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 | Click or tap here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country / Region | Choose an item. |

# Introduction

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

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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?

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The proposal is complete and acceptable. We only point out the need for clarification about the requested information on:

* **AML/CFT risk management**. Regarding Article 2 (d), it isn’t clear whether the “person in charge of ensuring the notifying entity's compliance with anti-money laundering and counter-terrorist financing obligations” refers to:
* the person in charge of the anti-money laundering control function. In that case, the information would already be known to the Supervisory Authority;
* the need to appoint a specific person responsible for crypto-assets AML and CFT risk management, established within the AML function;
* To the member of the body with strategic oversight function who has been assigned AML responsibilities under the EBA Guidelines.
* **The Execution Policy:** Concerning Article 9 (b), it isn’t clear why the Execution Policy doesn’t also include exchanges as possible execution venues, mentioning only “a list of the trading platforms for crypto-assets on which the notifying entity will rely for the execution of orders”. In fact, it should be noted that, under the corresponding MiFID requirement, “execution venues” also include entities that provide trading services on their own account on a systematic and professional basis (such as systematic internalisers).

Regarding Article 9(c) (“which trading platforms it intends to use for each type of crypto-assets”, it isn’t clear whether 'type of crypto-assets' means the various classes provided for in the Level I Regulation (E-Money Token; Asset Referenced Token; Utility Token; Other-than crypto-assets) or more granular classes.

For the same reasons, we highlight the opportunity to indicate in the notification for the provision of services involving electronic money tokens whether the subject considers that these services configure the provision of payment services within the meaning of the PSD2 regulation and the deadline by which the consequent authorisation will be requested from the competent authority (as regards the simultaneous application to electronic money tokens of the PSD2 regulation and the MiCAR regulation, see the answer to question 3).

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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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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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We agree with the approach aimed at gathering information to identify risks similar to those that caused the recent CASP failures, with particular reference to outsourcing policies and relationships with companies in the same group, governance and control mechanisms, prudential supervision requirements, and the suitability and adequacy of the members of the management body.

We also agree that the information to be provided should be, where required under both RTS, the same applied to supervised service providers who are subject to a mere reporting obligation.

In accordance to par. 63, concerning the provision of transfer services involving crypto-assets, and in general for services involving e-money tokens, it should be noted that the MiCAR legislation doesn’t provide for an exemption from authorisation requirements - and the consequent obligation of mere notification - for payment institutions. The mere notification regime provided is limited to: “An electronic money institution authorised under Directive 2009/110/EC shall only provide custody and administration of crypto-assets on behalf of clients and transfer services for crypto-assets on behalf of clients with regard to the e-money tokens it issues if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.”

This implies:

- that a payment institution in order to provide e-money token transfer services must apply for the same authorisation as for CASPs;

- that a CASP in order to provide services involving e-money tokens would have to obtain both MiCAR and PSD2 authorisation at the same time, with a duplication of some of the required information.

For this reason, a simplification of the information requirements for entities already authorised to provide payment services could be envisaged at the RTS level, correcting the - partially - unequal treatment as compared to credit institutions, IMELs, investment firms, trading venues and CSDs. It should also be noted that most CASPs today provide services on crypto-assets, which with the application of MiCAR (and the consequent application of the obligation to guarantee a right of redemption to the customer) will also be classifiable as e-money, as confirmed under art. 48 par. 2. Most CASPs are therefore likely to be subject to this dual authorisation obligation.

<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>

We have no comments on the requirements envisaged for complaint handling, which are in line with what is already envisaged for the provision of other reserved activities (e.g. investment and banking services).

We agree with the provision of specific and detailed second-level regulations on complaint-handling procedures, in order to encourage CASPs to adopt standards comparable to those applied by financial institutions. We highlight, however, the need to specify the relationship between the requirements for complaint handling about the provision of crypto-asset services and those relating to the provision of payment services when these relate to e-money tokens.

Indeed, services involving an e-money token, being the provision of payment services under PSD2, would seem to be subject to the existing rules on complaint handling, alternative dispute resolution and right of withdrawal. However, although MiCAR confirms that tokens classifiable as e-money should be subject to the payment services regulation - and doesn’t provide for any derogation from the existing rules on this point - attention should be drawn.

It is therefore difficult to determine not only which is the special regime - and therefore applicable as of 31.12.2024 - between that provided by MiCAR and that on the provision of payment services, but also which is the regulatory framework currently in force on the matter.

The relationship between the MiCA Regulation and the PSD2 in the context of the provision of services involving electronic money tokens doesn’t only concern the handling of complaints but also, for example, the regulation of the documentation to be transmitted to customers.

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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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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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We haven’t comments on what ESMA has proposed. We do, however, emphasise that the requirements should be aligned as closely as possible with those for the provision of corresponding financial services (e.g. investment services). The misalignment of regulation - although limited - leads banks and investment firms to apply partially different requirements about the provision of financial services and corresponding services involving crypto-assets. By way of example, we highlight some differences determined, however, by Level I regulation:

* for the provision of services on crypto-assets, there is an obligation to publish the Conflicts of Interest Policy, which isn’t reflected in the MiFID regulation;
* the MiFID regulation provides for a disclosure obligation regarding the insufficiency of its safeguards that isn’t provided for in the MiCA Regulation.

Concerning par. 123, in the Section “Resources dedicated to the implementation, maintenance and review of the conflicts of interest policies and procedures**”,** the Level 2 regulation requires that the identification, prevention, and management of conflicts of interest be assigned to dedicated resources, implicitly referring to the establishment of a specific function. This obligation isn’t even reflected in the most comprehensive regulation on the subject (MiFID II) and is not consistent with the division of responsibilities in supervised institutions, where the identification, prevention, and control of conflicts of interest are divided between Level I, II and III without the provision of a dedicated function.

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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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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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