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 | The Capital Markets Company (CAPCO) |
| Activity | DLT and IT systems developers |
| Are you representing an association? |  |
| Country / Region | Germany |

# Introduction

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

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# 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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In addition to the standardized templates offered for the application process of crypto-asset service provision by specific financial entities, we recommend further clarification on this detail:

* The prescribed format for the submission of supporting documentation, such as business continuity and legal structure materials, should be specified (e.g., PDF, JPEGs, etc.).

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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.:

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The topics covered in the drafts of RTS and ITS for the notification of certain financial entities to provide crypto-asset services under Article 60(13) and 60(14) of the MiCA Regulation seem to cover a comprehensive range of aspects. The topics mentioned are critical to ensure integrity, security, and transparency in the crypto-asset services realm. It appears that there may be some lack of clarity regarding the rationale behind ESMA's request for information from entities eligible for a notification-based application, especially since certain details have already been provided to the local authorities. Here are some additional points that ESMA could consider in the drafts of RTS and ITS:

* **Stress Tests and Crisis Management:** Given the volatility and potential risks in the crypto market, financial institutions should disclose information on the stress tests they have conducted and their crisis management procedures when applying for authorization as a Crypto Asset Service Provider (CASP).
* **Market Analysis**: It would make sense for ESMA to require financial firms to provide insights into their analysis of the crypto market, including potential risks, trends and opportunities. This can help ESMA assess the firm's understanding of market dynamics and prevent fraudulent firms from entering the market.
* **Partnerships and Collaborations:** Financial entities might need to disclose their partnerships or collaborations with other entities, especially if they involve sharing customer data or conducting joint activities.
* **Risk Assessment:** Beyond money laundering and terrorist financing risks, financial entities might need to detail their overall risk assessment methodologies, including cybersecurity risks, operational risks, and how they plan to mitigate these risks.
* **Compliance Framework:** Provide information about their internal compliance framework, including designated compliance officers, training programs, and processes for staying up-to-date with evolving regulations.
  + How will the compliance framework be adapted to the regulations in connection with crypto assets?

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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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The templates provided by ESMA offer a viable and structured method of application to offer crypto-asset services. With regards to our positive feedback, we propose the following enhancements:

* *9.2.2 ITS on standard forms, templates, …* Article 2: 2. It might make sense to explicitly mention a selection of channels through which the notification can be provided.
* Allow the complainant to specify their preferred mode of communication for receiving updates or responses regarding their complaint. This could include options such as email, phone, or postal mail (see Q5).
* Include a section where the complainant provides explicit consent for the crypto-asset service provider to process their personal data for the purpose of addressing the complaint and complying with regulatory requirements. This ensures compliance with data protection regulations.
* Ask the complainant to indicate their preferred resolution to the issue. This could include options like financial compensation, rectification of errors, clarification of terms, or other desired outcomes.
* Request information about whether the complainant has previously filed complaints with the CASP or any other regulatory authority. This can provide context for assessing the nature and frequency of complaints.
* Include a section for complainants to grant authorization for the CASP to share relevant complaint details with regulatory authorities, if necessary, to facilitate a fair and transparent resolution process.
* Ask the complainant about their preferred language for communication and documentation, ensuring that they receive information in a language they understand.

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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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It would be interesting to better understand the reasons behind CASPs needing to collect complaint data in accordance with

”*the number of complaints received, per year (on a rolling basis), and for each step of the complaints handling procedure, the number of complaints where the CASP did not comply with the maximum time limits set out in its complaints handling procedure.”*

With regards to this, our follow-up questions are as follows:

* Will ESMA and/or EBA make an effort to analyze such internal filings from CASPs and take respective consequences?
* Are there any defined threshold values CASPs are allowed to reach before potential penalties are forced into action?
* How long do CASPs need to keep an internal filing on complaints before they are deleted (in accordance with GDPR guidelines)?

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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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As clients of CASPs are likely to be technologically proficient, the need to offer the option to file complaints by post seems less essential. Considering the digital nature of both the services provided and the clientele, providing electronic means for filing complaints appears to align better considering clients are likely to be digitally-savvy. Encouraging electronic means for filing complaints at CASPs not only aligns with the technological proficiency of their clientele but also promotes environmental sustainability, operational efficiency, and digital inclusivity, demonstrating a commitment to ESG principles.

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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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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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For the purposes of mitigation measures, ESMA could take additional steps and provide further in-detail specifications, i.e., measures that CASPs could deploy to achieve the mentioned points in Article 3. For exemplary reasons, this could include:

* **Disclosure and Transparency:** a key measure in identifying and managing conflicts of interest is to establish a culture of transparency. By requiring all connected persons to promptly disclose any potential conflicts, such as economic interests, personal relationships, or professional ties with conflicting entities, the CASP can raise awareness of these situations and better identify them. This measure aligns with the need to ensure that the interests of connected persons are in harmony with those of the service provider.
* **Regular Training and Education:** To enhance the awareness of connected persons and enable them to recognize and address conflicts effectively, ongoing training and education programs may serve as appropriate measures to take. These programs can educate personnel of CASPs about the types of conflicts outlined in the original question and provide guidance on appropriate responses. Training and education are integral to fostering a culture of compliance and client-centricity.
* **Recusal and Decision-Making Protocols:** In situations where conflicts of interest are identified, clear protocols for recusal and decision-making have to be put in place. By establishing procedures that allow connected persons to step aside from conflicted tasks or responsibilities, CASPs can ensure that impartial and ethical decisions are made. This measure aligns directly with the need to prevent conflicting tasks or responsibilities from compromising the service provider's integrity.

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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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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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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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In addition to those already mentioned, a further potential point can be made with respect to different deal structures:

* Earn-out arrangement: the acquisition is not fully completed at the outset. Instead, a portion of the acquisition expenses is paid immediately, while the remaining costs are disbursed at a later date, contingent upon the acquired business achieving specific performance milestones. It's possible that the funding for the deferred portion of the acquisition may originate from a different source than the initial upfront payment.

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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?

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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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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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