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Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 143

Subject Matter
Passporting rights for entities benefiting from grandfathering

Question
1) Are entities benefiting from grandfathering eligible to passport their crypto services to other Member States?

2) Can an entity grandfathered to provide crypto services in one Member State provide cross-border activities in another Member State that has elected not to allow grandfathering (i.e., shortened or opted out of the transitional period)?

ESMA Answer

29-01-2024

Original language

1) No. Grandfathered entities do not benefit from an EU passport (unless they were to acquire a MiCA license starting from 2025 and therefore cease being a ‘grandfathered’ entity). Cross-border activities by an entity benefiting from grandfathering may occur only if the entity complies with relevant legislation applicable in both the home and host Member States. The provision of crypto-asset services during the transitional period should in any case always comply with the applicable national laws in the Member State where the services are provided.

Indeed, the Anti-Money Laundering framework (AMLD5) does not offer a harmonised passporting regime, but certain Member States might allow in their national law the provision of crypto services from an entity established in another Member State.

Therefore, during the transitional period of MiCA, the only possibility to offer cross-border services (beyond MiCA authorisation of course) would be in the scenario in which the national regimes of the home and host Member States (i.e., the Member State where the service is provided) allows.

2) No. Entities benefiting from grand-fathering will be forbidden from conducting cross-border activities in Member States where the grandfathering clause is not (or no longer) applicable.

For those entities offering crypto services who did not provide such services (or exist as a legal entity) under any applicable laws before 30 December 2024, they will not benefit from grandfathering. To provide services in the transitional period (and after), they must acquire a

MiCA authorisation.