



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 May 2024

on crypto-asset service providers' accounts at a central bank

(CON/2024/17)

Introduction and legal basis

On 12 April 2024 the European Central Bank (ECB) received a request from the Ministry of Finance of the Republic of Latvia for an opinion on a draft law on crypto-asset services (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and Article 2(1), third, fifth and sixth indents of Council Decision 98/415/EC¹, as the draft law relates to Latvijas Banka, payment and settlement systems and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

- 1.1 The aim of the draft law is to establish a legal framework for the operation of the crypto-assets market in Latvia by regulating persons and firms involved in the issuance, public offering and admission to trading of crypto-assets or providing post-issuance crypto-asset services. The draft law follows up on the provisions of Regulation (EU) 2023/1114 of the European Parliament and of the Council² and also seeks to ensure compliance with the requirements of Recommendation No 15 of the Financial Action Task Force³ (FATF).
- 1.2 The subjects to be covered by the draft law would include new crypto-asset market participants planning to commence their activities from 30 June 2024 or 30 December 2024, as well as existing financial market participants that have already obtained a licence or authorisation issued by Latvijas Banka to provide certain types of financial services. Crypto-asset service providers that have already started their activities before 30 December 2024, and whose activities are currently supervised by the State Revenue Service, would also be subject to the requirements of the draft law if they receive an authorisation issued by Latvijas Banka to provide crypto-asset services.

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² 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).

³ Available on FATF's website at www.fatf-gafi.org.

- 1.3 The draft law designates Latvijas Banka as the competent supervisory authority in Latvia⁴. In this capacity, Latvijas Banka would issue authorisations to the subjects of the draft law and would be entitled to impose appropriate supervisory and administrative measures, as well as sanctions, in accordance with national law, for infringements of the requirements laid down in Regulation (EU) No 2023/1114.
- 1.4 The draft law provides that, in order to comply with Article 70(3) of Regulation (EU) No 2023/1114, a crypto-asset service provider has the right to open an account with Latvijas Banka for the purposes of safeguarding clients' funds, by concluding an account service agreement with Latvijas Banka, and thus confers a new task on Latvijas Banka. The explanatory memorandum and the consultation letter explicitly state that the provisions of the account service agreement will be developed in accordance with the Eurosystem's common policy on the servicing of such accounts at the national central bank (NCB). The consulting authority has specifically requested the ECB to opine on the right of crypto-asset service providers to open accounts with Latvijas Banka.

2. Observations on the right of crypto-asset service providers to open accounts with Latvijas Banka

- 2.1 As noted above, according to the draft law crypto-asset service providers will have the right to open an account with Latvijas Banka in order to comply with Article 70(3) of Regulation (EU) No 2023/1114. The ECB does not support the provision of the draft law establishing a right for crypto-asset service providers to hold accounts with Latvijas Banka. Regulation (EU) No 2023/1114 merely provides that crypto-asset service providers must, by the end of the business day following the day on which clients' funds other than e-money tokens were received, place those funds with a credit institution or a central bank. Recital 82 of Regulation (EU) No 2023/1114 clarifies that such funds may be deposited with central banks but only where an account with the central bank is available. Hence Article 70(3) of Regulation (EU) No 2023/1114, read in conjunction with recital 82, neither creates a right of crypto-asset service providers to open accounts with central banks, nor creates any corresponding obligation on the part of central banks to open such accounts for crypto-asset service providers.
- 2.2 The ECB also draws the Latvian legislator's attention to Article 17 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), which is part of Chapter IV thereof, on the 'Monetary Functions and Operations of the ESCB'. Article 17 states that the ECB and the NCBs **may** (rather than shall) open accounts for market participants in order to conduct their operations. Within the Eurosystem, decisions pertaining to the conduct of monetary operations are to be taken by the Governing Council⁵ and are binding on all Eurosystem central banks, including Latvijas Banka. It follows that the decision to open accounts for market participants needed for the purposes of conducting monetary policy rests with each of the ESCB central banks, which may only provide such accounts in the context of the conduct of

⁴ In accordance with Article 93(1) of Regulation (EU) 2023/1114.

⁵ See Articles 8, 10 and 12 of the Statute of the ESCB.

their monetary operations, subject to the overall authority of the Governing Council with respect to the monetary operations of Eurosystem central banks, including Latvijas Banka.

- 2.3 As regards accounts in TARGET, the large value payment systems for the euro, which is owned and operated by the Eurosystem and which serves, inter alia, as the channel for the implementation of the euro area's monetary policy, these are only available to entities that fulfil the eligibility criteria determined by the Governing Council in a public legal act binding on all Eurosystem central banks, including Latvijas Banka⁶. It follows from the relevant eligibility criteria that access to TARGET is possible as of right for certain predefined entities, upon their request, and is subject to the exercise of central bank discretion for certain other entities⁷. At the present juncture, crypto-asset service providers are not eligible to hold accounts in TARGET, as they do not belong to either of the above two categories.
- 2.4 The situation regarding the opening of accounts for purposes other than monetary policy operations and outside TARGET has so far been less homogenous across the Eurosystem. The ECB accordingly takes the opportunity presented by this opinion to signal that the Eurosystem is currently working on the specific matter of access to central bank operated payment systems and safeguarding accounts for non-bank payment service providers, with a view to providing a harmonised approach of the Eurosystem on the subject. In the coming months, the Eurosystem expects to announce this harmonised approach, which will also specify the discretion for accessing Eurosystem central bank accounts. The ECB therefore invites the Latvian authorities to remove the provision related to the opening of an account at Latvijas Banka from the draft law entirely, in order to ensure that Latvian legislation does not pre-empt or foreshadow a matter pertaining to the Eurosystem's competences.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 27 May 2024.

[signed]

The President of the ECB

Christine LAGARDE

⁶ Guideline (EU) 2022/912 of the European Central Bank of 24 February 2022 on a new-generation Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET) and repealing Guideline ECB/2012/27 (ECB/2022/8) (OJ L 163, 17.6.2022, p. 84).

⁷ See Annex I, Part I, Article 4, of Guideline (EU) 2022/912 (ECB/2022/8).