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ESMA
European Securities and Markets Authority

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# ESMA_QA_2486

**Submission Date**
18/03/2025

Status: Question Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Interests earned from client funds deposited at credit institutions

**Question**
Does MiCA permit crypto-asset service providers (CASPs) to earn interest on client funds deposited in a savings account at a credit institution?

# ESMA_QA_2482

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Is the maximum percentage of liquid assets that can be used for redemption requests referred to in Article 18(2) point (d) of the ELTIF regulation a systematic

cap?

# ESMA_QA_2481

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Nationality-related eligibility restrictions on ELTIFs stemming from national law

**Question**
Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or

specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment?

May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

# ESMA_QA_2480

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Dividend entitlement date

**Question**
May an ELTIF define a minimum period before which the shares cannot benefit from distributions of the ELTIF?

May the setting of a minimum holding period during which investors cannot benefit from the distributions of the ELTIF be considered as a “fee" or a “cost”, as per the requirements of Article 25 of the ELTIF Regulation?

# ESMA_QA_2479

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Matching mechanism

**Question**
While anti-dilution levies are referred to in Article 5(9) of the ELTIF Delegated Regulation, can the matching price, as referred to in Article 19(2a) of the ELTIF

Regulation, of the secondary market include an anti-dilution levy?

# ESMA_QA_2478

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Given the requirements set out in Article 17(1) point a) and 18(2) point a) of the ELTIF Regulation, as well as in Article 3 of the ELTIF Delegated Regulation, is the

minimum holding period, referred to in Article 18(2) point a) of the ELTIF Regulation, assessed in relation to the launch date of the ELTIF for all investors, or is it applied at each new subscription and on the basis of the date of each capital contribution if there is more than one investment by an individual investor?

# ESMA_QA_2477

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Is a daily redemption and daily valuation compatible with the requirements of the ELTIF Regulation and Delegated Regulation, as referred to, in particular, in Article

5, Annex I and II of the ELTIF Delegated Regulation?

# ESMA_QA_2476

**Submission Date**
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Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Can an ELTIF use borrowings, as referred to in Article 16(1) of the ELTIF Regulation, to meet redemptions?

Can confirmed but undrawn credit lines be considered as “expected cash flows”, as referred to in Article 5(6) of the ELTIF Delegated Regulation, and thus be taken into account in the maximum limit referred to in Article 18(2), point (d) of the ELTIF Regulation?

What are the criteria to assess the “prudent” nature of the expected cash flows forecasted […] over 12 months, as referred to in Article 5(6) of the ELTIF Delegated Regulation that could be added to the maximum size of redemption at a given redemption date?

For private debt ELTIFs, what elements should be taken into account in the abovementioned "expected cash flows"?

# ESMA_QA_2475

**Submission Date**
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## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Should the ELTIF comply with the minimum liquid asset requirements referred to in Annex II of the Delegated Regulation at all times, and if not, which types of

“necessary measures”, as referred to in Article 5(7) of the ELTIF Delegated Regulation, and within which time frame, are expected to be implemented by the ELTIF manager?

# ESMA_QA_2474

**Submission Date**
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## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
When should the calculation of liquid assets be conducted?

# ESMA_QA_2473

**Submission Date**
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## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Should the minimum percentage of liquid assets referred to in Annex II of the ELTIF Delegated Regulation solely comprise, as per Article 5(5) point b) of the ELTIF

Delegated Regulation, the UCITS eligible assets, or should it also include, as it is the case for the purpose of the denominator of the percentage referred to in Article 18(2) point (d), the expected cash flow, forecasted on a prudent basis over 12 months?

# ESMA_QA_2472

**Submission Date**
14/03/2025

Status: Question Published

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Redemption policy

**Question**
Pursuant to Article 23(4) point (d) of the ELTIF Regulation, shall the ELTIF disclose in its rules or instruments of incorporation a minimum (and not only a maximum, as

per the requirements of Article 18(2) point d) of the ELTIF Regulation) percentage of liquid assets referred to in article 9(1) point (b) to be used for redemption requests?

# ESMA_QA_2471

**Submission Date**
14/03/2025

Status: Question Published

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Investment strategy

**Question**
Do the requirements of Articles 16(4) and 17(1) of the ELTIF Regulation only apply to closed-ended ELTIFs?

If not, how may an open-ended ELTIF, as referred to in Article 18(2) of the ELTIF Regulation, reconcile its obligation to comply with the portfolio composition/diversification requirements, set out in Article 13 of the ELTIF Regulation, with the borrowing limits of the ELTIF Regulation, referred to in Article 16(1) of the ELTIF Regulation, if the suspension referred to in Article 17(1) point c) is to apply at each subscription/redemption?

# ESMA_QA_2470

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Investment strategy

**Question**
Should it be understood from the requirements of Article 10(1) point (d) of the ELTIF Regulation that investing in non-EU AIFs is not compatible with the

requirements of the ELTIF regulation?

Do underlying investment funds referred to in Article 10(1) point (d) of the ELTIF Regulation (ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs) have to be invested only in “in eligible investments as referred to in Article 9(1) and (2)”? If not, how to interpret the abovementioned requirement according to which the underlying funds in which the ELTIF has invested must be invested “in eligible investments as referred to in Article 9(1) and (2)”?

# ESMA_QA_2469

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Indirect investment

**Question**
Are the assets and the cash borrowing position of the “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, included when calculating the

investment limit and the other limits laid down in Article 13 and Article 16(1) of the ELTIF Regulation?

# ESMA_QA_2468

**Submission Date**
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Indirect investment

**Question**
Certain industry practices often involve equity or quasi-equity instruments that are issued by an intermediate holding company or SPV of which the QPU is a majority

owned subsidiary, especially when multiple investors are involved in a single deal. Should the requirements of Article 10(1) point (a)(iii) of the ELTIF Regulation be understood as covering such investment?

Which other types of investments are the requirements of Article 10(1) point (a)(iii) referring to?

Do “intermediary entities”, as referred to in recital 12 of the ELTIF regulation, fall within the only scope of Article 10(1) point (a)(iii)?

Should “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, only invest in ‘eligible investment assets’ as referred to Article 9(1) point (a) of the ELTIF Regulation? If not, can investments in UCITS eligible assets via a SPV be accounted for as “eligible assets” as referred to in Article (9)(1)(b), and, in the case of an open-ended ELTIF, as also referred to in Article 18(2)(d) of the ELTIF Regulation?

Should “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, be considered as a qualifying portfolio undertaking if they fulfil the requirements of Article 11 of the ELTIF Regulation? In such a case, which requirements are applicable to the assets within these intermediary entities?

In relation to the “possibility of conducting minority co-investment” as referred to in recital 12 of the ELTIF Regulation, should these terms be understood as introducing a threshold for indirect investments?

# ESMA_QA_2463

**Submission Date**
12/03/2025

Status: Question Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Autotrading

**Question**
Do “copy trading services” (also referred as “auto trading services”) related to crypto-assets fall within the scope of portfolio management or any other crypto-asset services as listed in Article?3(1)(16) of MiCA?

# ESMA_QA_2442

**Submission Date**
17/02/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

**Topic**
* EMIR Art.9 reporting

**Subject Matter**
Reporting of Settlement Rate Options

**Question**
How should the Settlement Rate Option be reported for FX products, such as FX non-deliverable forwards or FX non-deliverable options?

## ESMA Answer

14-02-2025

Original language

When reporting currency derivatives based on an underlying benchmark, both sets of reporting fields are applicable, depending on the terms of the contract being reported. Therefore, both the ‘currency derivatives-related’ fields and ‘benchmark-related’ fields should be reported as appropriate.

In addition to the relevant currency and benchmark fields, the following fields should be populated as outlined below to accurately identify the derivative. For example, in the case of NDFs based on an underlying benchmark:

- Field 2.11 ‘Asset Class’ should be populated with the corresponding value for currency derivatives (‘CURR’).
- Field 2.13 ‘Underlying identification type’ should be populated with ‘X’, indicating that the derivative relates to an Index.
- Field 2.14 ‘Underlying identification’ should be populated with the ISIN of the underlying benchmark. If the benchmark does not have an associated ISIN, this field should be left blank.
- Field 2.16 ‘Name of underlying index’ should be populated with the full name of the underlying index as assigned by the index provider.

# ESMA_QA_2441

**Submission Date**
14/02/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

**Topic**
* EMIR Art.9 reporting

**Subject Matter**
Assessment of significance for the purpose of the Error and Omission Notifications

**Question**
(a) How should counterparties conduct the significance assessment referred to in Articles 9(1)(a) and 9(1)(c) of Commission Delegation Regulation (EU) 2022/1860

(ITS on reporting under EMIR REFIT)?

More specifically, how should the “NumOfAffReports” and the “Average Monthly Number of Submissions” referred to in the formula for significance in Paragraph 392 of the Guidelines on reporting under EMIR REFIT be calculated?

(b) Paragraph 392 of the Guidelines for reporting under EMIR REFIT states that the actual number of reports should be based on the previous 12 months. In the context of EMIR REFIT being applicable as of 29 April 2024, should data from before 29 April 2024 be included in the 12-month calculation?

## ESMA Answer

14-02-2025

Original language

(a) For the purpose of the significance assessment, counterparties should calculate the “NumOfAffReports” and the “AverageMonthNum” separately for each category. For example, in Category 1, the calculation should be as follows:

$$\frac{\text{Number of affected records in Category 1}}{\text{Average Aggregate Number of Reports submitted (and accepted ) to the TR unde}}$$

i.e., with AT='New','Modify','Correct','Terminate','Error', 'Revive'or 'Position Component'

(b) The calculation for the ‘Average Monthly Number of Submissions’ should cover data from the 12 months immediately preceding the notification. Where feasible and not overly burdensome, this calculation should also include data from before EMIR REFIT’s applicability (i.e., prior to 29 April 2024).

# ESMA_QA_2439

**Submission Date**
13/02/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Secondary Markets

**Level 2 Regulation**
Regulation 2017/565 - MiFID II Delegated Regulation

**Topic**
Position reporting

**Additional Legal Reference**
Article 83(1)(b) of CDR 2017/565; Article 57(1) of MiFID II

**Subject Matter**
Q&A on open interest thresholds in energy derivatives

**Question**
How do open interest thresholds that are denominated in lots such as in Article 83(1)(b) of CDR 2017/565 (10,000 lots) and in Article 57(1) of MiFID II (300,000 lots) translate into underlying units of energy derivatives such as Megawatt Hour (MWh), million British Thermal Units (MMBTU), or Therms (therm)?

## ESMA Answer

13-02-2025

Original language

For the purpose of converting thresholds that are denominated in lots into underlying units of energy derivatives, ESMA considers the monthly contracts in which most trading activity is concentrated as a baseline, each representing 1 lot.

The conversion for the 10,000 lot threshold is exemplarily demonstrated below:

For gas and base load power, the monthly contracts representing 1 lot, are considered equivalent to 720MWh (1MW[1]*24h*30days). Given that 1 MWh = 3.41 [2] MMBTU and 1 MMBTU = 10 therm, the following thresholds apply:

**10,000 lots** = 10,000 * 720MWh **= 7,200,000 MWh**

**10,000 lots** = 10,000 * 720MWh * 3.41 MMBTU/MWh **= 24,548,477 MMBTU**

**10,000 lots** = 10,000 * 720MWh * 3.41 MMBTU/MWh * 10 therm/MMBTU **= 245,484,766 therm**

For peak load power, the monthly contract representing 1 lot is considered equivalent to 264MWh (1MW*12h*22days) and consequently, the following threshold applies:

**10,000 lots** = 10,000 * 264MWh **= 2,640,000 MWh**

This Q&A expands the scope of the existing Q&A on Position limits - the definition of "a lot" to also cover position reporting, without changing the approach.

Concerning gas derivatives denominated in units different from MWh, please also refer to the Q&A on lot sizes and position limits.

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[1] Sometimes the physical power of energy contracts is stated in daily terms, e.g. 1 MWh/d = 1/24 MW instead of 1 MW, however, this is less common.

[2] The calculations were performed using a conversion factor of 3.4095106405145.

# ESMA_QA_2438

**Submission Date**
12/02/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Best Execution

**Subject Matter**
Multiple offers

**Question**
Can a project owner seek funding for its project through both a crowdfunding offer and an offer to the public of transferable securities which is not a crowdfunding offer?

## ESMA Answer

12-02-2025

Original language

The ECSPR does not prevent a project owner from seeking funds for a project through different means of financing, including a public offer of transferable securities. However, restrictions apply in case where such public offer of transferable securities falls in the scope of point (ii) of point (c) of Article 1(2) of the ECSPR for the purpose of the calculation of the threshold referred to in point (c) of Article 1(2) of the ECSPR (EUR 5 000 000 over a period of 12 months).

In this context, ESMA would like to clarify that offers of transferable securities to the public made by a project owner shall not be taken in consideration for the purpose of the calculation of the threshold referred to in point (c) of Article 1(2) of the ECSPR, when they have the following features:

- any offer to the public of transferable securities that is not made pursuant to the exemption in Article 1(3) or the one in Article 3(2) of Regulation (EU) 2017/1129;

- any offer to the public of transferable securities closed more than 12 months prior to the launch of the crowdfunding offer;

- any offers to the public of transferable securities conducted after the launch of the crowdfunding offer.

# ESMA_QA_2437

**Submission Date**
12/02/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Suitability

**Additional Legal Reference**
Article 1(2) of ECSPR

**Subject Matter**
Scope of the ECSPR - Calculation of threshold in point (c) of Article 1(2) of ECSPR

**Question**

How should the threshold laid down in point (c) of Article 1(2) of ECSPR be calculated?

## ESMA Answer

12-02-2025

Original language

The ECSPR enables project owners to make use of crowdfunding platforms to raise funds up to an aggregated maximum amount of EUR 5 000 000 euros in a 12-month period.

The EUR 5 000 000 aggregated amount includes (i) the offers (of transferable securities and admitted instruments (*), and loans) conducted through crowdfunding platforms as well as (ii) the other offers to the public (of transferable securities) conducted in exemption of the obligation to publish a prospectus (i.e. so called “small offers” (**)) by a specific project owner over a period of 12 months.

More in div, point (c) of Article 1(2) of the ECSPR states that the ECSPR does not apply to crowdfunding offers with an aggregated consideration of more than EUR 5 000 000, which are to be calculated over a period of 12 months as the sum of:

- the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and

- the total consideration of offers to the public of transferable securities made by that project owner through other offers covered by the so-called “small offer” exemptions

of the prospectus regulation.

With regard to the calculation of the 5-million threshold for the application of the ECSPR, ESMA is of the view that the reference to the “total consideration” of offers made in both point (i) and (ii) of point (c) of Article 1(2) of the ECSPR, should be read consistently with the reference to the “total consideration” of offers made in Article 1(3) and in Article 3(2) of Prospectus Regulation (Regulation (EU) 2017/1129) with regard to offers to the public which are exempted from the obligation to publish a prospectus.

In light of the above, ESMA believes that, in order to assess if a crowdfunding offer is covered under the ECSPR, the following amounts should be aggregated and summed up:

(a) the amount in transferable securities and admitted instruments that the project owner offered in offers conducted through crowdfunding platforms across the Union over the previous 12 months,

(b) the amount raised by that project owner in offers of loans conducted through crowdfunding platforms across the Union over the previous 12 months,

(c) the amount in transferable securities that the same project owner offered in other offers to the public, when exempted from the obligation to publish a prospectus in accordance with Article 1(3) or Article 3(2) of the Prospectus Regulation.

If the sum of the items a) to c) above exceeds EUR 5 000 000, the offer shall be considered as not covered by the ECSPR (i.e. such an offer is not included in the authorisation to operate as CSP).

This implies that surpassing the threshold established under point (c) of Article 1(2) of the ECSPR is not only relevant for the project owner, but also for the CSP which should assess whether the project owner remains below the threshold, taking into account the restrictions of its authorisation under the ECSPR (i.e., to provide crowdfunding services as defined under the ECSPR across the Union),  and the risk

of providing investment services exceeding this authorisation.

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Endnotes

(*) As defined, respectively, in points (m) and (n) of Article 2(1) of the ECSPR.

(**) Point (ii) of Article 1(2)(c) of the ECSPR notably refers to the exemption from the obligation to publish a prospectus under Article 1(3), or Article 3(2), of Regulation (EU) 2017/1129 (Prospectus Regulation).

# ESMA_QA_2436

**Submission Date**
12/02/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Secondary Markets

**Level 2 Regulation**
Regulation 2017/565 - MiFID II Delegated Regulation

**Topic**
Non-equity transparency

**Subject Matter**
Legal qualification of Financial Transmission Rights under MiFID II

**Question**

Do Financial Transmission Rights referred to in the Forward Capacity Allocation Regulation (Commission Regulation 2016/1719) qualify as financial instruments under Annex I, Section C of MiFID II (Directive 2014/65/EU)?

# ESMA_QA_2435

**Submission Date**
10/02/2025

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Register of information

**Subject Matter**
Register of Information at consolidated level

**Question**
A Group contains within it both insurance entities and banking entities; for the purposes of preparing the Register at a consolidated level, must it consider both types of Entity? To which Authority is the Register sent at a consolidated level?

# ESMA_QA_2431

**Submission Date**
04/02/2025

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Register of information

**Subject Matter**
Non-EU ICT service providers without a LEI - conflicting validation rules

**Question**
When an ICT service provider reported under schedule 05.01 is a legal person outside of the EU, the absence of a EUID and LEI will result in a report validation error rendering the submission of the ROI impossible. Should such service provider

be left out of the register or should a dummy EUID be used (preferably issued by ESA to adequately consolidate missing positions)

# ESMA_QA_2429

**Submission Date**
04/02/2025

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Topic**
Cross-border distribution of funds

**Subject Matter**
Premarketing of units or shares of AIFs

**Question**
Article 32a, paragraph 3, third sub-paragraph of Directive (EU) 2011/61/EU (as modified by CBDF Directive) states the following: "(…) For a period of 36 months

from the date referred to in point (c) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in paragraph 2." How should "similar investment strategies or investment ideas" be interpreted?

# ESMA_QA_2428

**Submission Date**
03/02/2025

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Register of information

**Subject Matter**
Register of Information at sub-consolidated Level

**Question**
For the purpose of preparing the Register of ICT Supplier Information (RoI) on a sub-consolidated basis, is it necessary to include within the different templates (ref. “B_XX.XX.XXX”) the information pertaining to both the Contractual Agreements that

the Entity signs and those that it uses?
Specifically then, the “financial entity maintaining the register of information” is to be considered corresponding to the "entity signing the contractual arrangement" and the "financial entity making use of the ICT service(s)"?

# ESMA_QA_2404

**Submission Date**
17/01/2025

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Stablecoin

**Subject Matter**
Scope of public offering

**Question**
Regarding ARTs or EMTs under MiCAR, what services provided in or into the EU constitute an offering to the public, a seeking admission to trading or a placing of an ART or EMT?

## ESMA Answer

17-01-2025

Original language

**Answer provided by the European Commission**

Since the application of Titles III and IV of MiCA on 30 June 2024, any issuer of an asset-referenced token (ART) or e-money token (EMT) offered to public or admitted to trading in the Union will have to be authorised in the EU in accordance with Article 16(1) and Article 48(1), subject to the transitional provisions relating to ARTs referred to in Article 143(4) and (5) of MiCA.

While the first sub-paragraph of Article 16(1) and Article 48(1) prohibits offering to public or seeking admission to trading unless the offeror or person seeking admission to trading is an authorised issuer complying with MiCA, the same applies to offering to public or seeking admission to trading by persons other than the issuer under the second subparagraphs of Article 16(1) and Article 48(1). Other persons than the issuer may offer to public or seek admission to trading of an ART or EMT, if the following conditions are met:

- the issuer of the ART or EMT is authorised in the EU in accordance with Article 16(1) or Article 48(1), respectively;

- the person must obtain a written consent from the issuer.

It follows from both first and second sub-paragraphs of Article 16(1) and 48(1) that offering to public or seeking admission to trading of ARTs or EMTs is only possible if the issuer of such tokens is authorised under MiCA.

Providing certain crypto-asset services amounts to an offering to public or seeking admission to trading. In particular, operators of trading platforms for crypto-assets that list ARTs or EMTs for which the issuer has not been authorised under MiCA are to be considered as persons seeking admission to trading on the own initiative of the operator under Articles 16(1) or Article 48(1).

Other crypto-asset services could also constitute an offering to the public, which requires a case-by-case assessment. For instance, providers of crypto-asset services engaged in exchange services, reception and transmission of orders or execution services could be regarded as making an offer where they promote or advertise, as part of these services, an ART or EMT.

Provision of crypto-asset services with respect to ARTs and EMTs that amounts to offering to public or admission to trading in non-compliance with Titles III and IV has been prohibited since 30 June 2024. This is the case also if the ARTs or EMTs had been first offered to public or admitted to trading before the application of Titles III and IV and continue to be offered to public or admitted to trading.

*Disclaimer: The answer clarifies 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.*

# ESMA_QA_2399

**Submission Date**
14/01/2025

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Digital operational resilience testing

**Subject Matter**
Finalised Comprehensive List of DORA questions

**Question**
Is there a finalised comprehensive list of all questions that the firms involved in the financial markets should answer? For each question is it clear to which type of firm it applies?

# ESMA_QA_2396

**Submission Date**
10/01/2025

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT risk management

**Additional Legal Reference**
Article 3 (21)

**Subject Matter**
Definition on ICT services

**Question**

Article 3 (21) of DORA defines that 'ICT services’ means digital and data services provided through ICT systems to one or more internal or external users on an ongoing basis.

It is not clear whether "digital and data services" should be interpreted as:
Version one: either digital or data services (so two different of sets of activities or
Version two: services which need to be both: digital service and parallel/in the same time data service.

# ESMA_QA_2382

**Submission Date**
18/12/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Digital operational resilience testing

**Subject Matter**
Applicable accounting standard for calculation of turnover

**Question**
Our understanding is that a business can rely on the exemption under either Article 3(60) micro enterprise, (63) small enterprise or (64) medium-sized enterprise categories under DORA. We have however not been able to find clear information

on which accounting standard that should be used when calculating annual turnover under DORA. In addition, our analysis has not shown that the Commission Recommendation 2003/361/EC on small and medium-sized enterprises provides any guidance on the question of which accounting standard can be used.
In a recent informal call with the Swedish FSA, we were informed that, when calculating the turnover of an entity to determine whether it falls under the SME exemption under DORA, the entity should use the same accounting standards that were used to draw up the relevant audited accounts. Thus, if IFRS is applied by the national entities, the relevant entity shall use the same basis (IFRS) to calculate the relevant national turnover. Is this also ESMA's view?

# ESMA_QA_2381

**Submission Date**
17/12/2024

Status: Question Published

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Other DORA topics

**Subject Matter**
art. 3 ust. 21

**Question**
Are service providers that are financial entities, in particular GPW, KDPW, IRGiT Banks, foreign entities that are financial institutions ICT service providers? The service does not concern the provision of ICT services, but e.g. maintaining a bank

account.

# ESMA_QA_2379

**Submission Date**
17/12/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Other DORA topics

**Subject Matter**
Art. 1 ust. 1 DORA - systems supporting the business processes of financial entities

**Question**
Financial entities select ICT service providers based on risk assessment, taking into account the business continuity plan and a number of national and sectoral regulations regarding cybersecurity. In addition to standard contractual relationships

with entrepreneurs, there are also solutions that financial entities use:
a) on the basis of a license, e.g. open source. The license provisions are not negotiated, and the service is not individually parameterized for the investment company. The investment company has no influence on the shape of the service and the license provisions. The licenses contain provisions regarding automatic update of the tool, but do not contain provisions regarding, e.g. support or SLA, e.g. Adobe Acrobat Reader;
b) web applications, e.g. Lex/Legalis systems (review of legal acts), which employees access via a browser, the agreement does not involve installing the application on the employee's computer, but only providing a specified number of licenses for use by the company, or a web system for registering correspondence in the case of ordering a courier;
c) providers of employee benefits, e.g. medical care. They are not directly related to the company's business, employees use the application on private devices and log in with a private email address, while registration is necessary for the medical company to create an account for the employee;

Is it possible to apply the principle of proportionality, provided for in the DORA regulations, which will allow for proper identification of risks and the application of proportionate mitigants in the case of the above-mentioned services? In the opinion of the financial entity, the application of all the obligations indicated in the DORA regulations, in particular those concerning contractual provisions and reporting obligations, is disproportionate to the risk generated by the above solutions. The financial entity does not deny the need for each case of evaluation of the solution and review of its correct functioning, the number of entities in relation to which these obligations would have to be performed may affect the quality of the duties performed.

Are the services supporting a critical or important function all the services used as part of performing this function, including those that are quickly and relatively cheaply replaceable (e.g. Adobe Acrobat Reader, 7ZIP, e-mail encryption program)?

# ESMA_QA_2374

**Submission Date**
13/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Level 2 Regulation**
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
Is there a minimum level for investment funds with the term “sustainable” in their name to be considered to be investing “meaningfully” in sustainable investments?

## ESMA Answer

13-12-2024

Original language

The third indent of paragraph 18 of the Guidelines foresees that funds using “sustainable” terms should commit to invest meaningfully in sustainable investments referred to in Article 2(17) of the SFDR. While national competent authorities should carry out a case-by-case analysis of how any sustainability-related term is used in the name of a fund, they may find that investment funds with "sustainable" terms in their names investing less than 50% of the proportion of investments in sustainable investments are not "meaningfully investing in sustainable investments". That amount could be higher, subject to the circumstances of the case.

# ESMA_QA_2373

**Submission Date**
13/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Level 2 Regulation**
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
Is there a minimum level for investment funds with the term “sustainable” in their name to be considered to be investing “meaningfully” in sustainable investments?

## ESMA Answer

13-12-2024

Original language

The third indent of paragraph 18 of the Guidelines foresees that funds using “sustainable” terms should commit to invest meaningfully in sustainable investments referred to in Article 2(17) of the SFDR. While national competent authorities should carry out a case-by-case analysis of how any sustainability-related term is used in the name of a fund, they may find that investment funds with "sustainable" terms in their names investing less than 50% of the proportion of investments in sustainable investments are not "meaningfully investing in sustainable investments". That amount could be higher, subject to the circumstances of the case.

# ESMA_QA_2372

**Submission Date**
13/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Level 2 Regulation**
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
How should the exclusions related to controversial weapons referred to in Commission Delegated Regulation (EU) 2020/1818 be interpreted for different types of controversial weapons?

## ESMA Answer

13-12-2024

Original language

For the purpose of applying the exclusions referred to in paragraphs 16-18 of the Guidelines related to Article 12(1)(a) of Commission Delegated Regulation (EU) 2020/1818 (companies involved in any activities related to controversial weapons), national competent authorities may, in the absence of any other clarification in that Delegated Regulation, refer to the list of controversial weapons provided in indicator 14 of Table 1 of Annex I of Commission Delegated Regulation (EU) 2022/1288, namely “anti-personnel mines, cluster munitions, chemical weapons and biological weapons”.

# ESMA_QA_2371

**Submission Date**
13/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Level 2 Regulation**
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
How should the exclusions related to controversial weapons referred to in Commission Delegated Regulation (EU) 2020/1818 be interpreted for different types of controversial weapons?

## ESMA Answer

13-12-2024

Original language

For the purpose of applying the exclusions referred to in paragraphs 16-18 of the Guidelines related to Article 12(1)(a) of Commission Delegated Regulation (EU) 2020/1818 (companies involved in any activities related to controversial weapons), national competent authorities may, in the absence of any other clarification in that Delegated Regulation, refer to the list of controversial weapons provided in indicator 14 of Table 1 of Annex I of Commission Delegated Regulation (EU) 2022/1288, namely “anti-personnel mines, cluster munitions, chemical weapons and biological weapons”.

# ESMA_QA_2370

**Submission Date**
13/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Level 2 Regulation**
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
When applying the exclusions referred to in paragraphs 16-18 of the guidelines, can fund managers consider the underlying project for use of proceeds instruments or should the manager always consider the whole issuer?

## ESMA Answer

13-12-2024

Original language

With regard to European Green Bonds that have been issued under the European Green Bonds Regulation (Regulation (EU) 2023/2631), investments in such instruments do not need to be assessed under the exclusions of investments referred to in paragraphs 16-18 of the Guidelines, because the Guidelines are intended to be read in conjunction with Level 1 legislation such as the European Green Bonds Regulation and should consider the high level of protection guaranteed by the EU legal framework for such investments.

With regard to investments in any other type of use of proceeds instruments, such as green bonds not issued under the European Green Bonds Regulation, the exclusions referred to in paragraphs 16-18 of the Guidelines should apply on a look-through basis to the economic activities financed by such instruments. The look-through approach should determine that the instrument invested in does not finance any activities referred to in Article 12(1)(a-b) and (d-g) of Commission Delegated

Regulation (EU) 2020/1818. Investments in companies excluded under Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 would not be able to benefit from this look-through approach (i.e. those companies are always excluded under the exclusions referred to in paragraphs 16-18 of the Guidelines).

# ESMA_QA_2368

**Submission Date**
12/12/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Level 2 Regulation**
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

**Level 3 Regulation**
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

**Topic**
Funds' names

**Subject Matter**
Guidelines on funds' names

**Question**
When applying the exclusions referred to in paragraphs 16-18 of the guidelines, can fund managers consider the underlying project for use of proceeds instruments or should the manager always consider the whole issuer?

## ESMA Answer

13-12-2024

Original language

With regard to European Green Bonds that have been issued under the European Green Bonds Regulation (Regulation (EU) 2023/2631), investments in such instruments do not need to be assessed under the exclusions of investments referred to in paragraphs 16-18 of the Guidelines, because the Guidelines are intended to be read in conjunction with Level 1 legislation such as the European Green Bonds Regulation and should consider the high level of protection guaranteed by the EU legal framework for such investments.

With regard to investments in any other type of use of proceeds instruments, such as green bonds not issued under the European Green Bonds Regulation, the exclusions referred to in paragraphs 16-18 of the Guidelines should apply on a look-through basis to the economic activities financed by such instruments. The look-through approach should determine that the instrument invested in does not finance any activities referred to in Article 12(1)(a-b) and (d-g) of Commission Delegated

Regulation (EU) 2020/1818. Investments in companies excluded under Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 would not be able to benefit from this look-through approach (i.e. those companies are always excluded under the exclusions referred to in paragraphs 16-18 of the Guidelines).

# ESMA_QA_2367

**Submission Date**
09/12/2024

Status: Awaiting Answer

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Additional Legal Reference**
Annex IX of the Listing Act

**Subject Matter**
The application of the Annex IX requirements to secondary issuances of existing shares

**Question**

How should an offeror undertaking a secondary issuance of existing shares and using the exemptions for fungible securities set out in Article (1), paragraph 4, points (da) and (db) of the Prospectus Regulation (amended by the Listing Act) provide the information required by Annex IX of the Listing Act, in those cases in which the issuer is not involved in the offer or the offeror is not involved in the ongoing management of the issuer?

Please provide guidance on how the issuer's declaration and risks statements set out in Annex IX shall be managed by the offeror. In particular the requirements include:

Statement of continuous compliance with reporting and disclosure obligations throughout the period of being admitted to trading, including under Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, Commission Delegated Regulation (EU) 2017/565.

Statement that at the time of the offer the issuer is not delaying the disclosure of inside information pursuant to Regulation (EU) No 596/2014.

Risks factors specific to the issuer

# ESMA_QA_2366

**Submission Date**
09/12/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Additional Legal Reference**
Article 1, paragraph 4, points (da) and (db)

**Subject Matter**
Listing Act implementation for secondary issuances of existing shares

**Question**

Are the exemptions from the obligation to produce a prospectus for offers of fungible securities that are set out in Article (1), paragraph 4, points (da) and (db) of the Prospectus Regulation (as amended by the Listing Act) also applicable to secondary issuances of existing shares, provided that all other requirements are met?

NB: Secondary issuances of existing shares are those initiated by an offeror (and not an issuer), as described in Article 14, 1st paragraph, point c) and Article 15, 1st paragraph, point d) of the Prospectus Regulation (prior to its amendment by the Listing Act). A concrete example are the offers of existing NBG shares realised in 2023 and 2024 under the simplified prospectus regime for secondary issuance. Such offers do not involve any increase in share capital.

# ESMA_QA_2363

**Submission Date**
06/12/2024

Status: Question Published

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
Life-Cycle of ELTIFS

**Question**
Can Member States impose limitations on the life and life-cycles of ELTIFs, as referred to in Article 18(1) of the ELTIF Regulation?

# ESMA_QA_2342

**Submission Date**
25/11/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Possibility of natural persons and trusts / trustees to be authorised as CASPs

**Question**
Can natural persons (self-employed individuals) and trusts/trustees be considered as „other undertakings“ for the purpose of authorisation as a CASP?

## ESMA Answer

12-12-2024

Original language

Natural persons and trusts/trustees cannot be considered as “other undertakings” for the purpose of authorisation as a CASP.?

# ESMA_QA_2344

**Submission Date**
15/11/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Audit / certification of CASP financial statements

**Question**
Are CASPs required to get their financial statements audited on an annual basis in order to calculate their own fund requirements?

## ESMA Answer

12-12-2024

Original language

Yes, CASPs should get their financial statements audited by an independent auditor on an annual basis. The exception to this is where the validation of financial statements by a specific national supervisor is allowed for in the national law of a CASP’s home Member State.

# ESMA_QA_2343

**Submission Date**
15/11/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Minimum capital requirements for CASPs

**Question**
What are the minimum capital requirements applicable to CASPs providing (i) only crypto-asset services listed under either Class 2 or Class 3, or (ii) providing crypto-asset services listed under Class 1 and Class 3 of Annex 4 of MiCA?

## ESMA Answer

12-12-2024

Original language

The minimum capital requirement applicable to a CASP should be the one applicable to whichever of its services requires the higher minimum capital requirement.

In particular:

The minimum capital requirements applicable to a CASP authorised to provide only one or several crypto-asset services belonging to the same Annex 4 “Class” of crypto-asset service – should be:

- If the crypto-asset service(s) is/are listed in Class 2 of Annex 4, EUR 125 000;

- If the crypto-asset service(s) is/are listed in Class 3 of Annex 4, EUR 150 000.

The minimum capital requirement applicable to a CASP authorised to provide both Class 1 and Class 3 services should be EUR 150 000.

# ESMA_QA_2328

**Submission Date**
06/11/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Other DORA topics

**Subject Matter**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Question**
We have service providers (Market Axess), who classify themselves as DORA-relevant because they offer regulated financial services (ARM and APA). However, they do not see themselves obligated to make contractual adjustments according to

Article 30. This is because "financial services" would not fall under the definition of "ICT service" as per Article 3(21) of DORA. Additionally, this requirement would only apply to non-regulated companies. Is this understanding correct?

# ESMA_QA_2318

**Submission Date**
31/10/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Product governance

**Subject Matter**
Individual portfolio management of loans

**Question**
Does a European crowdfunding service provider (“ECSP”) have the right to link the individual portfolio management of loans to the bulletin board functionality by not only allocating investors funds to one or multiple crowdfunding projects on ECSP's

crowdfunding platform but also by allowing investor a possibility of automatically investing in the loans published on the bulletin board?

# ESMA_QA_2313

**Submission Date**
23/10/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Register of information

**Additional Legal Reference**
ITS on Register of Information

**Subject Matter**
b_06.01.0020 - Licensed activity - Legal Protection Insurance

**Question**

Which licensed activity has to be selected for the licensed activity dropdown in the Register of Information if the entity is a legal protection insurance? According to the Annex of Solvency II it is the class 17, but class 17 is not available in the choices for the drop down field.

# ESMA_QA_2310

**Submission Date**
22/10/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Digital operational resilience testing

**Subject Matter**
Application of DORA to non-EU AIFMs of AIFs with EU investors

**Question**
The scope of DORA includes (Article 2(1)(k) “managers of alternative investment funds”. Such an entity is defined in Article 3(44) as “… a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU”. It is

noted that the definition does not extend to the need to be authorised or registered under Directive 2011/61/EU. As such this can be read as meaning that all managers (regardless of their jurisdiction) of alternative investment funds could potentially fall within scope of DORA.

ESMA_QA_2107 clarifies that a financial entity in the EU is subject DORA and that DORA does not directly apply to a non-EU entity providing services to an EU financial entity – although DORA may apply indirectly to the non-EU entity given that the “EU financial entity is expected to validate that the non-EU third-party provider does not prevent it to be compliant with DORA”.

Does the same principle apply to non-EU AIFMs that manage AIFs (regardless of where those AIFs are established) which have investors based in the EU i.e. DORA will not directly apply to such non-EU AIFMs, but may apply indirectly if such investors are financial entities in the EU who are directly subject to DORA?

# ESMA_QA_2306

**Submission Date**
16/10/2024

Status: Question Published

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

**Level 2 Regulation**
Regulation 2017/583 - RTS on transparency requirements in respect of non-equity financial instruments (RTS 2)

**Topic**
Non-equity transparency

**Subject Matter**
Questions related to package orders/transactions

**Question**

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 4.4]

a) How is the requirement for a package order that ‘Each component of the transactions bears meaningful economic or financial risk related to all the other components’ to be interpreted?
b) Can package orders also include equity instruments? If yes, how is pre- and post-trade transparency applied?
c) When does an investment firm apply the systematic internaliser obligations on a package order level?
d) How should systematic internalisers determine whether package orders which are not liquid as a whole are subject to the transparency obligations in non-equity instruments under Article 18(1) or 18(2) of MiFIR?
e) Which party to a package transaction is required to make the transactions public via an APA?
f) Can package orders (Article 2(1)(49)(b) of MiFIR) also include instruments that are not admitted to trading or traded on a venue?
g) Where an investment firm buys a newly issued bond in the primary market as the result of an allocation and funds its investment by selling another bond to the lead manager of the issuance, simultaneously with and contingent upon the investment in the new issue, would this qualify as a package order for the purpose of pre-trade transparency?

# ESMA_QA_2304

**Submission Date**
11/10/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Secondary Markets

**Topic**
Position limits

**Subject Matter**
Q&A on lot sizes and position limits

**Question**
In the gas derivatives market, lot sizes defined in the contract specification by trading venues do not represent a standard quantity of the underlying across all

market areas, for the same maturity. How should the open interest in lots be calculated for gas derivatives, for the application of position limits in Article 57(1) of MiFID II?

## ESMA Answer

11-10-2024

Original language

In most European gas market areas, the unit of trading is MWh/h. However, in some market areas the market trading convention is different. For example, the unit of trading is MWh/day in French PEG and Spanish PVB and Ktherms/day in UK NBP. Those differences are reflected in the unit of trading of associated derivatives contracts and their lot sizes: one lot of PEG or PVB gas derivative contract is 24 times smaller than one lot of the TTF gas derivative contact, for the same maturity. Taking the example of a monthly contract, one lot of TTF represents 720MWh while one lot of PEG and PVB represent 30MWh.

Gas derivatives are traded on EU trading venues and therefore subject to positions limits where the open interest equals or exceeds 300,000 lots over a one-year period, in accordance with Article 57(1) of MiFID II.

Due to the differences in unit of trading explained above, the open interest of contracts with smaller lot sizes may exceed the 300,000 lot threshold even though, when converted to MWh, their open interest is much smaller compared to contracts with larger lot sizes. In other words, those contracts may exceed the threshold due to historical market conventions rather than actual liquidity. This goes against the

original intention of the position limit regime, which aims to set position limits only on contracts with significant liquidity.

Therefore, it is necessary to ensure a consistent calculation of open interest in gas derivatives contracts to assess the 300 000 lot threshold and set position limits for critical or significant commodity derivatives under Articles 11(1) and 13 of RTS 21a. For such position limit assessment, the open interest should be calculated "equivalent lot", where one equivalent lot of all gas derivative contracts represent the same quantity of MWh as the benchmark TTF derivative contract for the same maturity.

The conversion from lots to equivalent lots, based on contracts existing in August 2024, is provided below for illustration purposes:

| Hub | Unit of trading | Lot size set by venues | Conversion of lot size in MWh | Equivalent lot for the application of position limits |
|---|---|---|---|---|
| **THE, PSV, TTF, CEGH VTP, ETF, ZTP, CZ VTP, MGP** | MWh/h | 1 lot = 1MW | Daily contract:<br><br>1 lot = 1MW*24 hours = 24MWh | 1 equivalent lot = 1 lot (no conversion) |
| | | | Monthly contract:<br><br>1 lot = 1MW*24hours*30days = 720MWh | [Monthly contract]<br><br>1 equivalent lot = 720MWh |

| | | | | |
|---|---|---|---|---|
| **PEG, PVB** | MWh/d | 1 lot = $\frac{1}{24}$MW | Daily contract:<br>1 lot = $\frac{1}{24}$MW * 24 hours = 1MWh<br>Monthly contract:<br>1 lot = 1MWh/d *30days = 30MWh | 1 equivalent lot = $\frac{720}{30}$ = 24 lots<br>[Monthly contract]<br>1 equivalent lot = 24 lots = 24 * 30MWh = 720MWh |
| **NBP** | Ktherms/d | 1 lot =1,000therms/d<br>1 therm ~ 29.31KWh | Daily contract:<br>1 lot = 1000terms/d*1day~29.31MWh<br>Monthly contract:<br>1 lot = 1000terms/d*30days ~ 879.21MWh | 1 equivalent lot = $\frac{720}{879.21}$ ~ 0.82 lot<br>[Monthly contract]<br>1 equivalent lot = 0.82 lots = 0.82 * 879.21MWh ~720MWh |

| | | | | |
|---|---|---|---|---|
| | | | | 1 equivalent lot = $\frac{720}{2930.71}$ ~ 0.25 lots |
| **LNG JKM** | MMBtu | 1 lot = 10,000MMBtu | Monthly contract:<br><br>1 lot = 10,000MMBtu = 2,930.710701722MWh | [Monthly contract]<br><br>1 equivalent lot = 0.25 lots = 0.25 * 2,930MWh ~ 720MWh |

# ESMA_QA_2303

**Submission Date**
10/10/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

**Topic**
Managers' transactions

**Additional Legal Reference**
Article 19 (12a) of MAR as introduced by the Listing Act

**Subject Matter**
Application of a new exception to PDMRs’ general prohibition to trade during the close period

**Question**

Does Article 19(12a) of MAR require issuers to expressly allow their PDMRs to trade during a closed period in the case of transactions or trade activities that do not relate to active investment decisions, that result exclusively from external factors or actions of third parties, or that are based on predetermined terms?

# ESMA_QA_2301

**Submission Date**
08/10/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT third-party risk management

**Additional Legal Reference**
Reg. DORA - Art. 3

**Subject Matter**
ICT Service definition

**Question**

Related to the definition provided by the Regulation, what are the criteria that can be used to identify the continuity component (i.e "on ongoing basis) mentioned?

# ESMA_QA_2295

**Submission Date**
02/10/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Status of entities providing crypto-asset services as part of the grandfathering regime

**Question**
Are Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024 and which are authorised to continue to

do so under the law of a Member State in accordance with Article 143 of MiCA, considered to be crypto-asset service providers under the terms of MICA during the transitional period until they are authorised?

## ESMA Answer

02-10-2024

Original language

*No. Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024 can continue to do so until the end of the applicable transition period (and not later than 1 July 2026), or until they are granted an authorisation, in accordance with MiCA.*

*Crypto-asset service providers authorised to perform their activities during the transitional period are not authorised within the meaning of this Article 3(1)(15) of MICA and therefore do not constitute "crypto-asset service providers" under the terms of MICA. The requirements of MiCA are therefore not applicable to them until they are granted an authorisation pursuant to Article 63.*

*As a consequence of the foregoing, when, under MiCA, an authorised crypto-asset service provider is subject to requirements in relation to another entity providing crypto-asset services' compliance with requirements for crypto-asset service providers, the authorised crypto-asset service provider may consider that these requirements are deemed to be complied with by an entity providing crypto-asset services under the transitional regime until such entity ceases to benefit from the applicable transitional period.*

*An entity providing crypto-asset services under the transitional regime may therefore continue to provide its services to an authorised crypto-asset services provider, until the end of the applicable transitional period. Inversely, an authorised crypto-asset services provider can have recourse to such entity under the transitional regime until the end of the applicable transitional period, including in the context of Article 75(9) of MiCA.*

*In the absence of a transitional period under Regulation (EU) 2023/1113, this clarification should not be read as exempting any entities providing crypto-asset services from fulfilling their obligations under that Regulation.*

*As a reminder, please see Q&A 2086 in relation to the provision of cross-border services during the transitional period.*

# ESMA_QA_2293

**Submission Date**
30/09/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Proprietary trading under MICA

**Question**
Do firms dealing on own account with regards to crypto-assets require a CASP license?

# ESMA_QA_2286

**Submission Date**
18/09/2024

Status: Question Published

## Additional Information

**Level 1 Regulation**
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

**Topic**
Information to clients on topics other than costs and charges

**Additional Legal Reference**
Annex I, Section B, point 5

**Subject Matter**
Scope of ancillary services and supervisory convergence

**Question**

What is the exact scope of the ancillary service, point 5 in annex I, Section B: Investment research and financial analysis or other forms of general recommendations relating to financial instruments?

# ESMA_QA_2282

**Submission Date**
17/09/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Short Selling Regulation (SSR) Regulation (EU) No 236/2012

**Topic**
Determination of net short position

**Subject Matter**
Calculation of Net Short Positions in case of issuers with non-listed shares

**Question**
When calculating net short positions in relation to issuers having both listed and non-listed shares, should the issued share capital also include non-listed shares?

## ESMA Answer

17-09-2024

Original language

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

Yes, non-listed shares should be included in the calculation of the issued share capital of a company and included in the denominator of the ratio. For reasons of consistency, non-listed shares should also be included in the numerator, where relevant. This interpretation aligns with previous interpretations that the EU Short Selling Regulation (Regulation (EU) 236/2012) refers to issued share capital of issuers, irrespective of any features attached to the issued shares.

# ESMA_QA_2261

**Submission Date**
22/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

**Topic**
ELTIF

**Subject Matter**
ELTIFs granting loans

**Question**
Can an ELTIF acquire equity or debt instruments issued by another collective investment scheme (CIS) or grant loans to another CIS, i.e. can CISs qualify as

qualifying portfolio undertaking as referred to in points a), b) and c) of Article 10(1) of the ELTIF Regulation? If yes, would the conditions set under article 11 or under article 10(1)d) apply? And would the look-through approach referred to in Article 10(2) of the ELTIF Regulation apply in this case, in particular for debt instruments referred to in Article 10(1)(b) of that Regulation issued by CIS, if CIS can qualify as “qualifying portfolio undertaking as referred to in Article 11?

# ESMA_QA_2260

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**

A) Article 19(1b) of the Prospectus Regulation states that issuers may incorporate

new annual or interim financial information by reference in their base prospectus. For base prospectus consisting of separate documents, should this annual or interim financial information be incorporated in the registration document?

B) If Article 19(1b) only applies to base prospectuses, what is the consequence for an RD used in a standalone tripartite prospectus which states that future financial information will be incorporated by reference?

C) Can future financial information still be ‘automatically’ incorporated by reference after the validity of the RD has expired but within the validity period of the tripartite base prospectus?

# ESMA_QA_2259

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**
How does future incorporation by reference interact with the general requirement to produce a supplement under Article 23 of the Prospectus Regulation?

# ESMA_QA_2258

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**
Information that is incorporated pursuant to Article 19(1b) of the Prospectus Regulation will not have been considered by an NCA during the prospectus scrutiny

and approval process. How will that interact with the NCA’s approval statement which will be included in the base prospectus at the time of approval?

# ESMA_QA_2257

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**
If future annual or interim financial information is being incorporated by reference, how should issuers comply with Article 19(2) of the Prospectus Regulation?

Article 19(2) requires issuers to include a hyperlink to documents that are incorporated by reference. But in the case of future incorporation the relevant documents will not have been published at the time of the prospectus approval.

# ESMA_QA_2256

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**
Article 19(1b) of the Prospectus Regulation states that issuers may incorporate new annual or interim financial information by reference that has been published

electronically.
If an issuer plans to use this facility how should this fact be reflected in the base prospectus?

# ESMA_QA_2255

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

**Question**

Please clarify the scope of ‘financial information’ to which Article 19(1b) applies, e.g., financial statements, audit reports, management reports.

# ESMA_QA_2254

**Submission Date**
21/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Prospectus Regulation 2017/1129

**Topic**
Public offer

**Subject Matter**
The interaction between the EU Green Bond Regulation (EuGBR) and the Prospectus Regulation

**Question**
Article 14 of the EuGB Regulation requires the publication of a prospectus approved under the Prospectus Regulation before the designation ‘European Green

Bond’ or ‘EuGB’ can be used.
Is it possible to publish the EuGB factsheet before the publication of a prospectus approved under the Prospectus Regulation or would this be considered unlawful use of the designation? Moreover, is it possible to publish advertisements before the approval of the prospectus? Please clarify the meaning ‘use of the designation’.

# ESMA_QA_2249

**Submission Date**
12/08/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

**Level 2 Regulation**
Regulation 2017/565 - MiFID II Delegated Regulation

**Topic**
Investment advice on an independent basis

**Additional Legal Reference**
article 2(1), under points (c) and (k) of Directive 2014/65/EU (MiFID II)

## Subject Matter

Scope of the exemptions provided for in article 2(1), (c) and (k) of Directive 2014/65/EU (MiFID II)

## Question

We would like to submit to you the two following questions regarding the ambit of the exemptions provided for in article 2(1), under points (c) and (k) of Directive 2014/65/EU (MiFID II).

• As regards art. 2(1)(c) of MiFID II, the provision states that :

“The Directive shall not apply to (…) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service”.

Article 4 of the Commission Delegated Regulation 2017/565 then states further that :

“(…) an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied: (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity ; (…)”.

Moreover, Recital 34 of this Delegated Regulation states that “the exemption should only apply if the investment service has an intrinsic connection to the main area of the professional activity and is subordinated thereto”.

Given the foregoing, assuming that conditions (b) and (c) from article 4 of the Delegated Regulation are met, should article 2(1)(c) of MiFID be construed as meaning that, in order to benefit from the exemption thereunder, it suffices that the provision of an investment service is complementary to the provision another service otherwise regulated, and do not need to be necessary to the provision of that other service?

• As regards art. 2(1)(k) of MiFID II, the provision states :

“The Directive shall not apply to (…) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated”.

Assuming that the investment advice is not specifically remunerated, should this article be construed as meaning that, in order to benefit from the exemption thereunder, it is necessary but sufficient that the investment advice is made in the context of the provision of another service (not covered by the Directive), irrespective of whether the investment advice is ancillary, incidental, complementary or even, factually or otherwise, connected to the other service, and irrespective of whether the activity is regulated?

# ESMA_QA_2248

**Submission Date**
12/08/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Digital operational resilience testing

**Additional Legal Reference**
Article 3 of the DORA Regulation points (60), (63) and (64)

**Subject Matter**
Size Thresholds for Self-Managed AIFs and UCITS

**Question**

We have been discussing a number of queries submitted by the local industry regarding practical difficulties when applying the definitions of micro, small and medium-sized enterprises as per Article 3 points (60), (63) and (64) of the DORA Regulation to self-managed AIFs and UCITS. We would like to obtain further clarification on the correct and proportionate interpretation of “annual turnover”, “total assets” and “employees” in the context of self-managed AIFs and UCITS.

# ESMA_QA_2247

**Submission Date**
08/08/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

**Level 2 Regulation**
Directive 2017/593 - MiFID II Delegated Directive

**Level 3 Regulation**
ESMA/2015/1886 - Guidelines - Assessment of knowledge and competence (MiFID)

**Topic**
Investment advice on an independent basis

**Additional Legal Reference**
CNMV Guía Técnica 4/2017 (Modificada diciembre 2020)

**Subject Matter**
Recertificaciones MIFID

**Question**
Que ocurre cuando el personal que trabaja en una entidad financiera con su certificado de Mifid en vigor durante un año no realiza los cursos de formación para renovar dicha certificación. Por ejemplo porque se encuentre en situación de baja laboral. Dicho empleado/a debe con posterioridad realizar el curso completo o debe simplemente recertificarse con los cursos de formación anual.
La Guía de la ESMA 2015/1886 no dice nada al respecto sobre la "caducidad" y el art. 21.d) del Reglamento 2017/565 sobre MIFID II establecen que el personal deben tener los conocimientos y competencias adecuados, pero ninguna normativa habla de lo que sucede si no se cumplen las horas de formación continua.

# ESMA_QA_2241

**Submission Date**
23/07/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT-related incident

**Subject Matter**
Consultas relacionadas con el reporte de incidentes

**Question**
Buenos días, me gustaría hacer dos consultas relacionadas con el reporte de incidentes:

En primer lugar, tras la publicación del segundo lote de RTS de DORA. En relación al RTS Final Report Draft Regulatory Technical Standards on the content of the notification and reports for major incidents and significant cyber threats and determining the time limits for reporting major incidents and Draft Implementing Technical Standards on the standard forms, templates and procedures for financial entities to report a major incident and to notify a significant cyber threats. Nos gustaría realizar dos consultas:
- Por una parte, se incluye, en el artículo 6 de los plazos de notificación para el reporte intermedio, las entidades financieras presentarán sin demora indebida un informe intermedio actualizado, en cualquier caso, cuando se hayan restablecido las actividades regulares. Por lo tanto, ¿se trata de un reporte obligatorio actualizar el informe intermedio bajo esa casuística?

- Por otro lado, en la RTS no se identifica a la autoridad competente a la que se debe de realizar los distintos reportes. En nuestro caso, España, tenemos como CSIRT de referencia INCIBE y también como autoridad competente BANCO DE ESPAÑA, ¿podríais comentarnos a quién es específico se deberían de realizar esos reportes, por favor?

En segundo lugar, aunque no se disponga de una relación estrecha con DORA, ha resultado también necesario Se elabora un informe semestral para la Autoridad Bancaria Europea (EBA) relacionado con los incidentes de ciberseguridad sufridos, con el propósito de llevar a cabo estudios estadísticos en el sector. ¿Podrías ayudarnos a confirmar si esta información es cierta y donde podríamos encontrar la referencia por favor?

# ESMA_QA_2240

**Submission Date**
23/07/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT-related incident

**Subject Matter**
Consultas relacionadas con el reporte de incidentes

**Question**
Buenos días, me gustaría hacer dos consultas relacionadas con el reporte de incidentes:

En primer lugar, tras la publicación del segundo lote de RTS de DORA. En relación al RTS Final Report Draft Regulatory Technical Standards on the content of the notification and reports for major incidents and significant cyber threats and determining the time limits for reporting major incidents and Draft Implementing Technical Standards on the standard forms, templates and procedures for financial entities to report a major incident and to notify a significant cyber threats. Nos gustaría realizar dos consultas:
- Por una parte, se incluye, en el artículo 6 de los plazos de notificación para el reporte intermedio, las entidades financieras presentarán sin demora indebida un informe intermedio actualizado, en cualquier caso, cuando se hayan restablecido las actividades regulares. Por lo tanto, ¿se trata de un reporte obligatorio actualizar el informe intermedio bajo esa casuística?

- Por otro lado, en la RTS no se identifica a la autoridad competente a la que se debe de realizar los distintos reportes. En nuestro caso, España, tenemos como CSIRT de referencia INCIBE y también como autoridad competente BANCO DE ESPAÑA, ¿podríais comentarnos a quién es específico se deberían de realizar esos reportes, por favor?

En segundo lugar, aunque no se disponga de una relación estrecha con DORA, ha resultado también necesario Se elabora un informe semestral para la Autoridad Bancaria Europea (EBA) relacionado con los incidentes de ciberseguridad sufridos, con el propósito de llevar a cabo estudios estadísticos en el sector. ¿Podrías ayudarnos a confirmar si esta información es cierta y donde podríamos encontrar la referencia por favor?

# ESMA_QA_2230

**Submission Date**
05/07/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Topic**
MiFID services under Article 6(4) of the AIFMD

**Additional Legal Reference**
Article 6(4)

**Subject Matter**
AIFMs safekeeping client money

**Question**

Are AIFMs permitted to hold client money, taking into account also the wording of Article 6(4)(b)(ii) of the AIFMD?

Will the situation change in light of the legislative amendments introduced following the AIFMD Review (Directive 2024/927/EU)?

## ESMA Answer

06-01-2025

Original language

**Answer from the European Commission:**

No.

Article 6(4)(b)(ii) of Directive 2011/61/EU (“AIFMD”) states that an AIFM may be authorized to provide safekeeping services in relation to shares or units of collective investment undertakings but does not permit AIFMs to safekeep clients’ money. Such a service is, therefore, not compatible with Article 6(4)(b)(ii) of AIFMD.

The situation will not change as a result of the extension of the scope of ancillary services under Article 6(4)(b) of the revised AIFMD (Directive (EU) 2024/927).

*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.*

# ESMA_QA_2229

**Submission Date**
05/07/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Topic**
Delegation

**Additional Legal Reference**
Article 20(1)(c)(d)

**Subject Matter**
Permission of AIFMs to delegate portfolio or risk management to non-supervised undertakings established outside of the EU

**Question**

Are AIFMs allowed to delegate portfolio or risk management to non-supervised undertakings established outside of the EU?

## ESMA Answer

06-01-2025

Original language

**Answer from the European Commission:**

No.

Under point (d) of Article 20(1) of Directive 2011/61/EU, the delegation of portfolio or risk management functions to an undertaking established outside the EU requires that cooperation between the national competent authorities of the AIFM's home Member State and the supervisory authority of the third-country undertaking is ensured. Article 78(3) of Commission Delegated Regulation (EU) No 231/2013 sets out the minimum conditions necessary to ensure this cooperation.

*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.*

# ESMA_QA_2227

**Submission Date**
02/07/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Topic**
Capital requirements

**Additional Legal Reference**
Directive 2009/65/EC of the European Parliament and of the Council (UCITS)

**Subject Matter**
Initial capital and additional own funds

**Question**

Are internally managed AIFs and self-managed UCITS investment companies required to maintain initial capital and additional own funds, respectively, pursuant to Article 9 of AIFMD and Articles 7 and 29 of the UCITS Directive, that are kept separate from the collective investment undertaking's assets, meaning that the initial capital and the additional own fund should not be included in the fund's net asset value (NAV)?

## ESMA Answer

18-06-2024

Original language

Yes. Internally managed AIFs and self-managed UCITS investment companies shall adopt procedures and systems to ensure compliance at all times with the requirements related to own funds under the UCITS and AIFM Directives.

As explained in recital 23 of AIFMD, minimum capital requirements imposed on AIFMs pursuant to Article 9 aim to "ensure the continuity and the regularity of the management of AIFs provided by an AIFM and to cover the potential exposure of AIFMs to professional liability in respect of all their activities". Article 11(c) of AIFMD provides that the competent authorities of the home Member State of the AIFM may withdraw the authorisation issued to an AIFM where that AIFM no longer meets the conditions under which authorisation was granted, including as regards own funds. Recital 9 and Article 29 of the UCITS Directive mirror AIFMD requirements.

Article 31 of the UCITS Directive and Article 18 of AIFMD demonstrate the differences in affectation and purpose between an investment company's own funds and its assets, as they require investment companies to have adequate internal

control mechanisms, including rules for the holding or management of investments in financial instruments in order to invest their own funds, which should be separate from assets of the investment company that should be invested according to the instruments of incorporation and the investment policy of that investment company.

As a result, an investment company's own funds should be neither invested in accordance with the funds' investment strategy nor distributed to the redeeming investors, but instead they should be preserved to cover exposures from the investment company's professional liability and they should always remain within the limits of the minimum capital requirements.

On the contrary, the assets of UCITS and AIFs should be invested according to the UCITS' or AIF's investment policy and objectives (Article 4(1)(a), 18(1) of AIFMD, Article 60(2) of Commission Delegated Regulation 231/2013, Article 1(2)(a), 5(2), 51(2) and 30 of UCITS D, Article 9(2) of Commission Directive 2010/43/EU).

*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.*

# ESMA_QA_2226

**Submission Date**
02/07/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Other DORA topics

**Subject Matter**
Scope of the definition of ICT services

**Question**
As the manager of an Alternative Investment Fund (AIF), we provide specialized investment opportunities to professional investors such as pension funds, insurers, and banks within the EU. Consequently, both our firm and our investors fall within

the scope of DORA.

Our investors can access their portfolios through an online portal operated by a third-party service provider (an ICT third-party service provider). We intend to establish a DORA addendum with this ICT third-party service provider to address this specific ICT service.

Several of our investors have inquired about DORA compliance in relation to their contractual relationship with us. While we are committed to ensuring the portal itself is compliant, we believe our core service – providing investment opportunities – does not constitute an ICT service under DORA. The online portal is merely a supplementary tool for accessing reports, not a fundamental part of our contractual obligations. This view is further supported by the fact that our agreements with investors only stipulate that we provide them with reports, without specifying the method of delivery.

Given these considerations, do you agree with our assessment that our services to investors do not fall under the definition of an ICT service as per DORA and that we, in respect of our investors, cannot be considered an ICT third-party service provider?

# ESMA_QA_2221

**Submission Date**
21/06/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Subject Matter**
Entities who have not applied for, or whose application for authorisation as CASPs has been refused by the end of the transition period

**Question**
What happens to an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 that has not applied for authorisation as a

CASP, or whose application for authorisation as a CASP has been refused by the end of the transition period?

## ESMA Answer

04-07-2024

Original language

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has not been authorised as a CASP by the end of the transition period applicable in the relevant Member State, it must cease providing crypto-asset services. Where such entities do not seek a MiCA authorisation, they should consider at an early stage how they will wind down their operations in a manner that avoids negative impact on their clients in accordance, if relevant, with applicable laws.

# ESMA_QA_2220

**Submission Date**
21/06/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Additional Legal Reference**
143(3)

**Subject Matter**
Entities not authorised as CASPs by the end of the transition period

**Question**

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has applied for but has not been granted or refused authorisation by the end of the transition period, can this entity continue providing services until it is granted or refused authorisation?

## ESMA Answer

04-07-2024

Original language

Article 143(3) of MiCA provides that “crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorisation pursuant to Article 63, whichever is sooner. Member States may decide not to apply the transitional regime for crypto-asset service providers provided for in the first subparagraph or to reduce its duration where they consider that their national regulatory framework applicable before 30 December 2024 is less strict than this Regulation.”

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has not been authorised as a CASP by the end of the transition period applicable in the relevant Member State, they must cease providing crypto-asset services until they are granted authorisation as a CASP under MiCA.

An entity providing crypto-asset services in accordance with applicable law before 30 December 2024 and wishing to continue providing services under MiCA should therefore apply for authorisation as a CASP as early as possible in order to ensure NCAs have the time to assess their applications without disrupting their services.

# ESMA_QA_2219

**Submission Date**
13/06/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT risk management

**Additional Legal Reference**
Final Report on Draft RTS on ICT Risk Management Framework and on Simplified ICT Risk Management Framework

**Subject Matter**
Questions on Microenterprises and RMF

## Question

QUESTION 1: Internal Audit Frequency for Microenterprises and financial entities subject to the simplified risk management framework
Recital 43 of DORA states that microenterprises and financial entities (FEs) referred to in Article 16(1) of DORA are not required to conduct regular internal audits of their ICT risk management framework (RMF). Does it conflict with Article 28, paragraph 5 of Commission Delegated Regulation (EU) 2024/1774 (RTS) that mandates an internal audit on the ICT RMF in line with the FE's audit plan?

QUESTION 2: ICT Testing Requirements for Microenterprises and Financial Entities – Cyber-attack scenarios
Article 11.6 of DORA excludes microenterprises from the requirement to include cyber-attack scenarios in their ICT business continuity and recovery plan testing. Does it conflict with Article 39, paragraph 1 of the Commission Delegated Regulation (EU) 2024/1774 (RTS), which mandates the inclusion of cyber-attack scenarios in the testing plans for financial entities referred to in Article 16(1) of DORA?

QUESTION 3: Recital 43 of DORA specifies that microenterprises and financial entities referred to in Article 16(1) of DORA are not required to regularly conduct risk analyses on legacy ICT systems. Does it conflict with Article 34, paragraph 1, point (e) of the Commission Delegated Regulation (EU) 2024/1774 (RTS) which mandates that financial entities referred to in Article 16(1) of Regulation (EU) 2022/2554 must manage the risks related to outdated or unsupported and legacy ICT assets?

## ESMA Answer

11-12-2024

Original language

**ANSWER 1:** Recital 43 does not conflict with Article 28, paragraph 5 of the RTS. The text of Recital 43 in DORA suggests that microenterprises and FEs referred to in Article 16(1) of DORA are not obligated to conduct internal audits of their ICT RMF on a regular basis. This means there is no mandate for these entities to perform the said internal audit with a specific periodicity. However, it does not exclude the necessity of conducting internal audits as deemed necessary by the FE's audit plan. The responsibility for determining the appropriate frequency and triggers for audits lies with the FE.

**ANSWER 2:** There is no contradiction between Article 11.6 of DORA and Article 39, paragraph 1 of the RTS. Article 11.6 of DORA explicitly excludes microenterprises from the requirement to include cyber-attack scenarios in their ICT business continuity and recovery plan testing. This exclusion applies solely to microenterprises and not to financial entities referred to in Article 16(1) of DORA. DORA clearly distinguishes between microenterprises and financial entities referred to in Article 16(1) of DORA, ensuring that the latter are still required to include cyber-attack scenarios in their testing plans as per Article 39, paragraph 1 of the RTS.

**ANSWER 3:** There is no contradiction between Recital 43 of DORA and Article 34, paragraph 1, point (e) of the RTS. Recital 43 specifies that microenterprises and financial entities referred to in Article 16(1) of DORA are not required to regularly conduct risk analyses on legacy ICT systems. This means there is no mandate for these entities to perform risk analyses with a specific periodicity. However, it does not imply that the risks associated with legacy systems should not be managed at all. Article 34 does not specify a required frequency for these risk analyses.

# ESMA_QA_2214

**Submission Date**
10/06/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

**Level 2 Regulation**
Directive 2017/593 - MiFID II Delegated Directive

**Topic**
Inducements

**Subject Matter**
Underwritting and placing fees

**Question**

In the specific situation that the calculation of the remuneration perceived by the firm for the placing/underwriting service is independent/unconnected with the number of securities finally placed to investors (i.e. the firm receives the same remuneration from the issuer or offeror of securities irrespectively of the amount of securities it sells to investors) as the circumstance “it is clear that the remuneration perceived for the placing service is connected to the provision of the investment service to the investor buying the financial instrument” is not met, should this remuneration be considered as an inducement?
If that is the case, how and to what extent entities should disclose in a “fair, clear and not misleading” manner information on such remuneration in costs, charges and inducements disclosures to their clients?

# ESMA_QA_2204

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-MDP

**Level 2 Regulation**
RTS 22 - Regulation 2017/590 on the reporting of transactions to competent authorities

**Topic**
* Transaction reporting

**Subject Matter**
Reporting of accumulator contracts

**Question**

(a) How should accumulators - i.e. derivative contracts whereby the buyer commits to buy a predefined number of underlying financial instruments at a predefined price, per day, over a certain “accumulation” period - be classified?

(b) Should the IF report the single transactions executed when settling the accumulator contract?

(c) Should the IF report the transactions concluded with third parties to secure the financial instruments to be sold to the accumulator’s buyer?

(d) How should the accumulator contract be reported?

## ESMA Answer

24-05-2024

Original language

(a) For the purposes of transaction data reporting, accumulators should be classified as either forwards or options, depending as to whether they embed option features (e.g. knock-out price or gearing ratio).

(b) No.

(c) Yes, they should be reported according to the general rules, as applicable.

(d) Accumulators should be reported as displayed below:

| RTS 22 Field Number | RTS 22 Field Name | Content to be reported |
|---|---|---|
| 30 | Quantity | Number of derivative contracts purchased. |
| 33 | Price | Price at which the buyer has committed to purchase the underlying financial instruments during the accumulation period.<br><br>*[For contracts classified as options]*<br><br>The premium of the derivative contract per underlying. |
| 38 | Up-front payment | If applicable, the monetary value of any up-front payment. |
| 42 | Instrument full name | Full name of the financial instrument, which must contain the term "accumulator". |
| 43 | Classification | JE**** **or** O***** |
| 46 | Price multiplier | Maximum number of shares to be purchased over the entire accumulation period. |
| 47 | Underlying ISIN | ISIN of the underlying. |

| | | |
|---|---|---|
| | | *[Only for contracts classified as options]* |
| 51 | Strike price | Pre-determined price at which the holder will have to buy the underlying financial instrument. |
| 55 | Expiry date | Expiration date of the accumulator. |

# ESMA_QA_2203

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

**Topic**
* EMIR Reporting

**Subject Matter**
Reporting of price field at position level

**Question**
Should the price field at position level be amended following a change in the notional amount?

## ESMA Answer

24-05-2024

Original language

No, counterparties should not update the price field at position level after it is reported initially (i.e., with action type ‘new’). The price field at position level should reflect the price of the position when it is first reported.

In particular, in cases where the notional of the position varies (increase/decrease) overtime due to factors such as, the inclusion of new trades into the position or the termination of trades included in that position, the price field should not be updated.

# ESMA_QA_2202

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

**Topic**
* EMIR Reporting

**Subject Matter**
Reporting of accumulator contracts

**Question**
(a) For the purpose of reporting under EMIR REFIT, how should OTC accumulator contracts – i.e., derivative contracts in which the buyer enters into an agreement to

purchasing a predetermined number of underlying financial instruments at a predefined price, per day - over a specified ‘accumulation’ period, be classified?

(b) How should these contracts be reported under EMIR REFIT?

## ESMA Answer

24-05-2024

Original language

(a) Under EMIR REFIT, accumulators shall be classified as either forwards or options, depending on the presence of option features within these contracts. An accumulator contract without any embedded option features should be reported as a forward (‘forward accumulator’), whereas accumulator contracts embedding one or more option features, should be reported as options accordingly.

(b) (i) Forward accumulators should be reported equivalently as forward contracts, as illustrated by the below example.

In the event that a knockout event is triggered, the counterparty should regard it as an early termination of the derivative. This scenario should be reported with Action Type ‘Terminate’ and Event Type ‘Exercise’.

**Example 1:**

Underlying Share: ABC Limited

Tenor: 12 months

Shares per day: 5,000

Accumulation days: Assuming 20 trading days per month (total accumulation days = 240)

Settlement date: Monthly

Forward Price: EUR 10*

Maximum Notional Amount: EUR 12,000,000**

Price of Underlying Share: Month 1 - EUR 11  / Month 2 - EUR 9.50

*Report at inception*

Reporting of accumulator contracts

| Table | Item | Field | Example |
|---|---|---|---|
| 2 | 9 | Product Classification | JESXFC |

| | | | |
|---|---|---|---|
| 2 | 10 | Contract type | FORW |
| 2 | 11 | Asset Class | EQUI |
| 2 | 41 | Venue of execution | XXXX |
| 2 | 43 | Effective date | 01/01/2024 |
| 2 | 44 | Expiration Date | 31/12/2024 |
| 2 | 46 | Final contractual settlement date | 03/01/2025 |
| 2 | 48 | Price | 10 |
| 2 | 49 | Price Currency | EUR |
| 2 | 55 | Notional amount of leg 1 | 12,000,000 |
| 2 | 56 | Notional currency 1 | EUR |
| Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods. | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/01/2024 |

| | | | |
|---|---|---|---|
| 2 | 58 | End date of the notional amount of leg 1 | 31/01/2024 |
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 1,000,000*** |
| 2 | 60 | Total notional quantity of leg 1 | 12,000,000 |
| 2 | 151 | Action type | NEWT |
| 2 | 152 | Event type | TRAD |
| 2 | 154 | Level | TCTN |

** Initial forward price should be populated in Field 2.48*

*** Maximum Notional Amount = maximum number of shares x forward price*

*Maximum number of shares = shares per day x maximum number of accumulation days*

*Maximum number of accumulation days = trading days x number of months within tenor*

**** On assumption of 20 trading days per month and 5,000 shared per accumulation day.*

*In this example, we assume a gearing ratio of 1, in the calculation of the maximum number of shares and notional amount.*

*Modification after 3rd month execution*

Reporting of accumulator contracts

| Table | Item | Field | Example |
|---|---|---|---|
| 2 | 9 | Product Classification | JESXFC |
| 2 | 10 | Contract type | FORW |
| 2 | 11 | Asset Class | EQUI |
| 2 | 41 | Venue of execution | XXXX |
| 2 | 43 | Effective date | 01/01/2024 |
| 2 | 44 | Expiration Date | 31/12/2024 |
| 2 | 46 | Final contractual settlement date | 03/01/2025 |
| 2 | 48 | Price | 10 |

| | | | |
|---|---|---|---|
| 2 | 49 | Price Currency | EUR |
| 2 | 55 | Notional amount of leg 1 | 12,000,000 |
| 2 | 56 | Notional currency 1 | EUR |
| Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods. | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/02/2024 |
| 2 | 58 | End date of the notional amount of leg 1 | 29/02/2024 |
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 1,000,000*** |
| 2 | 60 | Total notional quantity of leg 1 | 12,000,000 |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/03/2024 |
| 2 | 58 | End date of the notional amount of leg 1 | 31/03/2024 |

| | | | |
|---|---|---|---|
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 950,000 |
| 2 | 60 | Total notional quantity of leg 1 | 12,000,000 |
| … | … | … | … |
| … | … | … | … |
| 2 | 151 | Action type | MODI |
| 2 | 152 | Event type | TRAD |
| 2 | 154 | Level | TCTN |

(ii) Option Accumulators should be reported as displayed below.

**Example 2:**

Underlying Share: XYZ Limited

Tenor: 6 months

Shares per month: 1,000

Settlement date: Monthly

Option 1: Strike Price: EUR 100 (Expiry in 2 month)

Option 2: Strike Price: EUR 105 (Expiry in 6 months)

Total Notional Amount: EUR 620,000

*Month 1: Market price EUR 110. Buy 1,000 shares at strike – EUR 100 (option 1);*

*Month 2: Market price EUR 108. Buy 1,000 shares at strike – EUR 100 (option 1);*

*Month 3: Market Price EUR 106. Buy 1,000 shares at strike – EUR 105 (option 2);*

*And so forth, until expiry.*

*Report at inception*

Reporting of accumulator contracts

| Table | Item | Field | Example |
|---|---|---|---|

| | | | |
|---|---|---|---|
| 2 | 9 | Product Classification | OCESCS |
| 2 | 10 | Contract type | OPTN |
| 2 | 11 | Asset Class | EQUI |
| 2 | 41 | Venue of execution | XXXX |
| 2 | 43 | Effective date | 01/01/2024 |
| 2 | 44 | Expiration Date | 28/06/2024 |
| 2 | 46 | Final contractual settlement date | 02/07/2024 |
| 2 | 55 | Notional amount of leg 1 | 620,000 |
| 2 | 56 | Notional currency 1 | EUR |
| Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods. | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/01/2024 |
| 2 | 58 | End date of the notional amount of leg 1 | 31/01/2024 |

| | | | |
|---|---|---|---|
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 100,000 |
| 2 | 60 | Total notional quantity of leg 1 | 1000 |
| | | | |
| 2 | 132 | Option type | CALL |
| 2 | 133 | Option style | EURO |
| 2 | 134 | Strike price | 100 |
| 2 | 135 | Effective date of the strike price | 01/01/2024 |
| 2 | 136 | End date of the strike price | 29/02/2024 |
| 2 | 137 | Strike price in effect on associated effective date | 100 |
| 2 | 138 | Strike price currency/currency pair | EUR |
| | | | |
| 2 | 151 | Action type | NEWT |

| | | | |
|---|---|---|---|
| 2 | 152 | Event type | EXER |
| 2 | 154 | Level | TCTN |

*Modification after 3rd month exercise of the option*

Reporting of accumulator contracts

| Table | Item | Field | Example |
|---|---|---|---|
| 2 | 9 | Product Classification | OCESCS |
| 2 | 10 | Contract type | OPTN |
| 2 | 11 | Asset Class | EQUI |
| 2 | 41 | Venue of execution | XXXX |
| 2 | 43 | Effective date | 01/01/2024 |

| | | | |
|---|---|---|---|
| 2 | 44 | Expiration Date | 28/06/2024 |
| 2 | 46 | Final contractual settlement date | 02/07/2024 |
| 2 | 55 | Notional amount of leg 1 | 620,000 |
| 2 | 56 | Notional currency 1 | EUR |
| Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods. | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/01/2024 |
| 2 | 58 | End date of the notional amount of leg 1 | 31/01/2024 |
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 100,000 |
| 2 | 60 | Total notional quantity of leg 1 | 1000 |
| | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/02/2024 |

| | | | |
|---|---|---|---|
| 2 | 58 | End date of the notional amount of leg 1 | 29/02/2024 |
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 100,000 |
| 2 | 60 | Total notional quantity of leg 1 | 1000 |
| | | | |
| 2 | 57 | Effective date of the notional amount of leg 1 | 01/03/2024 |
| 2 | 58 | End date of the notional amount of leg 1 | 31/03/2024 |
| 2 | 59 | Notional amount in effect on associated effective date of leg 1 | 105,000 |
| 2 | 60 | Total notional quantity of leg 1 | 1000 |
| | | | |
| 2 | 132 | Option type | CALL |
| 2 | 133 | Option style | EURO |

| | | | |
|---|---|---|---|
| 2 | 134 | Strike price | 100 |
| 2 | 135 | Effective date of the strike price | 01/01/2024 |
| 2 | 136 | End date of the strike price | 29/02/2024 |
| 2 | 137 | Strike price in effect on associated effective date | 100 |
| 2 | 138 | Strike price currency/currency pair | EUR |
| | | | |
| 2 | 135 | Effective date of the strike price | 01/03/2024 |
| 2 | 136 | End date of the strike price | 28/06/2024 |
| 2 | 137 | Strike price in effect on associated effective date | 105 |
| 2 | 138 | Strike price currency/currency pair | EUR |
| | | | |
| 2 | 151 | Action type | MODI |

| | | | |
|---|---|---|---|
| 2 | 152 | Event type | EXER |
| 2 | 154 | Level | TCTN |

# ESMA_QA_2201

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Control functions (Compliance, Risk and Audit)

**Additional Legal Reference**
Article 11 ECSPR

**Subject Matter**
Prudential requirements

**Question**

What is the seniority between the own funds and the insurance policy in case of losses for the CSP whose prudential safeguards are a combination of own funds and insurance policy (as allowed in point (c) of Article 11(2) of the ECSPR)?

## ESMA Answer

27-05-2024

Original language

The ECSPR does not provide any specific indication on how occurred losses should impact the prudential safeguards of a CSP (i.e., whether such losses should be deducted from the own funds at first level and then from the insurance policy or differently). ESMA notes that such impact will often depend upon the terms and conditions of the insurance policy subscribed by the CSP.

ESMA is of the view that a CSP whose prudential safeguards are a combination of own funds and insurance policy shall pay specific attention to the terms and conditions of its insurance policy to ensure that in case of occurred losses the portion meant to be covered by the insurance policy can be made available without undue delay.

ESMA would also like to remind that, in case of losses, CSPs shall put in place actions to continue to comply with Article 11(1) of the ECSPR, according to which CSPs shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

(a) EUR 25 000; and

(b) one quarter of the fixed overheads of the preceding year, reviewed annually, which are to include the cost of servicing loans for three months where the crowdfunding service provider also facilitates the granting of loans.

# ESMA_QA_2200

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Control functions (Compliance, Risk and Audit)

**Additional Legal Reference**
Article 11 ECSPR

**Subject Matter**
Prudential requirements

**Question**

What should be done with a possible own risk excess of the insurance policy that CSPs subscribe to comply with the prudential safeguards established under Article 11 of the ECSPR?

## ESMA Answer

27-05-2024

Original language

According to Article 4(3) of the ECSPR, the management body of a CSP shall review, at least once every two years, taking into account the nature, scale and complexity of the crowdfunding services provided, the prudential safeguards referred to in point (h) of Article 12(2) of the same regulation, which requires perspective CSPs to provide the authorising competent authority with (inter alia) a description of the prospective CSP's prudential safeguards in accordance with Article 11 of the ECSPR.

According to Article 11(2) of the ECSPR, CSPs' prudential safeguards (as defined in paragraph (1) [4] of the same article) shall take one of the following forms:

1. own funds

2. an insurance policy covering the territories of the Union where crowdfunding offers are actively marketed or a comparable guarantee; or

3. a combination of points (a) and (b).

Article 11 of the ECSPR provides the minimum characteristics that the insurance policy shall have in paragraph (6) and the list of risks that such insurance policy shall (at least) cover in paragraph (7).

ESMA believes that, where the insurance policy used by a CSP to fulfil the prudential safeguards leaves some risks related to the provision of crowdfunding services uncovered, the CSP shall complement the coverage of such risks using own funds, as required in point (c) of Article 11(2) of the ECSPR.

# ESMA_QA_2199

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Control functions (Compliance, Risk and Audit)

**Additional Legal Reference**
Article 4(1) ECSPR

**Subject Matter**
Risk management framework

**Question**

Are all CSPs that facilitate granting loans required to have a risk management framework? Shall such a framework be based on risk categories for the loans offered by the CSP?

## ESMA Answer

27-05-2024

Original language

Article 4(1)[3] of the ECSPR introduces general organisational and internal governance requirements for all CSPs, which implies, inter alia, that the management body in its supervisory function carries out an effective oversight of the management decision-making process, and the risks involved in the activity provided.

According to Article 12(2)(e) of the ECSPR, the application for the authorisation as CSP shall provide the authorising NCA with a description of the prospective CSP's governance arrangements and internal control mechanisms to ensure compliance with the ECSPR, including risk-management and accounting procedures.

In addition to these general duties, paragraph (2) of the same Article 4 establishes more specific obligations regarding the management body of all CSPs which intermediate loans and requires to establish, and oversee the implementation of, appropriate systems and controls to assess the risks related to the loans intermediated. More detailed requirements are provided in paragraph (4) for the assessment of credit risk and relevant risk-management framework of CSPs which determine the price of the offers. This framework is complemented by the

organisational requirements established in Article 6 of the ECSPR for lending-based CSPs which also provide the individual portfolio management of loans.

Since Article 20(1)(b) of the ECSPR requires all CSPs that facilitate the granting of loans to annually publish an outcome statement indicating the expected and actual default rate of all loans facilitated by the CSP by risk category and by reference to the risk categories set out in the risk management framework, ESMA considers that the risk management framework of (all) lending-based CSPs should assess the risks of loans intermediated on their platform by classifying them into risk categories which correspond to the risks /probabilities of default of such loans.

This would allow CSPs to soundly assess the risks of the loans that they offer on their platform in accordance with Article 4(2) of the ECSPR and at the same time to comply with Article 20(1)(b) of the same regulation and provide accurate outcome statements on actual and expected default rate of such loans by reference to same risk categories used in their risk management framework.

Based on the above, ESMA believes that all CSPs shall establish – in the context of their organisational arrangements – a risk management framework whose complexity is also determined by the various provisions which are applicable to the specific activities provided by the CSP taking into account the nature, scale and complexity of such activities. When CSPs intermediate loans, such risk management framework shall at least assess the risks related to the loans intermediated on the crowdfunding platform (Article 4(2) of the ECSPR).

In case of CSPs that determine the price of crowdfunding offers, the risk management arrangements shall also comply with the specific additional requirements set out in Article 4(4)(f) of the ECSPR.

# ESMA_QA_2198

**Submission Date**
27/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2020/1503 - European crowdfunding service providers for business

**Topic**
Information to clients on topics other than costs and charges

**Additional Legal Reference**
Article 20 ECSPR

**Subject Matter**
Default rate disclosure

**Question**

Article 20 of the ECSPR requires CSPs who facilitate the granting of loans to annually disclose the information on the default rate of the crowdfunding projects over at least the preceding 36 months as well as the outcome statement on the expected and actual default rates along with the actual return achieved (for individual portfolio management of loans) of each financial year.

Should the reference period for the default rate disclosure include crowdfunding projects which started in the preceding 36 months, but which were offered on a crowdfunding platform of a CSP that, at the time of such offers, was providing crowdfunding services in accordance with the applicable national law before the expiration date of the transitional period established in Article 48 of the ECSPR?

## ESMA Answer

27-05-2024

Original language

Article 20 of the ECSPR on default rate disclosure, similar to Article 19 and Article 26 of the ECSPR, intends to promote transparency, reduce information asymmetry and empower investors with the necessary information on crowdfunding which also cover the nature and the risks of the crowdfunding offers.

Article 20 of the ECSPR aims in particular at facilitating the assessment of risk arising from loans offered on crowdfunding platforms by providing information which are not limited to the interest rate of the loan that might not be a sufficient indicator for investors to understand the risk of the loan. Thus, Article 20 of the ECSPR requires CSPs which provide crowdfunding services consisting of the facilitation of granting of loans  to provide investors, on an annual basis, with the default rate related to all crowdfunding projects offered by CSPs on their crowdfunding platform

over at least the preceding 36 months and the actual and expected default rate of all loans by risk category of the previous financial years (such disclosure includes the assumptions on which estimates are based).

ESMA believes that the default rate disclosure that CSPs that facilitate the granting of loans have to provide in accordance with Article 20 of the ECSPR should be done considering all loans offered on a crowdfunding platform over at least the preceding 36 months[1] (for the disclosure under point (i) of Article 20(1)(a) of the ECSPR) and in the previous financial year[2] (for the disclosure under point (ii) of Article 20(1)(b) of the ECSPR) irrespectively of the date in which the CSP was authorised in accordance with Article 12 of the ECSPR and Article 48(2) of the ECSPR, thus including in the disclosure the default rate of loans offered by CSPs which provided crowdfunding offers in accordance with the national law during the transitional period, as allowed in Article 48 of the ECSPR. Furthermore, it is worth noting that the use of the longest possible period for the calculation of the default rate should provide a more robust and solid base for the assessment of the project owner's risk.

# ESMA_QA_2186

**Submission Date**
14/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2021/23 - recovery and resolution of central counterparties (CCPRRR)

**Topic**
CCP Resolution

**Subject Matter**
Voting arrangements in resolution colleges

**Question**
Where one authority attends a resolution college in multiple roles pursuant to Article 4(2) of CCP RRR, would it have the corresponding number of votes?

## ESMA Answer

11-09-2024

Original language

**Answer was provided by the European Commission**

Article 4(3), first sub-paragraph, of CCPRRR provides that ESMA, EBA and the authorities referred to in points (d), (e), (k) and (l) of paragraph 2 of that article are non-voting members. It follows that the authorities that qualify for membership of the resolution college in accordance with Article 4(2), points (a), (b), (c), (f), (g), (h), (i), (j) and (m), of CCPRRR are, instead, voting members.

Article 4(3), second sub-paragraph, of CCPRRR explicitly provides that the ECB can express two votes where it is a member of the college pursuant to both points (c) and (j) of paragraph 2 of the same Article. Therefore, the CCPRRR explicitly mentions the case where one member with voting rights has two votes in the resolution college. If the legislator's will had been to give more than one voting right to the members of the resolution college other than the ECB, the CCPRRR would have referred to this situation explicitly. In addition, the references to the simple majority of voting members in articles 11, 14 and 17 CCPRRR suggest that each voting member can express only one vote, unless explicitly provided otherwise by the CCPRRR.

Consequently, where the members of the resolution college qualify as members thereof pursuant to more than one point of Article 4(2) CCPRRR, these will have one voting right unless in situations explicitly referred to in that Regulation (i.e. ECB).

Any interpretation provided in this Q&A is strictly limited to the CCPRRR and should not be construed as providing any guidance on or limitation to the application of any other EU legislation.

**Disclaimer**

*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.*

# ESMA_QA_2185

**Submission Date**
14/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2021/23 - recovery and resolution of central counterparties (CCPRRR)

**Topic**
CCP Resolution

**Subject Matter**
Voting arrangements in resolution colleges

**Question**
How should votes be distributed in the case of two or more authorities in a particular Member State sharing one of the roles specified in Article 4(2) of CCP RRR?

## ESMA Answer

11-09-2024

Original language

**Answer was provided by the European Commission**

Where two or more authorities exercise the same role as referred to in Article 4(2) CCPRRR in relation to the same entity, such authorities are to be considered as a single member of the resolution college. Accordingly, they will express only one vote and would need to agree amongst themselves on the vote to cast.
Any interpretation provided in this Q&A is strictly limited to the CCPRRR and should not be construed as providing any guidance on or limitation to the application of any other EU legislation.

**Disclaimer**

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# ESMA_QA_2184

**Submission Date**
14/05/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Regulation 2021/23 - recovery and resolution of central counterparties (CCPRRR)

**Topic**
CCP Resolution

**Subject Matter**
Resolution college membership

**Question**
Could the competent authority of the CCP’s parent undertaking be invited to participate in the resolution college, if the parent undertaking is not a CCP and operates in a third country?

# ESMA_QA_2183

**Submission Date**
14/05/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Regulation 2021/23 - recovery and resolution of central counterparties (CCPRRR)

**Topic**
CCP Resolution

**Subject Matter**
Resolution colleges

**Question**
In accordance with Article 4(2)(c) of CCP RRR, competent authorities and resolution authorities of clearing members referred to in Article 18(2)(c) of EMIR should be voting members of the resolution college. Art. 18(2)(c) of EMIR refers to

the three Member States with the largest contributions to the default fund of the CCP. Where not all clearing members of the CCP are subject to supervision by competent authorities, should the calculation exclude default fund contributions from not supervised clearing members?

# ESMA_QA_2182

**Submission Date**
14/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Regulation 2021/23 - recovery and resolution of central counterparties (CCPRRR)

**Topic**
CCP Resolution

**Subject Matter**
Resolution college membership

**Question**
Should the banking national resolution authorities (BNRA) participate in the resolution college where the SRB also qualifies as resolution authority of the clearing members of the same Member State?

## ESMA Answer

11-09-2024

Original language

**Answer was provided by the European Commission**

Article 4(2)(c) CCPRRR provides that the resolution authorities of the clearing members referred to in point (c) of Article 18(2) of Regulation (EU) No 648/2012 (EMIR), including, where relevant, the Single Resolution Board (SRB) in its role as a resolution authority of credit institutions within the single resolution mechanism conferred upon it in accordance with Regulation (EU) No 806/2014 (SRMR), are members of the resolution college. The clearing members referred to in Article 18(2)(c) EMIR are the clearing members of the CCP which are established in the three Member States with the largest contributions to the default fund of the CCP. Therefore, Article 4(2)(c) CCPRRR should be interpreted in such a way that the resolution authorities of the CCP's clearing members which are established in the three Member States with the largest contributions to the CCP's default fund are members of the resolution college.

In the hypothetical situation where all the CCP's clearing members in one of these three Member States are within the SRB's remit, only the SRB will be member of the resolution college on this basis. In another hypothetical situation where all the CCP's clearing members in one of these three Member States are within the remit of the national bank resolution authority, only the national bank resolution authority will be member of the resolution college on this basis. Finally, if some of the CCP's clearing members in one of these three Member States are within the SRB's remit, while other clearing members of this CCP which are established in the same

Member State are within the remit of the national bank resolution authority, both authorities will be member of the resolution college. Therefore, participation of bank resolution authorities to the resolution college depends on their authority over the CCP’s clearing members.

Any interpretation provided in this Q&A is strictly limited to the CCPRRR and should not be construed as providing any guidance on or limitation to the application of any other EU legislation.

**Disclaimer**

*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.*

# ESMA_QA_2181

**Submission Date**
14/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
MiCA

**Topic**
Crypto-Asset Service Provider (CASP)

**Additional Legal Reference**
Article 77

**Subject Matter**
Publication of information by CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets

**Question**

Where should a CASP exchanging crypto-assets for funds or other crypto-assets publish the “firm price or method of determining the price of the crypto-assets" as required by Article 77(2) of MiCA?

Where should they publish the “information about the transactions concluded by them, such as transaction volumes and prices”, as required by Article 77(4) of MiCA?

## ESMA Answer

17-05-2024

Original language

CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets should publish the information required under paragraphs 2 and 4 of Article 77 in a publicly available location (e.g. on their website) that is accessible to all without registration.

The quotations published under Article 77(2) of MiCA should include all elements allowing a party to anticipate with certainty the price at which an exchange would be made.

The information published under Article 77(4) on executed transactions should remain available for a sufficient period of time. The information would typically be expected to be available until midnight of the following business day.

CASPs are strongly encouraged to align as much as possible with the format prescribed in the Commission Delegated Regulations on pre-trade and post-trade

transparency and record keeping once these Regulations are finalised and made available.

# ESMA_QA_2176

**Submission Date**
08/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Topic**
Costs and fees

**Additional Legal Reference**
ESMA guidelines on performance fees in UCITS and certain types of AIFs

**Subject Matter**
Performance fees

**Question**

Can the manager of a Fund of Funds (FoF) charge performance fees?

## ESMA Answer

24-05-2024

Original language

In line with paragraph 18 of the Guidelines, the manager of a FoF should be able to demonstrate to the NCA that the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors' interests.

Against this background, as a general principle, where the investment policy of a FoF requires the active management of the FoF and the determination of the allocation in the underlying funds has a material impact on the FoF performance, performance fees for the manager of the FoF could be considered as justified.

The assessment on how performance fees are justified in light of the investment policy of the FoF should be reflected in the fund documentation, including the fund rules or the instruments of incorporation and may be reviewed, where needed, by the NCA on a case-by-case basis.

# ESMA_QA_2175

**Submission Date**
08/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Topic**
Costs and fees

**Additional Legal Reference**
ESMA guidelines on performance fees in UCITS and certain types of AIFs

**Subject Matter**
Performance fees

**Question**
Can the manager of a Fund of Funds (FoF) charge performance fees?

## ESMA Answer

24-05-2024

Original language

In line with paragraph 18 of the Guidelines, the manager of a FoF should be able to demonstrate to the NCA that the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors' interests.

Against this background, as a general principle, where the investment policy of a FoF requires the active management of the FoF and the determination of the allocation in the underlying funds has a material impact on the FoF performance, performance fees for the manager of the FoF could be considered as justified.

The assessment on how performance fees are justified in light of the investment policy of the FoF should be reflected in the fund documentation, including the fund rules or the instruments of incorporation and may be reviewed, where needed, by the NCA on a case-by-case basis.

# ESMA_QA_2174

**Submission Date**
08/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

**Topic**
Costs and fees

**Additional Legal Reference**
ESMA guidelines on performance fees in UCITS and certain types of AIFs

**Subject Matter**
Performance fees

**Question**

Where a manager applies an additional reference indicator to the performance fee model (e.g.: a hurdle rate on top of the High-Water Mark model or the benchmark model), should the minimum performance reference period be applied to the additional reference indicator?

## ESMA Answer

24-05-2024

Original language

The minimum performance reference period in accordance with paragraph 40-42 of the Guidelines should be applied to the performance fee model. However, the manager is not required to apply the minimum performance reference period to the additional reference indicator, considering that (a) the final combination (i.e.: the performance fee model plus the additional reference indicator) does not result in increased fees for investors compared to the use of the performance fee model alone and (b) the performance fee model (excluding the additional reference indicator) is consistent with the fund’s investment objectives, strategy and policy, in line with Guideline 2. In line with paragraph 46 of guidelines, appropriate disclosure should be provided in the prospectus.

# ESMA_QA_2173

**Submission Date**
08/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

**Topic**
Costs and fees

**Additional Legal Reference**
ESMA guidelines on performance fees in UCITS and certain types of AIFs

**Subject Matter**
Performance fees

**Question**

Where a manager applies an additional reference indicator to the performance fee model (e.g.: a hurdle rate on top of the High-Water Mark model or the benchmark model), should the minimum performance reference period be applied to the additional reference indicator?

## ESMA Answer

24-05-2024

Original language

The minimum performance reference period in accordance with paragraph 40-42 of the Guidelines should be applied to the performance fee model. However, the manager is not required to apply the minimum performance reference period to the additional reference indicator, considering that (a) the final combination (i.e.: the performance fee model plus the additional reference indicator) does not result in increased fees for investors compared to the use of the performance fee model alone and (b) the performance fee model (excluding the additional reference indicator) is consistent with the fund's investment objectives, strategy and policy, in line with Guideline 2. In line with paragraph 46 of guidelines, appropriate disclosure should be provided in the prospectus.

# ESMA_QA_2172

**Submission Date**
07/05/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

**Topic**
Client categorisation

**Subject Matter**
Two classifications for one client

**Question**
Assuming that the investor disclosure requirements are predefined in legal documents and agreements, is it possible to select two client categories for a

professional client (such as per se eligible counterparty and professional client)?

## ESMA Answer

11-07-2024

Original language

Yes. More generally, it is possible to have clients categorised in two different client categories, depending on the investment service or activity provided or even the financial instrument. Nevertheless, if the client is classified into different categories, they must be clearly informed, for each relevant category, which financial instruments, investment services, and activities fall under it.

As an example, under Annex II of MiFID II, a retail client may waive the benefit of certain MiFID II rules of conduct by stating in writing to the investment firm that they wish to be treated as a professional client, "*either generally or in respect of a particular investment service or transaction, or type of transaction or product*". As such, one client may be treated as retail for one investment service and/or type of financial instrument but as a professional client for a different combination of service and product.

Similarly, a client qualifying as a *per se* eligible counterparty for the services of execution of orders, reception and transmission of orders and dealing on own account would be treated as a professional client for other types of investment services or activities for which the eligible counterparty category is not applicable.

# ESMA_QA_2168

**Submission Date**
30/04/2024

Status: Forwarded to EC/Public Consultation/Other

## Additional Information

**Level 1 Regulation**
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

**Topic**
CSD questions - Organisational requirements (governance arrangements, record keeping, outsourcing, user committee)

**Additional Legal Reference**
Article 29(1a) of Regulation (EU) No 909/2014 (CSDR), as amended by Regulation (EU) 2023/2845 (CSDR Refit)

**Subject Matter**

Scope of issuers required to obtain and transmit to CSDs a valid LEI

**Question**

Does the new requirement under Article 29(1a) of Regulation (EU) No 909/2014 (CSDR), as amended by Regulation (EU) 2023/2845 (CSDR Refit), apply to all issuers to whom a CSD provides services?

Does the requirement also apply to issuers of securities in paper form, if the CSD provides ancillary services to those issuers?

Does the obligation for issuers to obtain and transmit to the CSD a valid legal entity identifier (LEI) apply only to new issuers to whom the CSD provides services, i.e. after the date of entry into force of the requirement?

# ESMA_QA_2160

**Submission Date**
18/04/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
Register of information

**Subject Matter**
DORA compliance contractual template to be provided by the ESA’s for FE’s / ICT providers

**Question**
Contractual agreements need to be updated to ensure that they are DORA compliant, yet Financial Entities (FE’s) do not know when standard contractual

clauses will be provided by the relevant public authorities following the Article 30.4. of Regulation(EU) 2022/2554 We understand that if standard contractual clauses are not provided by the relevant public authorities' in due time, then the legal departments of FE’s and ICT providers will potentially need to develop their own contractual clauses and templates, which will not only create a huge amount of work, duplicated by the different parties, and potentially mis-interpretation of the regulation, but will lead to protracted contractual negotiations between the FE’s and the ICT providers over which template should be used to cover the services provided, i.e. the template designed by the FE, or, the template designed by the ICT provider, and which will undoubtedly lead to a situation whereby the FE’s and ICT providers are required to manage multiple different contractual arrangements (which in turn will generate a tremendous additional supervisory efforts regarding the different provisions implemented).
Could you please kindly confirm the expected date when the relevant public authorities will release a first draft of the DORA compliant standard contractual clauses and template to be used by the FE’s and ICT providers?
Notwithstanding the fact that the abovementioned article refers to standard clauses for certain specific services, the financial sector has claimed the publication of standard contractual clauses under DORA. This will not only ease negotiations between FE´s and ICT providers but will also enforce the contractual security framework, as less misinterpretations of DORA will take place.
Additionally, critical ITC providers are still to be designated by the ESAs and, therefore, negotiations between FE´s and ICT providers have not started yet in most of the cases. Therefore, we strongly request that consideration be given to the possibility of establishing a transitional period to adapt the contracts to the framework established by DORA.

# ESMA_QA_2159

**Submission Date**
18/04/2024

Status: Question Rejected

## Additional Information

**Level 1 Regulation**
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

**Topic**
ICT risk management

**Historic Question Reference**
Clarification Request on Preliminary Assessment of ICT Concentration Risk submitted via DORA's consultation papers.

**Additional Legal Reference**
Art.1(i) of the 'Draft RTS to specify the elements that a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions', as mandated by Article 30(5) of Regulation (EU) 2022/2554

## Subject Matter

Intragroup ICT service providers consideration regarding the preliminary assessment of ICT concentration risk.

## Question

When conducting the preliminary assessment of potential ICT concentration risk associated with an ICT service provider, as stipulated in Regulation 2022/2054 and its corresponding draft RTS on subcontracting ICT services supporting critical or important functions, what treatment should be applied to ICT intra-group service providers? In other words, are financial entities (FEs) required to consider this concentration risk for ICT intra-group service providers? Alternatively, would the exemption outlined in Regulation 2022/2054 article 31.8(iii) apply, thereby meaning that this risk should not be considered for intra-group service providers?

REGIS-TR SA seeks further clarification on this matter, given that the DORA Regulation establishes that

- 'While intra-group provision of ICT services entails specific risks and benefits, it should not be automatically considered less risky than the provision of ICT services by providers outside of a financial group and should therefore be subject to the same regulatory framework. However, when ICT services are provided from within the same financial group, financial entities might have a higher level of control over intra-group providers, which ought to be taken into account in the overall risk assessment'.

Similarly, article 28.4(c) states that

- 'Before entering into a contractual arrangement on the use of ICT services, financial entities shall: (c) identify and assess all relevant risks in relation to the contractual arrangement, including the possibility that such contractual arrangement may contribute to reinforcing ICT concentration risk as referred to in Article 29'.

Furthermore, the aforementioned article 29 covers the considerations and risks to take into account in relation to ICT service providers supporting critical or important functions, when performing the preliminary assessment of ICT concentration risk.

Additionally, the draft RTS on 'the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions' also explains that

- ‘ICT intragroup subcontractors, including the ones fully or collectively owned by financial entities within the same institutional protection scheme, providing ICT services supporting critical or important functions should be considered as ICT third-party services providers. Intragroup ICT subcontracting should not be treated differently from subcontracting outside of the group. The risks posed by those ICT intragroup subcontractors may be different but the requirements applicable to them are the same in accordance with Regulation (EU) 2022/2054. When the use of ICT subcontractors is permitted, then those also include ICT intragroup subcontractors’, thereby making no distinction between intra-group and external service providers.

Due to these reasons, we are uncertain about whether the exemption outlined in Regulation 2022/2054 article 31.8(iii) would apply; or if exposure to a ICT intragroup service providers should also be considered during the preliminary assessment of ICT concentration risk.

# ESMA_QA_2148

**Submission Date**
03/04/2024

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

**Level 2 Regulation**
Regulation 2017/565 - MiFID II Delegated Regulation

**Topic**
Reporting to clients

**Additional Legal Reference**
Article 63, Paragraph 1 of Delegated Regulation EU 2017/565

**Subject Matter**

Deadline for providing clients with statement on owned financial instruments

**Question**

What is the latest date on which the statement, under Article 63, Paragraph 1 of the Delegated Regulation EU 2017/565, for the respective quarter should be sent by the investment firm and how to determine this date?

## ESMA Answer

11-07-2024

Original language

For the information requirements under Article 63(1) to meet their investor protection objectives, it is important that the statement of a client's financial instruments and funds is provided as soon as possible after the end of the reporting period. For instance, a statement sent later than 1 month after the end of the reporting period should be considered as being provided in an untimely manner unless the firm can justify of a compelling reason why it may not be sent before. Indeed, it is in the best interest of the client to receive this information as soon as possible after the end of the reporting period so that they may decide on any action to be taken, if any.