

Consultation Paper
Technical Standards specifying certain requirements of the Markets in
Crypto Assets Regulation (MiCA)

Responses by BCAS specifically in relation to Question 1 and Question 10

Q1: Do you think that anything is missing from the draft RTS and ITS on the notification by certain financial entities to provide crypto-asset services referred to in Articles 60(13) and 60(14) of MiCA?

A. Reference is made to Section 9.2.1 under Annex II on the notification by certain financial entities of their intention to provide crypto-asset services. While the information to be included in the description of the financial entity's programme of operations includes the provision of a detailed description of the human, financial and technical resources allocated to the intended crypto-asset services, this does not necessarily include information to be provided on the competencies of management body members. This is in contrast to the requested information from applicants seeking to obtain a MiCA licence to provide crypto-asset services, with reference being made to Article 7 of RTS 9.2.3, most notably the information being requested under sub-articles 1(e) and 1(i) (pg. 87 of the Consultation Paper).

We are of the opinion that the requirement to provide such information should be extended to financial entities that may offer crypto-asset services through a notification i.e. that, at least, they should be required to include such information within the notification itself as part of the information being requested in relation to the Programme of Operations. There may be a material risk of an appreciable degree that members of management bodies in credit and/or financial institutions may not have the required expertise, experience or skills required for the offering of crypto-asset services, especially given the fact that crypto-assets may and do differ significantly from other instruments such as financial instruments or funds in certain aspects. Crypto-assets are ultimately a separate category of assets which do ultimately require certain specialised expertise, and as a minimum, listing and describing the management body members that are competent in this regard should be included as part of the notification process.

The required information requested under Article 7(1)(i) of RTS 9.2.3 would also be of material significance vis-à-vis credit and financial institutions since it is reasonable to presume that there may be a certain level of sharing of personnel/human resources in group structures which offer both services under their respective licenses as credit/financial institutions, as well as crypto-asset services, and time splitting/dedication may indeed be a concern.

Q10: Do you consider the list of information under Article 8 complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem?

A. Reference is made to Section 9.2.7 under Annex II, Article 8 under the RTS on the proposed acquisition of a qualifying holding in a crypto-asset service provider, specifically information relating to the financing of the proposed acquisition (pg. 136 of the Consultation Paper. Given the treatment of EMTs at par with electronic money as per Article 48(2) under MiCA, they should be treated as '*funds*' rather than assets for the purpose of acquisitions, since there are certain additional requirements for assets that are used for the funding of acquisitions. Given that EMTs will predominantly be used as forms of payment, and given their legal status as electronic money, they should therefore be differentiated from other crypto-assets within the ambit of financing proposed acquisitions of CASPs.

BCAS is a crypto-focused regulatory consultancy & law firm set up in 2017, working primarily with prominent CASPs offering their services within the EU, and blue-chip DeFi projects. It has also worked extensively with regulatory authorities in Malta, Japan and Serbia in relation to the structuring and drafting of crypto regulatory frameworks, with its CEO, Dr. Jonathan Galea, also partaking in a technical expert group advising the EBA on the Transfer of Funds Regulation.