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 | European Savings and Retail Banking Group |
| Activity | Trade association |
| Are you representing an association? |  |
| Country / Region | Belgium |

# Introduction

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

<ESMA\_QUESTION\_MICA\_0>

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<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>

As we understand it, Art. 1 - 4 of the consulted RTS are to be submitted by all notifying companies, while the subsequent articles define additional requirements depending on the type of intended crypto value service.

In our view, however, there is almost no difference between this and the requirements for the new application for authorisation as a CASP under Art. 62 MiCA.

It should be taken into account that notification entities are already regulated financial entities, as the legislative intention is reflected in marginal 8 (point 3.2, page 10). A reference to previously submitted documents (Art. 60 (9)) is not a relief, as the authorisation applications for established companies often date back a long time.

Rather, the focus should be on the crypto-specific features that supplement the previous authorisation, as provided for in marginal no. 10 (point 3.2, page 10).

Likewise, greater differentiation should be made with regard to the Crypto Asset Services provided. If a credit institution has been providing investment advice, investment brokerage, or portfolio management for many years, it is not necessary for them to provide the extensive documentation pursuant to Art. 1 - 4 of the planned RTS (e.g., extensive business plans, strategies, influence on the group and group strategy, or technical and security concepts) for the arguably equivalent crypto securities services pursuant to Art. 3 paragraph 16 h), i) and j) (acceptance and transmission of orders for crypto securities for clients; advice on crypto securities; portfolio management of crypto securities). These entities are already allowed to provide advice in derivatives on crypto assets under the MiFiD II-Directive and should thus also be able to give advice on crypto assets. The planned RTS are thus an unnecessary barrier to market entry for many companies, as the compilation of the documents is very time-consuming and cost intensive.

Instead, it seems sufficient if credit institutions that provide these activities under the MiFiD II Directive only attach the information pursuant to Art. 10 of the planned RTS with special reference to crypto assets to their notification.

<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.:

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<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.

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TYPE YOUR TEXT HERE

<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.

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The alignment with previous rules on complaint handling expressed in marginal no. 77 is welcomed.

Since many companies provide financial services that fall under several European standards on complaint management, further harmonisation and standardisation of the rules on complaint management should be undertaken.

It is therefore desirable that, at least within a regulation such as MiCA, the rules are uniform, as it can be assumed that some companies act both as issuers and as Crypto Asset Service Providers. However, this uniformity is not the case according to the EBA's RTS/ITS of 12.07.2023 (EBA/CP/2023/13), which is also under consultation.

This applies in particular to the content of the acknowledgement of receipt and the time limits.

It is not necessary that a copy of the complaint should be sent back to the customer again. It should also be sufficient to include the Rules of Procedure by means of a link in the acknowledgement of receipt.

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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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We believe that cryptocurrency services are an environment where both providers and customers have a high digital affinity. Therefore, we do not consider it necessary that complaints can still be submitted by physical mail. Since crypto value services are often to be offered across borders in different member states, longer postal transit times would also hinder the speedy processing of complaints.

<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>

It is to be welcomed that ESMA has closely followed the Delegated Regulation on MiFiD II on conflicts of interest. Unfortunately, however, this is also supplemented by regulations from the Delegated Regulation on Crowdfunding and other regulations that are not necessary and also represent an additional regulatory burden for financial institutions already regulated under the MiFiD II regime.

<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>

The provisions in Art. 3 of the draft RTS seem to be based on the Guidelines on the assessment of the suitability of members of the management body and key function holders of the EBA and ESMA EBA/GL/2021/06 ESMA35-36-2319 of 02.07.2021, there paragraph 83 (page 30).

In the sense of consistent regulations, it seems more sensible and more appropriate to regulate the provisions of Art. 3 of the planned RTS not in the conflicts of interest pursuant to Art. 72 MiCA, but in the requirements for business managers pursuant to Art. 7 of the planned RTS on applications for authorisation pursuant to Art. 62 MiCA (Annex 9.2.3 of the consultation package).

Irrespective of this, the indiscriminate inclusion of all employees according to Art. 3 of the draft RTS in connection with the definition in Art. 1 (a) of the planned RTS with reference to Art. 72 (1) point (a) (i) to (iv) MiCA is too far-reaching and also not provided for in comparable regulations.

Moreover, the terms in Art. 3 No. 1 such as personal (b), professional (c) or political (d) connection are not sufficiently specified. The same applies to Art. 3 No. 1 (e).

<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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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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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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