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Additional Information

Level 1 Regulation
MiCA

Topic
Mining

Subject Matter
Treatment of staking services in MiCA

Question
Does MiCA prohibit staking-related services or are staking activities exempt from the application of MiCA?

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

In its narrow meaning, staking is the process of immobilising crypto-assets to support the operations of proof-of-stake and proof-of-stake-like blockchain consensus mechanisms in exchange for the granting of validator privileges that can generate block rewards. MiCA does not contain provisions specific to staking. It does not therefore prohibit staking, and staking as such is not subject to specific requirements or licensing.

As opposed to staking, where crypto asset holders engage themselves directly on a proprietary basis with the distributed ledger protocol to stake their assets to obtain validator privileges and eventually collect associated block rewards, or where they commit their assets to a liquidity pool in return for a yield, staking services (also referred to as staking-as-aservice) are provided to clients for a consideration by intermediaries that undertake to stake the clients' crypto assets on their behalf. The staking service provider will collect the yield or obtain the validator privileges allowing them to earn block rewards. This yield or these block rewards are then distributed between the service provider as consideration for their service (staking the assets on the client's behalf, exercising validator obligations and collecting the block rewards, etc.), and the staking service provider's clients, who are the ultimate owners of the crypto assets that are staked.

In the provision of staking services the crypto assets, or the private keys giving access to them, are held by the staking service provider in custody. Thus, the provision of staking services is ancillary to custody services which are fully covered under MiCA. The provision of staking services therefore requires that the crypto asset staking service provider is authorised under MiCA to provide custody and administration of crypto-assets on behalf of clients, as set out in Article 75 MiCA. In offering and providing the staking services, the service provider must meet at all times the requirements set out in MiCA incumbent on entities authorised for the provision of custody and administration of 6 crypto-assets on behalf of clients (in

particular Articles 59, 62, 66, 67, 68, 69, 70, 71, 72, 73,74 and 75 MiCA including but not limited to concluding agreements that specify duties and responsibilities, segregating customer assets from the service provider’s estate, minimising the risk of loss, liability for loss of crypto assets, etc.).

In particular, it follows from these obligations that, where staking services are provided in combination with the provision of custody, crypto-asset service providers (CASPs) should ensure that the assets held on behalf of clients can be returned to the clients in accordance with the custody agreement. CASPs should also remain liable to their clients for any loss of crypto-assets attributable to them, pursuant to Article 75(8) MiCA. Losses of crypto-assets stemming from the provision of staking services provided to the client, and from the underlying staking activity itself, should be deemed as attributable to the CASP.

Where staking services are provided in combination with any other crypto-asset services governed by MiCA, CASPs should obtain an explicit consent from the clients to stake their crypto-assets, as it may have an impact on their clients' ability to access them.

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