

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 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 under the heading '[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.

1 General information about respondent

Name of the company / organisation	Safello Group
Activity	CASP
Are you representing an association?	<input type="checkbox"/>
Country / Region	Sweden

2 Introduction

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

<ESMA_QUESTION_MICA_0>

Safello is the leading cryptocurrency exchange in the Nordics, with more than 330,000 users. The company, based in Sweden, has been registered as a financial institution with Finansinspektionen (Swedish Financial Supervisory Authority) since 2013 and has been listed on the Nasdaq First North Growth Market since 2021. Safello aims to make cryptocurrency accessible to everyone by providing a secure way to buy, sell, and store crypto in seamless transactions.

With a strong track record of supporting Swedish law enforcement and authorities, Safello actively contributes, through its services, to the work of the Swedish Police Authority, the Swedish Customs Office, and the Swedish Economic Crime Authority, as their exclusive crypto service provider addressing their cryptocurrency exchange needs on a national basis. Safello cooperates with law enforcement agencies on an ongoing basis for investigations related to digital crimes.

Safello is dedicated to raising awareness around digital assets' potential to drive significant constructive change and how cryptocurrencies can be utilized to catalyze positive impact in society. This commitment is exemplified by Safello's role as the chosen provider in Malmö Stad's innovative campaign, which aims to enhance environmental consciousness and reduce litter. Safello continuously engages and seeks work and initiatives that in different ways will contribute to positive societal and environmental progress.

Participating in the ongoing dialogue with regulators in Sweden to bring regulatory clarity and educate within the field of digital assets, Safello is pleased to contribute to the work of ESMA by answering this consultation paper. We would be happy to contribute further in any way ESMA needs.

<ESMA_QUESTION_MICA_0>

3 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?

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Safello does not deem it sufficient for entities that already have a license to provide financial services to only **notify** the NCA. Cryptocurrencies is a high risk product, both from an AML and customer protection perspective, compared to traditional financial instruments. To operate in the field where crypto is converted to fiat and vice versa means that the entity is connected to the highest possible AML and TF risks, which is very different from plain vanilla distribution of UCITS funds or providing open banking services for example. The NCA must ensure that all companies have correctly assessed and mitigated the risks associated with providing crypto services and actively approve CASPs. The risk is that NCA's will work retroactively to ensure compliance by the entities that have been operating as CASPs post a notification. This can create systemic risks, AML/TF risks and customer risks. In addition, the trading in crypto is open 24/7 and global, which could attract another segment of customers than what the traditional financial entities are used to, which is why the NSA needs to ensure that all risks are properly identified and mitigated before providing crypto services to the retail market..

Safello therefore proposes that **any entity wanting to provide crypto service should need an authorisation from the NSA** and that it should never be sufficient with a notification.

The draft RTS is missing a requirement on product governance policy, addressing how the relevant entity has assessed what crypto to distribute to its customers.

The suitability of managers should be re-assessed and re-approved by the NCA to make sure the entity has enough experience and competence within the management team and board to provide the crypto services. Crypto currencies is a complicated product with inherent risks, therefore the composition of the board and management team should cover prior experience and competences within crypto currencies on a professional level.

<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>

In principle, yes.

The requirements about information relating to shareholders should be subject to exemption for publicly listed companies unless a legal or natural person owns 25% or more of the shares in such publicly listed company. The reason for the suggestions is that it will be too cumbersome for publicly listed companies to comply with the requirements.

The requirement on market abuse detection should only be applicable to providers of primary market transactions. A general requirement is too cumbersome. Stablecoins should definitely be exempt from market abuse detections (it is in the nature of the stable coin that the price does not move as it is pegged to a fiat currency) . A requirement of market abuse detection should, in case ESMA find that it is needed, be combined with a volume threshold of X amount of the daily traded volume globally.

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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.

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Yes, with exception of the information about shareholders. The reason is stated above.

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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.

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i) Safello disagrees with the definition of a complaint ("For the purposes of this Regulation, 'complaint' means a statement of dissatisfaction addressed to a crypto-asset service provider by one of its clients relating to the provision of one or more crypto-asset services. ") A complaint should be defined as a statement of dissatisfaction **and** be combined with a financial loss. General opinions from customers, expressing dissatisfaction with a service, may not be admissible to qualify as a complaint. The reason for this is the unproportional amount of work it would incur to handle all statements of dissatisfaction as a complaint according to the requirements in MiCA.

ii) The CASPS should be able to independently decide how resources are spent on

complaints handling as well as where in the organisation the complaints handling lies.

iii) Safello opposes the requirement for CASP's to, on an ongoing basis, analyze complaints data. It should be up to the CASP itself to decide what data is prioritized to analyze as long as there are routines that satisfy the ability for customers to file complaints and a process to handle complaints.

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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?

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Yes. A customer of a CASP is likely used to electronic means of communication, but there are many fraud cases where elderly people are targeted and for this sake, the possibility to communicate and file complaints by post should be kept.

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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?

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No.

<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?

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Include personal relationships within a CASP when there is an incentive to protect an employee (art. 3.b). I.e a person employed within a control function have a personal relationship with an employee in a department that the control function is controlling, a conflict of interest may arise if the control function make findings but want to protect the employee

<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?

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Yes.

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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?

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Yes.

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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?

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

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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>

i) Sweden ii) This is not subject for disclosure as we are a publicly listed company.

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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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The services stated in Art.3.1.16: a, c, d, j.

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

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

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(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?

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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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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?

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

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

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

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

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

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(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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