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Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 3(1), point (26), Article 82(2)

Subject Matter
Crypto-asset transfers as component of another crypto-asset service or as a separate crypto-asset transfer service

Question

Recital 93 of MiCA states that “[…] Many crypto-asset service providers also offer some kind of transfer service for crypto-assets as part of, for example, the service of providing custody and administration of crypto-assets on behalf of clients, exchange of crypto-assets for funds or other crypto-assets, or execution of orders for crypto-assets on behalf of clients […].”

Does Recital 93 of MiCA imply that a crypto-asset transfer offered as part of a crypto-asset service (such as custody and administration or execution of orders on behalf of clients) is to be regarded as a component of such a crypto-asset service and should therefore not be subject to the authorisation requirements under Article 59 of MiCA? Or would such a transfer of crypto-asset still qualify as the separate service of crypto-asset transfer, as defined under Article 3(1), point (26), of MiCA, and be subject to authorisation requirements?

What criteria should be taken into account to determine whether the crypto-asset transfer is a separate service or not?

Please confirm that, if a transfer of crypto-assets is part of a crypto-asset service such as custody and administration or execution of orders on behalf of clients and thus does not constitute the separate service of transfer of crypto-assets, the requirements in Article 82 MiCA apply anyway (including the ESMA guidelines issued according to the mandate in Article 82(2)).

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

A crypto-asset service of providing transfer services as defined in Article 3(1), point (26), is a self-standing crypto-asset service referred to in Article 3(1), point (16)(j), along with other crypto-asset services. It follows from the definition of a crypto-asset service provider in Article 3(1), point (15), and Article 59 that a crypto-asset service provider may provide transfer services only if it is allowed to do so in accordance with Article 59.

Therefore, if the provision of a service falls under the definition of providing transfer services, despite being regarded as part of another crypto-asset service, it is subject to Article 59 on authorisation and Article 82 on providing transfer services, including the guidelines developed under Article 82(2).

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