advertising, agreements with influencers, sponsorships agreements, calls, webinars, any invitation to an event, affiliation campaign, gamification techniques, invitation to fill in a response form or to follow a training course, demo accounts or educational materials.
- (6) The competent authority should be able to assess the applicant's resilience to withstand external financial shocks, including those concerning the value of crypto-assets. Therefore, the applicant should include stress scenarios simulating severe but plausible events in its forecast calculations and plans to determine its own funds.
- (7) Clients are exposed to potential risks related to the crypto-asset service providers. In order to enable competent authorities to assess whether applicants meet the requirements set out in Article 67 Regulation (EU) 2023/1114 to protect clients against such risks, an application should contain an obligatory set of information describing the applicant's prudential safeguards.
- (8) To ensure that crypto-asset service providers comply with their obligations in accordance with Regulation (EU) 2023/1114, applicants should demonstrate that they have adequate and robust governance arrangements and internal control mechanisms, as such arrangements and mechanisms are essential to the sound and prudent management of crypto-asset service providers.
- (9) In the financial services system, time is often of the essence. It is thus critical to maintain operations or at least essential functions and to minimise downtime due to unexpected disruptions (such as cyberattacks, natural disasters) to avoid outages as they can have major financial, regulatory and reputational consequences for the crypto-asset service provider and crypto-assets markets more generally. An application should thus contain detailed information on the applicant's arrangements to ensure continuity and regularity in the performance of its crypto-asset services, including a detailed description of its business continuity and disaster recovery plans.
- (10) Effective mechanisms, systems and policies and procedures in compliance with Directive (EU) 2015/849 of the European Parliament and of the Council²⁰ are crucial to ensure that applicants appropriately address risks and practices of money laundering and terrorist

²⁰ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

financing in the provision of crypto-asset services. Thus, applicants should provide detailed information on their mechanisms, systems and policies and procedures on how they prevent, inter alia, anti-money laundering and counter-terrorist financing risks associated with their business activities.

- (11) As one of the requirements to ensure that the crypto-asset service provider will act fairly and honestly, it is necessary that applicants provide the information and documents to prove that the members of the management body are of sufficiently good repute and have sufficient knowledge, skills and experience. Notably, the applicant should provide the competent authorities with all information about past criminal convictions and with information on pending criminal investigations, civil and administrative cases, penalties, enforcement actions and other adjudicatory proceedings of the members of the management body relating to commercial law, insolvency law, anti-money laundering, counter-terrorist financing, fraud, professional liability. In order to provide competent authorities with adequate information on the reputation of the members of the management body, the information should be provided for those cases directly concerning the member or concerning an organisation of which the member held a position as member of the management body, shareholder or member with qualifying holdings or a key function holder. To ensure that competent authorities receive sufficient information on refusals or withdrawals of, inter alia, registrations, authorisations or memberships related to the applicant's provision of crypto-asset services, the applicant should provide such information about any member of the management body. Additionally, applicants should provide, for each member of the management body, relevant information to enable competent authorities to assess their professional experience, knowledge and skills in the scope of the position sought and a description of all financial and non-financial interests of the members of the management body that could create potential material conflicts of interest significantly affecting the members' perceived trustworthiness in the performance of their mandate.
- (12) In respect of the requirement of good repute of shareholders and members directly or indirectly holding qualifying holdings in the applicant, the application should contain all information about past convictions and pending criminal investigations, civil and administrative cases and other adjudicatory proceedings as well as relevant information relating to the certainty and legitimate origin of the funds used to set-up the applicant and finance its business so to enable the assessment of any attempt or suspicion of money laundering or terrorist financing.
- (13) Due to the decentralised and digital nature of crypto-assets, cybersecurity risks for crypto-asset service providers are significant and take many forms. To ensure that applicants are able to prevent data breaches and financial losses that may be caused by cyberattacks, competent authorities should be provided with information on the applicants' deployed ICT systems and related security arrangements, including the human resources dedicated to addressing cybersecurity risks.
- (14) The segregation of client crypto-assets and funds is an important part of the regime regulating crypto-asset services as it protects clients from losses of the crypto-asset service provider and from misuse of their crypto-assets and funds. Crypto-asset service providers are therefore subject to an obligation to make adequate arrangements to safeguard clients' ownership rights. This requirement also applies to crypto-asset service providers which do not provide custody and administration services.

- (15) To allow national competent authorities to assess the adequacy of the applicant's operating rules of trading platforms for crypto-assets, specific elements should be detailed in their description. In particular, the applicant should elaborate aspects of the operating rules relating to the admission to trading of crypto-assets, the trading and the settlement of crypto-assets. Relating to the admission to trading, applicants should provide detailed information on rules governing the admission of crypto-assets to trading, the way in which the admitted crypto-assets comply with the applicant's rules, the types of crypto-assets that the applicant will not admit to its platform and the reasons for these exclusions and fees applicable to the admission to trading. As for the trading of crypto-assets, the applicant should further specify in the description of the operating rules, the elements of those rules which govern the execution and cancelation of orders, elements which aim at ensuring orderly trading and transparency and record-keeping rules. Finally, the applicant should include in the description of the operating rules the elements governing the settlement of transactions of crypto-assets concluded on the trading platform, including whether the settlement of transactions is initiated in the Distributed Ledger Technology (DLT), the timeframe in which the execution is initiated, the definition of the moment at which the settlement is final, all verifications required to ensure the effective settlement of the transaction and any measure in place to limit settlement failures.
- (16) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission, as developed in close cooperation with the European Banking Authority (EBA).
- (17) 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 Council²¹,

HAS ADOPTED THIS REGULATION:

Article 1

General information

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority an application that includes all of the following information:

- (a) the legal name, phone number and email of the applicant;

²¹ 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).

- (b) any commercial or trading name used or to be used by the applicant;
- (c) the legal entity identifier (LEI) of the applicant;
- (d) the full name, function, email address and telephone number of the designated contact point or person;
- (e) the legal form of the applicant (including information on whether it will be a legal person or other undertaking) and, where available, its national identification number as well as evidence of its registration with the national register of companies;
- (f) date and Member State of the applicant's incorporation or foundation;
- (g) where applicable, the instruments of constitution, the articles of association and by-laws;
- (h) the address of the head office and, if different, of the registered office of the applicant;
- (i) information on where the branches will operate, if any, and their legal entity identifiers (LEI), if available;
- (j) the domain name of each website operated by the applicant and the social media accounts of that applicant;
- (k) where the applicant is not a legal person, documentation to assess whether the level of protection ensured to third parties interests and the rights of the holders of crypto-assets, including in case of insolvency, is equivalent to that afforded by legal persons and that the applicant is subject to equivalent prudential supervision appropriate to their legal form,
- (l) where the applicant intends to operate a trading platform for crypto-assets:
 - (i) the physical address, phone number and email of the trading platform for crypto-assets;
 - (ii) any commercial name of the trading platform for crypto-assets.

Article 2

Programme of operations

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority the programme of operations for the following three years, including all of the following information:

- (a) where the applicant belongs to a group, an explanation of how the activities of the applicant will fit within the group strategy and interact with the activities of the other entities of the

group, including an overview of the current and planned organisation and structure of the group;

- (b) an explanation of how the activities of the entities affiliated with the applicant, including where there are regulated entities in the group, is expected to impact the activities of the applicant. This explanation shall include a list of and information on the entities affiliated with the applicant, including where there are regulated entities, the services provided by these entities (including regulated services, activities and types of clients) and the domain names of each website operated by such entities;
- (c) a list of crypto-asset services that the applicant intends to provide as well as the types of crypto-assets to which the crypto-asset services will relate;
- (d) other planned activities, regulated in accordance with Union or national law or unregulated, including any services, other than crypto-asset services, that the applicant intends to provide;
- (e) whether the applicant intends to offer crypto-assets to the public or seek admission to trading of crypto-assets and if so, of what type of crypto-assets;
- (f) a list of jurisdictions, in and outside the European Union, in which the applicant plans to provide crypto-asset services, including information on the domicile of targeted clients and the targeted number by geographical area;
- (g) types of prospective clients targeted by the applicant's services;
- (h) a description of the means of access to the applicant's crypto-asset services by clients, including all of the following :
 - (i) the domain names for each website or other ICT-based application through which the crypto-asset services will be provided by the applicant and information on the languages in which the website will be available, the types of crypto-asset services that will be accessed through it and, where applicable, from which Member States the website will be accessible;
 - (ii) the name of any ICT-based application available to clients to access the crypto-asset services, in which languages it is available and which crypto-asset services can be accessed through it;
- (i) the planned marketing and promotional activities and arrangements for the crypto-asset services, including:

- (i) all means of marketing to be used for each of the services, the means of identification that the applicant intends to use and information on the relevant category of clients targeted and types of crypto-assets;
- (ii) languages that will be used for the marketing and promotional activities;
- (j) a detailed description of the human, financial and ICT resources allocated to the intended crypto-asset services as well as their geographical location;
- (k) the applicant's outsourcing policy and a detailed description of the applicant's planned outsourcing arrangements, including intra-group arrangements, how the applicant intends to comply with the requirements set out in Article 73 of Regulation (EU) 2023/1114. The applicant shall also include information on the functions or person responsible for outsourcing, the resources (human and ICT) allocated to the control of the outsourced functions, services or activities of the related arrangements and on the risk assessment related to the outsourcing;
- (l) the list of entities that will provide outsourced services, their geographical location and the relevant services outsourced;
- (m) a forecast accounting plan including stress scenarios at an individual and, where applicable, at consolidated group and sub-consolidated level in accordance with Directive 2013/34/EU. The financial forecast shall consider any intra-group loans granted or to be granted by and to the applicant;
- (n) any exchange of crypto-assets for funds and other crypto-asset activities that the applicant intends to undertake, including through any decentralised finance applications with which the applicant wishes to interact on its own account.

2. Where the applicant intends to provide the service of reception and transmission of orders for crypto-assets on behalf of clients, it shall provide to the competent authority a copy of the policies and procedures and a description of the arrangements ensuring compliance with the requirements set out in Article 80 of Regulation (EU) 2023/1114.

3. Where the applicant intends to provide the service of placing of crypto-assets, it shall provide to the competent authority a copy of the policies and procedures and a description of the arrangements in place to comply with Article 79 of Regulation (EU) 2023/1114 as well as Article 9 of [RTS on conflicts of interest of CASPs].

Article 3

Prudential requirements

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority all of the following information:

- (a) a description of the applicant's prudential safeguards in accordance with Article 67 of Regulation (EU) 2023/1114, consisting of:
 - (i) the amount of the prudential safeguards that the applicant has in place at the time of the application for authorisation and the description of the assumptions used for its determination;
 - (ii) the amount of the prudential safeguards covered by own funds referred to in Article 67(4), point (a), of Regulation (EU) 2023/1114, where applicable;
 - (iii) the amount of the applicant's prudential safeguards covered by an insurance policy referred to in Article 67(4), point (b), of Regulation (EU) 2023/1114, where applicable;
- (b) forecast calculations and plans to determine own funds, including:
 - (i) forecast calculation of the applicant's prudential safeguards for the first three business years;
 - (ii) planning assumptions including stress scenarios for the above forecast as well as explanations of the figures;
 - (iii) expected number and type of clients, volume of orders and transactions and expected maximum amount of crypto-assets under custody;
- (c) for companies that are already active, the financial statements of the last three years approved, where audited, by the external auditor;
- (d) a description of the applicant's prudential safeguards planning and monitoring policies and procedures;
- (e) proof that the applicant meets the prudential safeguards in accordance with Article 67 of Regulation (EU) 2023/1114, including:
 - (i) in relation to own funds:
 - documentation on how the applicant has calculated the amount in accordance with Article 67 of Regulation (EU) 2023/1114;

- for companies that are already active and whose financial statements are not audited, a certification by the national supervisor of the amount of own funds of the applicant;
 - for undertakings in the process of being incorporated, a statement issued by a bank certifying that the funds are deposited in the applicant's bank account;
- (ii) in relation to the insurance policy or comparable guarantee:
- the legal name, the date and Member State of incorporation or foundation, the address of the head office and, if different, of the registered office and contact details of the undertaking authorised to provide the insurance policy or comparable guarantee;
 - a copy of the subscribed insurance policy incorporating all the elements necessary to comply with Article 67(5) and (6) of Regulation (EU) 2023/1114, where available, or
 - a copy of the insurance agreement incorporating all the elements necessary to comply with Article 67(5) and (6) of Regulation (EU) 2023/1114 signed by an undertaking authorised to provide insurance in accordance with Union law or national law.

Article 4

Information about governance arrangements and internal control mechanisms

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority the following information on its governance arrangements and internal control mechanisms:

- (a) a detailed description of the organisational structure of the applicant, where relevant encompassing the group, including the indication of the distribution of the tasks and powers and the relevant reporting lines and the internal control arrangements implemented together with an organisational chart;
- (b) the personal details of the heads of internal functions (management, supervisory and internal control functions), including their location and a curriculum vitae, stating relevant education, and professional training and professional experience and a description of the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

- (c) the policies and procedures and a detailed description of the arrangements put in place to ensure that relevant staff are aware of the policies and procedures which must be followed for the proper discharge of their responsibilities;
- (d) the policies and procedures and a detailed description of the arrangements put in place to maintain adequate and orderly records of the business and internal organisation of the applicant in accordance with Article 68(9) of Regulation (EU) 2023/1114;
- (e) the policies and procedures and arrangements to enable the management body to assess and periodically review the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114 in accordance with Article 68(6) of the same Regulation including all of the following:
 - (i) identification of the internal control functions in charge of monitoring the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, together with the scope of their responsibility and reporting lines to the management body of the applicant;
 - (ii) indication of the periodicity of internal control functions reporting to the management body of the applicant on the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114;
 - (iii) explanation of how the applicant ensures that the internal control functions operate independently and separately from the functions they control, have access to the necessary resources and information, and that those internal control functions can report directly to the management body of the applicant both at least once a year and on an ad hoc basis including where they detect a significant risk of failure for the applicant to comply with its obligations;
 - (iv) a description of the ICT systems, safeguards and controls put in place to monitor the activities of the applicant and ensure compliance with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, including back-up systems, and ICT systems and risk controls, where not provided in accordance with Article 9 of this Regulation;
- (b) the policies and procedures and a detailed description of the arrangements established by the applicant to ensure compliance with its obligations under Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, including;
 - (i) the applicant's record keeping arrangements in accordance with [*RTS on record-keeping by crypto-asset services providers*];
 - (ii) a detailed description of the procedures for the applicant's employees to report potential or actual infringements of Regulation (EU) 2023/1114 in accordance with Article 116 of Regulation (EU) 2023/1114;

- (c) where relevant, a description of the arrangements put in place to prevent and detect market abuse in accordance with Article 92 of Regulation (EU) 2023/1114;
- (d) whether the applicant has appointed or will appoint external auditors and, if that is the case, their name and contact details, when available;
- (e) the accounting policies and procedures by which the applicant will record and report its financial information, including the start and end dates of the applied accounting year.

2. As part of the information on policies and procedures established to ensure compliance with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, applicants shall provide to the competent authority all of the following information on the management of risks relating to conflicts of interests:

- (a) a copy of the applicant's conflicts of interest policy, together with a description of how the policy:
 - (i) ensures that the applicant identifies and prevents or manages conflicts of interests in accordance with Article 72(1) of Regulation (EU) 2023/1114 and discloses conflicts of interest in accordance with Article 72(2) of Regulation (EU) 2023/1114;
 - (ii) is commensurate to the scale, nature and range of crypto-asset services that the applicant intends to provide and of the other activities of the group to which it belongs;
 - (iii) ensures that the remuneration policies and procedures and arrangements do not create conflicts of interest;
- (b) how the applicant's conflicts of interest policy ensures compliance with Article 4(9) of [*RTS on conflicts of interest of CASPs*], including information on the systems and arrangements put in place by the applicant to:
 - (i) monitor, assess, review the effectiveness of its conflicts of interests policy and remedy any deficiencies;
 - (ii) record cases of conflicts of interests, including the identification, assessment, remedy and whether the case was disclosed to the client.

Article 5

Business continuity

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall submit to the competent authority a detailed

description of the applicant's business continuity plan, including which steps shall be taken to ensure continuity and regularity in the performance of the applicant's crypto-asset services.

2. The description shall include details showing that the established business continuity plan is appropriate and that arrangements are set up to maintain and periodically test it. The description shall explain, with regard to critical or important functions supported by third-party service providers, how business continuity is ensured in the event that the quality of the provision of such functions deteriorates to an unacceptable level or fails. The description shall also explain how business continuity is ensured in the event of the death of a key person and, where relevant, political risks in the service provider's jurisdiction.

Article 6

Detection and prevention of money laundering and terrorist financing

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with information on its internal control mechanisms and policies and procedures to ensure compliance with the provisions of national law transposing Directive (EU) 2015/849 and with information on the risk assessment framework to manage risks relating to money laundering and terrorist financing, including all of the following:

- (a) the applicant's assessment of the inherent and residual risks of money laundering and terrorist financing associated with its business, including the risks relating to the applicant's customer base, to the services provided, to the distribution channels used and to the geographical areas of operation;
- (b) the measures that the applicant has or will put in place to prevent the identified risks and comply with applicable anti-money laundering and counter-terrorist financing requirements, including the applicant's risk assessment process, the policies and procedures to comply with customer due diligence requirements, and the policies and procedures to detect and report suspicious transactions or activities;
- (c) detailed information on how such mechanisms, systems and procedures are adequate and proportionate to the scale, nature, inherent money laundering and terrorist financing risk, range of crypto-asset services provided, the complexity of the business model and how they ensure the applicant's compliance with Directive (EU) 2015/849 and Regulation (EU) 2023/1113;
- (d) the identity of the person in charge of ensuring the applicant's compliance with anti-money laundering and counter-terrorist financing obligations, and evidence of the person's skills and expertise;

- (e) arrangements, human and financial resources devoted to ensure that staff of the applicant is appropriately trained in anti-money laundering and counter-terrorist financing matters (annual indications) and on specific crypto-asset related risks;
- (f) a copy of the applicant's anti-money laundering and counter-terrorism policies and procedures, and systems;
- (g) the frequency of the assessment of the adequacy and effectiveness of such mechanisms, systems and policies and procedures as well as the person or function responsible for such assessment.

Article 7

Identity and proof of good repute, knowledge, skills, experience and of sufficient time commitment of the members of the management body

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with all of the following information for each member of the management body:

- (a) the full name and, where different, name at birth;
- (b) the place and date of birth, address and contact details of the current place of residence and of any other place of residence in the past ten years, nationalit(y/ies), personal national identification number and copy of an official identity document or equivalent;
- (c) details of the position held or to be held by the person, including whether the position is executive or non-executive, the start date or planned start date and, where applicable, the duration of mandate, and a description of the person's key duties and responsibilities;
- (d) a curriculum vitae stating relevant education, professional training and professional experience with the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought, including professional experience relevant to financial services, crypto-assets, or other digital assets, distributed ledger technology, information technology, cybersecurity, or digital innovation; for positions held in the previous 10 years. When describing the aforementioned activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;
- (e) documentation relating to the person's reputation and experience, in particular a list of reference persons including contact information and letters of recommendation;
- (f) personal history, including all of the following:

- (i) criminal records, including criminal convictions and any ancillary penalties and information on pending criminal proceedings or investigations or penalties (including relating to commercial law, financial services law, money laundering, and terrorist financing, fraud or professional liability), information on enforcement proceedings or sanctions, information on relevant civil and administrative cases and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document or, where such certificate does not exist. For ongoing investigations, the information may be provided through a declaration of honour. Official records, certificates and documents shall have been issued within three months before the submission of application for an authorisation;
 - (ii) information on any refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence to carry out a trade, business or profession; or any expulsion by a regulatory or government body or by a professional body or association;
 - (iii) information on dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
 - (iv) information on whether another competent authority has assessed the reputation of the individual, including the identity of that authority, the date of the assessment and information about the outcome of that assessment. The applicant shall not need to submit such information about the previous assessment where the competent authority is already in possession of such information;
- (g) a description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders. Such description shall include any financial interests, including crypto-assets, other digital assets, loans, shareholdings, guarantees or security interests, whether granted or received, commercial relationships, legal proceedings and whether the person was a politically exposed person as defined in point (9) of article 3 of Directive (EU) 2015/849 over the past two years.
- (h) where a material conflict of interest is identified, a statement of how that conflict will be satisfactorily mitigated or remedied, including a reference to the outline of the conflicts of interest policy;
- (i) information on the time that will be devoted to the performance of the person's functions within the applicant, including all of the following:

- (i) the estimated minimum time, per year and per month, that the individual will devote to the performance of his or her functions within the applicant;
- (ii) a list of the other executive and non-executive directorships that the person holds, referring to commercial and non-commercial activities or set up for the sole purposes of managing the economic interests of the person concerned;
- (iii) information on the size and complexity of the companies or organisations where the mandates referred to in point (ii) are held, including total assets, based on the last available annual accounts whether or not the company is listed and the number of employees of those companies or organisations;
- (iv) a list of any additional responsibilities associated with the mandates referred to in point (ii), including chairing a committee;
- (v) the estimated time in days per year dedicated to each of the other mandates referred to in point (ii) and the number of meetings per year dedicated to each mandate.

2. For the purposes of paragraph 1, points (f)(i) and (ii), the applicant shall provide the information through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document, where such certificate does not exist. Official records, certificates and documents shall have been issued within three months before the submission of application for an authorisation. For ongoing investigations, the information may be provided through a declaration of honour.

3. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with the suitability policy and the results of any suitability assessment of each member of the management body performed by the applicant, and the results of the assessment of the collective suitability of the management body, including the relevant board minutes or suitability assessment report or documents on the outcome of the suitability assessment.

Article 8

Information relating to shareholders or members with qualifying holdings

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with all of the following information:

- (a) a detailed organigram of the holding structure of the applicant, including the breakdown of its capital and voting rights and the names of the shareholders or members with qualifying holdings;

- (b) for each shareholder or member holding a direct or indirect qualifying holding in the applicant, the information and documents set out in Articles 1 to 4 of the *[RTS specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding]* as applicable;
- (c) the identity of each member of the management body who will direct the business of the applicant and will have been appointed by, or following a nomination from, such shareholder or member with qualifying holdings;
- (d) for each shareholder or member holding a direct or indirect qualifying holding, information on the number and type of shares or other holdings subscribed, their nominal value, any premium paid or to be paid, any security interests or encumbrances, including the identity of the secured parties.
- (e) information referred to in Article 6, points (b), (d) and (e) and in Article 8 of the *[RTS specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding]*.

Article 9

ICT systems and related security arrangements

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority all of the following information:

- (a) technical documentation of the ICT systems, on DLT infrastructure relied upon, where relevant, and on the security arrangements. The applicant shall include a description of the arrangements and deployed ICT and human resources established to ensure that the applicant complies with Regulation (EU) 2022/2554, including, but not limited to:
 - (i) a sound, comprehensive and well-documented ICT risk management framework as part of its overall risk management system, including a detailed description of ICT systems, protocols and tools and of how the applicant's procedures, policies and systems to safeguard the security, integrity, availability, authenticity and confidentiality of data in accordance with Regulation (EU) 2022/2554 and Regulation (EU) 2016/679;
 - (ii) an identification of ICT services supporting critical or important functions, developed or maintained by the applicant, as well as those provided by third-party service providers, a description of such contractual arrangements (identity and geographical location of the providers, description of the outsourced activities or ICT services with their main characteristics, copy of contractual agreements) and how they comply with

Article 73 of Regulation (EU) 2023/1114 and the Chapter V of Regulation (EU) 2022/2554;

- (iii) a description of the applicant's procedures, policies, arrangements and systems for security and incident management;
- (b) a cybersecurity audit realized by a third-party cybersecurity auditor having sufficient experience in accordance with [DORA TLPT RTS detailing the minimum requirements on capabilities which are described in DORA Level 1 Article 27] covering: the following audits or tests performed by external independent parties:
 - (i) organisational cybersecurity, physical security and secure software development lifecycle arrangements;
 - (ii) vulnerability assessments and scans, network security assessments;
 - (iii) configuration reviews of ICT assets supporting critical and important functions as defined in Article 3(22) of Regulation (EU) 2022/2554;
 - (iv) penetration tests on the ICT assets supporting critical and important functions as defined in Article 3(22) of Regulation (EU) 2022/2554, in accordance with all the following audit test approaches:
 - black box: the auditor has no information other than the IP addresses and URLs associated with the audited target. This phase is generally preceded by the discovery of information and the identification of the target by querying domain name system (DNS) services, scanning open ports, discovering the presence of filtering equipment, etc.;
 - grey box phase: auditors have the knowledge of a standard user of the information system (legitimate authentication, "standard" workstation, etc.). The identifiers can belong to different user profiles in order to test different privilege levels;
 - white box phase: auditors have as much technical information as possible (architecture, source code, telephone contacts, identifiers, etc.) before starting the analysis. They also have access to technical contacts related to the target.
 - (v) if the applicant uses and/or develops smart-contracts, a cybersecurity source code review of them.
- (c) a description of conducted audits of the ICT systems including used DLT infrastructure and security arrangements;

- (d) a description of the relevant information set out in subparagraphs a) and b) in non-technical language of the information provided under points a) and b).

Article 10

Segregation of clients' crypto-assets and funds

1. Where the applicant intends to hold crypto-assets belonging to clients or the means of access to such crypto-assets, or clients' funds (other than e-money tokens), the applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority a detailed description of its policies and procedures for the segregation of clients' crypto-assets and funds, including all of the following:

- (a) how the applicant ensures that
- (i) clients' funds are not used for its own account;
 - (ii) crypto-assets belonging to the clients are not used for its own account;
 - (iii) the wallets holding clients' crypto-assets are different from the applicant's own wallets;
- (b) a detailed description of the approval system for cryptographic keys and safeguarding of cryptographic keys (for instance, multi-signature wallets);
- (c) how the applicant segregates clients' crypto-assets, including from other clients' crypto-assets in the event of wallets containing crypto-assets of more than one client (omnibus accounts);
- (d) a description of the procedure to ensure that clients' funds (other than e-money tokens) are deposited with a central bank or a credit institution by the end of the business day following the day on which they were received and are held in an account separately identifiable from any accounts used to hold funds belonging to the applicant;
- (e) where the applicant does not intend to deposit funds with the relevant central bank, which factors the applicant is taking into account to select the credit institutions to deposit clients' funds, including the applicant's diversification policy, where available, and the frequency of review of the selection of credit institutions to deposit clients' funds;
- (f) how the applicant ensures that clients are informed in clear, concise and non-technical language about the key aspects of the applicant's systems and policies and procedures to comply with Article 70(1), (2) and (3) of Regulation (EU) 2023/1114.

2. In accordance with Article 70(5) of Regulation (EU) 2023/1114, crypto-asset service providers that are electronic money institutions or payment institutions shall only provide the information listed in paragraph 1 above in relation to the segregation of clients' crypto-assets.

Article 11

Complaints-handling

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority a detailed description of the applicant's complaints handling policies and procedures, including all of the following:

- (a) information on the human and technical resources allocated to complaints handling;
- (b) information on the person in charge of the resources dedicated to the management of complaints, together with a curriculum vitae stating relevant education, professional training and professional experience justifying the skills, knowledge and expertise for the discharge of the responsibilities allocated to him or her;
- (c) how the applicant ensures compliance with the requirements set out in Article 1 of [*RTS on complaints handling by CASPs*];
- (d) how the applicant will inform clients or potential clients of the possibility to file a complaint free of charge, including where and how on the applicant's website, or on any other relevant digital device that may be used by clients to access the crypto-asset services, is the information available as well as what information is provided;
- (e) the applicant's record-keeping arrangements in relation to complaints;
- (f) the timeline provided in the complaints-handling policies and procedures of the applicant to investigate, respond and, where appropriate, take measures in response to complaints received;
- (g) how the applicant will inform clients or potential clients of the available remedies;
- (h) the procedural key steps of the applicant in making a decision on a complaint and how the applicant will communicate this decision to the client or potential client who filed the complaint.

Article 12

Custody and administration policy

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of custody and administration of crypto-assets on behalf of clients shall provide to the competent authority all of the following information:

- (a) a description of the arrangements linked to the type or types of custody offered to clients, a copy of the applicant's standard agreement for the custody and administration of crypto-assets on behalf of clients as well as a copy of the summary of the custody policy made available to clients in accordance with Article 75(3) of Regulation (EU) 2023/1114;
- (b) the applicant's custody and administration policy, including a description of identified sources of operational and ICT risks for the safekeeping and control of the crypto-assets or the means of access to the crypto-assets of clients, together with:
 - (i) the policies and procedures, and a description of, the arrangements to ensure compliance with Article 75(8) of Regulation (EU) 2023/1114;
 - (ii) the policies and procedures, and a description of the systems and controls, to manage those risks, including when the custody and administration of crypto-assets on behalf of clients is outsourced to a third party;
 - (iii) the policies and procedures relating to, and a description of, the systems to ensure the exercise of the rights attached to the crypto-assets by the clients;
 - (iv) the policies and procedures relating to, and a description of, the systems to ensure the return of crypto-assets or the means of access to the clients;
- (c) information on how the crypto-assets and the means of access to the crypto-assets of the clients are identified;
- (d) information on arrangements to minimise the risk of loss of crypto-assets or of means of access to crypto-assets;
- (e) where the crypto-asset service provider has delegated the provision of custody and administration of crypto-assets on behalf of clients to a third-party:
 - (i) information on the identity of any third-party providing the service of custody and administration of crypto-assets and its status in accordance with Article 59 or Article 60 of Regulation (EU) 2023/1114;

- (ii) a description of any functions relating to the custody and administration of crypto-assets delegated by the crypto-asset service provider, the list of any delegates and sub-delegates (as applicable) and any conflicts of interest that may arise from such a delegation.
- (iii) a description of how the applicant intends to supervise the delegations or sub-delegations.

Article 13

Operating rules of the trading platform and market abuse detection

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to operate a trading platform for crypto-assets shall provide to the competent authority a description of all of the following:

- (a) rules regarding the admission of crypto-assets to trading;
- (b) the approval process for admitting crypto-assets to trading, including the customer due diligence carried out in accordance with Directive (EU) 2015/849;
- (c) the list of any categories of crypto-assets that will not be admitted to trading and the description of the reasons for such exclusion;
- (d) the policies and procedures and fees for the admission to trading, together with a description, where relevant, of membership, rebates and the related conditions;
- (e) the rules governing order execution, including any cancellation procedures for executed orders and for disclosing such information to market participants;
- (f) the policies and procedures adopted to assess the suitability of crypto-assets in accordance with Article 76(2) of Regulation (EU) 2023/1114;
- (g) the systems, procedures and arrangement put in place to comply with Article 76(7) points (a) to (h) of Regulation (EU) 2023/1114;
- (h) the systems, procedures and arrangements to make public any bid and ask prices, the depth of trading interests at those prices which are advertised for crypto-assets through their trading platforms and price, volume and time of transactions executed in respect of crypto-assets traded on their trading platforms;
- (i) the fee structures and a justification of how they comply with the requirements laid down in Article 76(13) of Regulation (EU) 2023/1114;

- (j) the systems, procedures and arrangement to keep data relating to all orders at the disposal of the competent authority or the mechanism to ensure that the competent authority has access to the order book and any other trading system;
- (k) with regards to the settlement of transactions:
 - (i) whether the final settlement of transactions is initiated on the distributed ledger or outside the distributed ledger;
 - (ii) the timeframe within which the final settlement of crypto-asset transactions is initiated;
 - (iii) the systems and procedures to verify the availability of funds and crypto-assets;
 - (iv) the procedures to confirm the relevant details of transactions;
 - (v) the measures foreseen to limit settlement fails;
 - (vi) the definition of the moment at which settlement is final and the moment at which final settlement is initiated following the execution of the transaction;
- (l) the policies and procedures and systems to detect and prevent market abuse, including information on the communications to the competent authority of possible market abuse cases.

2. Applicants intending to operate a trading platform for crypto-assets shall provide to the competent authority a copy of the operating rules of the trading platform and of any policies and procedures to detect and prevent market abuse.

Article 14

Exchange of crypto-assets for funds or other crypto-assets

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of exchange of crypto-assets for funds or other crypto-assets shall provide to the competent authority all of the following information:

- (a) a description of the commercial policy established in accordance with Article 77(1) of Regulation (EU) 2023/1114;
- (b) the methodology for determining the price of the crypto-assets that the applicant proposes to exchange for funds or other crypto-assets in accordance with Article 77(2) of Regulation (EU) 2023/1114, including how the volume and market volatility of crypto-assets impact the pricing mechanism.

Article 15

Execution policy

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of executing orders for crypto-assets on behalf of clients shall provide to the competent authority its execution policy, including all of the following:

- (a) the arrangements to ensure the client has provided consent on the execution policy prior to the execution of the order;
- (b) a list of the trading platforms for crypto-assets on which the applicant will rely for the execution of orders and the criteria for the assessment of execution venues included in the execution policy in accordance with Article 78(6) of Regulation (EU) 2023/1114;
- (c) which trading platforms it intends to use for each type of crypto-assets and confirmation that it will not receive any form of remuneration, discount or non-monetary benefit in return for routing orders received to a particular trading platform for crypto-assets;
- (d) how the execution factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other relevant factors are considered as part of all necessary steps to obtain the best possible result for the client;
- (e) where applicable, the arrangements for informing clients that the applicant will execute orders outside a trading platform and how the applicant will obtain the prior express client consent before executing such orders;
- (f) how the client is warned that any specific instructions from a client may prevent the applicant from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;
- (g) the selection process for trading venues, execution strategies employed, the procedures and processes used to analyse the quality of execution obtained and how the applicant monitors and verifies that the best possible results were obtained for clients;
- (h) the arrangements to prevent the misuse of any information relating to clients' orders by the employees of the applicant;
- (i) the arrangements and procedures for how the applicant will disclose to clients information on its order execution policy and notify them of any material changes to their order execution policy;

- (j) the arrangements to demonstrate compliance with Article 78 of Regulation (EU) 2023/1114 to the competent authority, upon the request of the authority.

Article 16

Provision of advice or portfolio management on crypto-assets

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide advice on crypto-assets or portfolio management of crypto-assets shall provide to the competent authority all of the following information:

- (a) the policies and procedures and a detailed description of the arrangements put in place by the applicant to ensure compliance with Article 81(7) of Regulation (EU) 2023/1114. This information shall include details on:
 - (i) the mechanisms to control, assess and maintain effectively the knowledge and competence of the natural persons providing advice or portfolio management on crypto-assets;
 - (ii) the arrangements to ensure that natural persons involved in the provision of advice or portfolio management are aware of, understand and apply the applicant's internal policies and procedures designed to ensure compliance with Regulation (EU) 2023/1114, especially Article 81(1) of Regulation (EU) 2023/1114 and anti-money laundering and anti-terrorist financing obligations in accordance with Directive (EU) 2015/849;
 - (iii) the amount of human and financial resources planned to be devoted on a yearly basis by the applicant to the professional development and training of the staff providing advice or portfolio management on crypto-assets;
- (b) the arrangements adopted by the applicant to ensure that the natural persons giving advice on behalf of the applicant have the necessary knowledge and expertise to conduct the suitability assessment referred to in Article 81(1) of Regulation (EU) 2023/1114.

Article 17

Transfer services

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide transfer services for crypto-assets on behalf of clients shall provide to the competent authority all of the following information:

- (a) details on the types of crypto-assets for which the applicant intends to provide transfer services;
- (b) the policies and procedures and a detailed description of the arrangements put in place by the applicant to ensure compliance with Article 82 of Regulation (EU) 2023/1114, including detailed information on the applicant's arrangements and deployed ICT and human resources to address risks promptly, efficiently and thoroughly during the provision of transfer services for crypto-assets on behalf of clients, considering potential operational failures and cybersecurity risks;
- (c) if any, a description of the applicant's insurance policy, including on the insurance's coverage of detriment to client's crypto-assets that may result from cyber security risks;
- (d) arrangements to ensure that clients are adequately informed about the policies and procedures and arrangements referred to in point (b).

Article 18

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President]