ESMA_QA_2005

Submission Date
07/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto assets

Additional Legal Reference
Articles 2 and 143 of MICA

Subject Matter
Crypto-asset services of a DLT MI

Question
Is a DLT MI (digital ledger technology market infrastructure) operator allowed to provide MiCA crypto-asset services such as operating a trading platform and custody services for

emoney tokens without an additional MiCA licence?

ESMA Answer

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Following entry into application of Regulation (EU) 2023/1114, persons wishing to provide crypto-assets services will have to obtain an authorsation under that regulation. However, as a derogation to that general rule, certain financial entities referred to in Article 60 of Regulation (EU) 2023/1114 may provide specified crypto-asset services without an additional MICA licence where they notify their intention to do so to their home NCA and follow the procedure set out in Article 60 of Regulation (EU) 2023/1114. This includes investment firms and central securities depositaries, which are eligible participants in the DLTPR. In the period until the entry into application of Regulation (EU) 2023/1114, a DLT MI will have to comply with national rules on the provision of crypto-asset services, where such services are regulated at national level. Furthermore, in accordance with Article 143(3) of that regulation, a DLT MI may be able to continue to provide crypto-asset services in accordance with national rules until 18 months after the date of application of the regulation or until it is granted or refused an authorisation pursuant to Article 63 of the regulation, whichever is sooner. However, Member States may also decide not to apply this transitional regime for crypto-asset service providers, or reduce its duration, in accordance with the second subparagraph of Article 143(3) referred above, in which case MICA shall start applying in accordance with that decision.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and

competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.