Reply form

**on** **the first Consultation Paper for MiCA implementation**

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1 . Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 September 2023.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘*Your input - Consultations’*.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

• Insert your responses to the questions in the Consultation Paper in this reply form.

• Please do not remove tags of the type < ESMA\_QUESTION\_MICA\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_MiCA \_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_MiCA \_ABCD.

• Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at *www.esma.europa.eu* under the heading *‘Your input - Consultations’.*

Publication of responses

All contributions received will be published following the close of the consultation unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites crypto-assets issuers, crypto-asset service providers and financial entities dealing with crypto-assets as well as all stakeholders that have an interest in crypto-assets.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Juscutum |
| Activity | Law firms |
| Are you representing an association? |[ ]
| Country / Region | Other |

# Introduction

Q0: Please make your introductory comments below, if any:

<ESMA\_QUESTION\_MICA\_0>

The contribution is submitted by the Ukraine-based law firm Juscutum.

<ESMA\_QUESTION\_MICA\_0>

# Questions

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?

<ESMA\_QUESTION\_MICA\_0>

The RTS draft regarding the notification by certain financial entities to provide crypto-asset services provides a list of information regarding:

* Programme of operations;
* Detection and prevention of money laundering and terrorist financing;
* Business continuity;
* ICT systems and related security arrangements;
* Segregation of clients’ crypto-assets and funds;
* Custody and administration policy;
* Operating rules of the trading platform and market abuse detection;
* Exchange of crypto-assets for funds or other crypto-assets;
* Execution policy;
* Provision of advice or portfolio management on crypto-assets;
* Transfer services.

Taking into consideration the amount of information already obtained by competent authorities in regard to certain financial entities, we recommend adapting the notification by certain financial entities providing crypto-asset services, based on the list of information to be provided with an application for authorisation as a crypto-asset service provider, with the following sections:

1. Information about governance arrangements and internal control mechanisms Section, since:
* the personal details of the heads of internal functions, organisational structure of the applicant, arrangements put in place to maintain adequate and orderly records of the business and internal organisation of the applicant may sufficiently differ from the already established in the applicant;
* sufficient identification is necessary for the amount of the prudential safeguards that the applicant has in place at the time of the application for authorisation and the description of the assumptions used for its determination;
* identification, prevention, managing of conflicts of interests, in accordance with Article 72(1) of Regulation (EU) 2023/1114, and disclosure of conflicts of interest, in accordance with Article 72(2) of Regulation (EU) 2023/1114, is commensurate to the scale, nature and range of crypto-asset services that the applicant intends to provide and of the other activities of the group to which it belongs.
1. Complaints-handling Section, since the procedure of informing clients or potential clients of the possibility to file a complaint free of charge, including where and how on the applicant’s website, or on any other relevant digital device that may be used by clients to access the crypto-asset services, may differ from the already established procedures by certain financial entities.

**Question:**

A question is raised in regard to paragraph 2, Article 5 “Business continuity”:

1) How can the political risks in the service provider’s jurisdiction be determined and assessed?

The ITS draft sufficiently demonstrates the typical application form for authorization based on the list of information to be provided by the certain financial entities.

<ESMA\_QUESTION\_MICA\_0>

Q2: Do you agree with the list of information to be provided with an application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.:

<ESMA\_QUESTION\_MICA\_0>

The list of information with regard to regulatory technical standards specifying the information to be included in an application for authorisation as crypto-asset service provider is sufficient for:

* General information;
* Programme of operations;
* Information about governance arrangements and internal control mechanisms;
* Business continuity;
* Detection and prevention of money laundering and terrorist financing;
* Identity and proof of good repute, knowledge, skills, experience and of sufficient time commitment of the members of the management body;
* Information relating to shareholders or members with qualifying holdings;
* ICT systems and related security arrangements;
* Segregation of clients’ crypto-assets and funds;
* Complaints-handling;
* Operating rules of the trading platform and market abuse detection;
* Custody and administration policy;
* Exchange of crypto-assets for funds or other crypto-assets;
* Execution policy;
* Provision of advice or portfolio management on crypto-assets;
* Transfer services.

**Suggestion:**

Article 3

Prudential requirements

We suggest adding the following information into subsection (ii), clause (e): the legal name, date, and Member State of the incorporation or foundation, the address of the head office and, if different, of the registered office, domain name, contact details of the undertaking authorised to provide insurance and/or insurance policy.

The provided information will facilitate the competent authorities in estimating the trustworthiness of the prudential safeguards of the applicant by identifying the undertaking authorised to provide insurance and/or insurance policy.

**Question:**

A question is raised in regard to paragraph 2, Article 5, Business continuity:

1) How can the political risks in the service provider’s jurisdiction be determined and assessed?

<ESMA\_QUESTION\_MICA\_0>

Q3: Do you agree with ESMA’s proposals on standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.

<ESMA\_QUESTION\_MICA\_0>

Yes, agree.

The list of information is sufficient, together with proposals from RTS and ITS, to be used for the estimation of the organizational structure, programme of operations, offered services, prudential requirements and other technical, operational, structural and communication remedies of the applicant.

<ESMA\_QUESTION\_MICA\_0>

Q4: Do you agree with ESMA’s proposals to specify the requirements, templates and procedures for the handling of client complaints by crypto-asset service providers? Please also state the reasons for your answer.

<ESMA\_QUESTION\_MICA\_0>

Yes, we agree.

The procedures for complaints handling are self-sustaining whereas they consist of:

* Complaints-handling procedures;
* Resources dedicated to complaints handling;
* Submission means and language;
* Acknowledgment of receipt and verification of admissibility;
* Investigation of complaints;
* Decisions;
* Communication with clients;
* Procedures to ensure consistent complaints-handling.

**Question:**

Two questions are raised in regard to Article 6 “Decisions”, paragraph 3:

1) Where, in exceptional situations, the decision on a complaint cannot be provided within the timeline referred to in of Article 1(2), point (e) or deadline referred to in paragraph 2, crypto- asset service providers shall inform the complainant about the reasons for that delay and specify the date of the decision.

2) What shall the phrase “in exceptional situations” mean and include?

<ESMA\_QUESTION\_MICA\_0>

Q5: Do you think that it is useful to keep the possibility for clients of CASPs to file their complaints by post, in addition to electronic means?

<ESMA\_QUESTION\_MICA\_0>

It is advised not to keep the possibility for clients of CASPs to file their complaints by post since filing the complaints by post will not positively affect the timeframes of the complaint-handling procedure and can lead to erroneous submissions of complaints both by the post and electronic means.

<ESMA\_QUESTION\_MICA\_0>

Q6: Do you think that other types of specific circumstances, relationships or affiliations should be covered by Articles 1 and 2 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?

<ESMA\_QUESTION\_MICA\_0>

We assume that Articles 1 and 2 of the draft RTS on the identification, prevention, management, and disclosure of conflicts of interest by crypto-asset service providers sufficiently cover all the types of specific circumstances, relationships, or affiliations.

<ESMA\_QUESTION\_MICA\_0>

Q7: Do you think that other types of specific prevention or mitigation measures should be highlighted in the minimum requirements of Article 3 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?

<ESMA\_QUESTION\_MICA\_0>

We assume that other types of specific prevention or mitigation measures should not be highlighted in the minimum requirements of Article 3 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers.

<ESMA\_QUESTION\_MICA\_0>

Q8: Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?

<ESMA\_QUESTION\_MICA\_0>

We agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds.

<ESMA\_QUESTION\_MICA\_0>

Q9: Do you agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion?

<ESMA\_QUESTION\_MICA\_0>

We agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion.

<ESMA\_QUESTION\_MICA\_0>

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?

<ESMA\_QUESTION\_MICA\_0>

Yes, we consider the list of information under Article 8 as complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem.

<ESMA\_QUESTION\_MICA\_0>

Q11: Do you agree with the identified cases where reduced information requirements apply and with the related requirements and safeguards?

<ESMA\_QUESTION\_MICA\_0>

Yes, we agree with the identified cases where reduced information requirements shall apply and with the related requirements and safeguards.

<ESMA\_QUESTION\_MICA\_0>

Q12: In which EU jurisdiction(s) do you plan to be authorised to provide CASP services? In which EU jurisdiction(s) do you plan to provide CASP services under cross-border provision of crypto-asset services as specified in Article 65 of Regulation (EU) 2023/1114?

<ESMA\_QUESTION\_MICA\_0>

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<ESMA\_QUESTION\_MICA\_0>

Q13: What crypto asset services as listed in point 16 of Article 3(1) of Regulation (EU) 2023/1114 do you plan to offer (e.g. reception/transmission of orders; execution of orders on behalf of clients; operation of a trading platform etc.)? In addition, please provide some high-level explanation of the business model, including, what type of trading systems do you plan to use.

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<ESMA\_QUESTION\_MICA\_0>

Q14: If you are planning to operate a trading platform:

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<ESMA\_QUESTION\_MICA\_0>

(a) How many white papers do you estimate to publish on you platform?

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<ESMA\_QUESTION\_MICA\_0>

(b) What turnover, in terms of crypto-assets trading volume, do you expect to attract on your platform according to your business forecasts for the upcoming years?

<ESMA\_QUESTION\_MICA\_0>

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<ESMA\_QUESTION\_MICA\_0>

(c) Do you plan to undertake transactions on the basis of an on-chain ledger or an off-chain one?

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<ESMA\_QUESTION\_MICA\_0>

 i. In case of the former, which type of DLT are you planning to use (e.g. Ethereum, Corda, Stellar etc.)? Do you plan to store transaction data on-chain or off-chain or a mix of the two?

<ESMA\_QUESTION\_MICA\_0>

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 ii. If the latter, how would you link on-chain and off-chain transaction data?

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Q15: If you are planning to execute/place orders on behalf of clients:

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<ESMA\_QUESTION\_MICA\_0>

(a) How many white papers do you estimate to offer to your clients for execution/order placement?

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<ESMA\_QUESTION\_MICA\_0>

(b) What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

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(c) Do you plan to undertake transactions on the basis of an on-chain ledger or an off-chain one?

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<ESMA\_QUESTION\_MICA\_0>

 i. In case of the former, is transaction data stored on-chain or off-chain or a mixed of the two?

<ESMA\_QUESTION\_MICA\_0>

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<ESMA\_QUESTION\_MICA\_0>

 ii: If the latter, how do you link on-chain and off-chain transaction data?

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<ESMA\_QUESTION\_MICA\_0>

Q16: If you are planning to receive and transmit orders:

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<ESMA\_QUESTION\_MICA\_0>

(a) How many white papers do you estimate to offer to your clients for order transmission?

<ESMA\_QUESTION\_MICA\_0>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MICA\_0>

(b) What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

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(c) Which are the main platforms/brokers you are intending to transmit orders to?

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(d) In which jurisdictions are these platforms/brokers based?

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(e) How do you plan to keep track of the transmitted orders?

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