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Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 3

Subject Matter
How to distinguish between different execution services

Question
How should the crypto-asset services of ‘exchange of crypto assets for funds’ or ‘exchange of crypto assets for other crypto assets’ (Article 3(1)(16c and d respectively) of MiCA), ‘execution of orders for crypto-assets on behalf of clients’ (Article 3(1)(16e), and ‘reception and transmission of orders for crypto-assets on behalf of clients’ (Article 3(1)(16g)) be distinguished from one another?

ESMA Answer

14-10-2025

Original language

It is important to assess whether the services for which a crypto-asset service provider (CASP) requests authorisation under MiCA, match the operational reality of their activities. In such assessment, NCAs should not rely solely on the qualification provided by the CASP, or the terms used by the CASP in the contractual or marketing documentation. Instead, special attention should be paid to the order fulfilment flow, including if the CASP acts in any or several of the following capacities: a counterparty to the client, an agent concluding agreements on behalf of the client or routing their orders to third parties who in turn will conclude agreements on behalf of clients.

*Execution services are applicable when a CASP acts as an agent of the client and concludes a contract or agreement concerning the purchase or sale of crypto-assets, on behalf of the client.

The crypto-asset service of execution of orders for crypto-assets on behalf of clients (under Article 3(1)(21) of MiCA) covers cases where a CASP concludes a contract concerning the purchase or sale of crypto-assets, on behalf of the client, and is therefore acting as agent of the client. This would happen, for instance, where a CASP executes the client's order by: i) directly entering into a transaction with another party without any intermediary involved, or ii) where a CASP executes clients' orders on a trading platform for crypto-assets[1].

*RTO services are applicable when a CASP transmits orders to a third-party for execution or onward transmission.

Where a CASP merely transmits the client's order to a third party, which in turn concludes a contract concerning the purchase or sale of crypto-assets on behalf of the client or further transmits the order, such CASP is providing reception and transmission of orders for crypto-assets on behalf of clients (RTO).

Exchange services are applicable when a CASP transacts with a client by acting as its counterparty with proprietary capital.

Exchange services are defined in Article 3(1)(20) of MiCA as "*the conclusion of purchase or sale contracts concerning crypto-assets with clients for other crypto-assets by using proprietary capital*". When a CASP provides exchange services, they are subject to the following obligations:

1. establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they agree to transact with and the conditions that shall be met by such clients (Article 77(1) of MiCA);

2.publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets that they propose to exchange for funds or other crypto-assets, and any applicable limit determined by that crypto-asset service provider on the amount to be exchanged (Article 77(2) of MiCA); and

3.execute client orders at the prices displayed at the time when the order for exchange is final (Article 77(3) of MiCA).

The above referred definition and obligations entail that the CASP providing exchange services lacks discretion on fulfilling or not an order, if a client and its order meet (i) all the conditions previously communicated in the CASP's non-discriminatory commercial policy and (ii) conditions for an order to be final.

*Determining when a CASP acting as a counterparty to a client is providing execution services or exchange services

The fact that a CASP acts as a client's counterparty to fulfil a client order does not *per se* indicate that such CASP is solely providing exchange services. Recital 87 of MiCA sets out that a CASP acting as a client's counterparty may provide execution services and thus be subject to the best execution requirements under MiCA: "[..]. *Yet in the execution of orders for crypto-assets on behalf of clients, the crypto-asset service provider should always ensure that it obtains the best possible result for its client, including when it acts as the client's counterparty, in line with its best execution policy. [...]*".

To understand whether a CASP provides exchange services, execution services or both, the relationship between the CASP and its client(s) must not be assessed solely on the basis of the service agreement between the CASP and the client(s) and documentation/information provided, but a fact-specific analysis should be conducted. This includes any elements that may indicate the nature of the service in practice. For instance, whether a reasonable person

in the client’s position would understand or expect the CASP to act as an agent/broker (providing execution services) and therefore be under a duty to seek the best possible outcome. Or would it be clear to such a reasonable person in the client’s position that the CASP only offers a firm price, leaving it to the client(s) to determine whether they could obtain better terms elsewhere?

In case of doubt, when a CASP deals with retail clients, a more conservative approach should be taken and there should be a presumption that the CASP acts as an agent and thus provides execution services (where best execution requirements apply).

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[1] Whether that trading platform is authorised and operated in accordance with MiCA or is a non-EEA trading platform.