ALASTRIA RECOMMENDATIONS ON ESMA CONSULTATION PAPER
Technical Standards specifying certain requirements of the Markets in Crypto Assets Regulation (MiCA)

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I. INTRODUCTION

Alastria is a public-permissioned blockchain multisector consortium ruled under Spanish private association laws, pioneering the development of a Spanish national DLT ecosystem and leading INATBA and EBSI EU initiatives since 2017, as well as blockchain interoperability and self-sovereign identity standards around the world.

Although more than 500 enterprises and institutions, both public and private, supporting very motley (and even competing) interests, compose the Alastria ecosystem, thus lacking a common opinion and autonomous vision of cryptoasset (hereafter CA) legal obligations and duties in accordance to 2023 MiCA Regulation, we must serve a common bunch of reflections to satisfy both the expectations of our members entering into CASP business and the whole node commodity, in particular legal firms represented in our Alastria Legal Committee, with regard to the questions proposed in this consultation.

Such reflections do not constitute or express the opinion of any particular firms, institutions or legal persons integrated within the Alastria community, nor they configure the formal or official positions of Alastria as a legal private-law entity, but only a common technical opinion from both Research and Technology Transfer Committee (CITT) and Legal Committee representing a mixture of legal criteria from Academia (particularly issued by leading specialized professors present in Alastria CITT projects) and law firms present at the Alastria Legal Committee, most of them recognized by their world-leading expertise in Securities Law and Tech Law.

These recommendations have been passed on to the Alastria Board members in order to obtain the preceptive *nihil obstat* in accordance with by-laws and inner rules and policies of the Association.

II. ALASTRIA RECOMMENDATIONS

Classified in accordance to the matters actually considered as prominent for the eventual incorporation of Alastria members (mainly involved in DeFi business) as CA service providers (hereinafter CASP in accordance with MiCA provisions), the following recommendations do not answer exhaustively to the questions proposed in each item of the consultation, addressing only law-principles to be accomplished and rules to be fulfilled from a civil-law perspective in accordance with EU current MiFID / MiFIR context, and EU consumer and commercial law principles and with other mandatory regulations currently in force in Spain within EU law context and ESMA principles, particularly investor protection and market integrity.

Such classification divides the Q1 to Q11 formulated in the consultation into three categories in accordance both with the legal nature of their contents and the scope and

aims of ESMA supervision in each case. Accordingly, four groups of questions were identified:

1. *Questions concerning CASP authorisation.*
   a) Financial entities ex art. 60.13 and .14 (Q1)
   b) Non-financial entities (Q2)
   c) Both categories (Q3 to Q5)

2. *Questions related with conflicts of interest (Q6 and Q7)*

3. *Questions on CASP acquisition (Q8 to Q11)*

The following paragraphs contain the respective answers, from a law-principle perspective encompassing EU securities-law perspective and other private-law related considerations, emphasising relevant aspects related to ANC and ESMA supervision, MiCA Regulation principles and the purported aims of the present consultation.

1. CASP REQUISITES TO OBTAIN AUTHORISATION, FROM THE PERSPECTIVE OF BOTH FINANCIAL AND NON-FINANCIAL ENTITIES

1.1. Rationale

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?

Q1 is formulated in a vague manner in order to encompass "anything" that could be missing from RTS and ITS drafts when filled or completed by financial entities aiming to become CASPS in accordance with 60.13) and 60.14 MiCA.

It is evident that the mentions listed are essential to bring transparency to MiCA and DeFi participants and preserve both public confidence and market integrity. Moreover, these mentions are classic in securities-law mandatory rules in force, not only in EU jurisdictions. Particularly, mentions on the programmed operations of the requesting CASP; its AML, ICT, anti-market abuse and cybersecurity, administration and governance policies and arrangements; platform operating rules; proof of business continuity; and investment services provided -namely, CA exchange, order execution, portfolio management, fiat and CA transfer, and advice on CA investment-.

Some other DLT-specific services could be included herein, like wallet custody and private key management, ordinarily outsourced to DLT specialists but suppliable by banks, big fund managers or other relevant credit institutions.

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

Regarding Q2, we believe that the list of information to be provided with an application for authorisation as a CASP, in the case of non-financial identities, is sufficient but not exhaustive, and it could be completed in a more proper manner.

The reference to "general information" is vague and therefore superfluous in order to ensure DeFi and MiCA transparency.

The rest of data specifically required from non-financial entities are coherent with the differences between legal data required to financial and non-financial legal person by EU existing regulations. Prudential requirements and specific info on governance, legal reputation, managers' expertise and experience and inner-control mechanisms are all essential for NCAs to understand the preconditions for optimal CASP service provision and prevent potential risk deterring misconduct from a securities-law perspective. With respect to complaints system, it is crucial to assume the cost of properly facilitating the exercise of legal rights of investors in MiCAs, thus this provision is particularly sound and opportune.

In the case of financial entities the mention to the segregation of clients' crypto-assets and funds could be deemed superfluous, but its relevance in a CEX DeFi context justifies in our view its inclusion in both lists.

However, such segregation is crucial and mandatory when the CASP is involved in the custody of assets underlying ART, EMT or other stablecoins requiring a system of monetary, cryptographic or real reserve to stabilize CA prices and/or satisfy the rights exerted by token holders. Moreover, CASPs involved in DeFi exchange activity or in reserve-investment activity must strictly comply with the segregation principle, irrespective of its legal form or the categories of CASP encompassed in the ANC authorisation.

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.

Q3 is aiming to provide information on the convenience of attaching the data contained in the proposed forms, templates and procedures in the application for CASP authorisation. We sincerely believe that this point lacks juridical relevance considering the MiCA principles and purposes. We understand that this is a mere formal data-volume saving measure resulting in more or less correlated savings of administrative burdens depending on the structure of the staff of each applicant entity. To us, such inclusion or not depends on ESMA inner organizative criteria. Although the nature of the authorisation differs from that of the transparent info to be served in forms and templates, the variable contents of

these data and related procedures can make efficient an ESMA resolution to let applicants opt for including them or not in the application.

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.

The aforementioned reasoning serves both for Q3 and Q4, *mutatis mutandis*. The convenience of specifying requirements and procedures to handle client complaints depends on the volume, complexity and diversification on the CASP envisaged activity and contracting. Thus, quantitative and/or qualitative thresholds could be set with respect to CASP net worth or social capital, total assets, net income, trading volume per year, number of MiCA contracts and/or amount of CAs value involved in CASP transactions wherein the applicant participates as a contracting party, and number and categories of investment services provided thereof.

We strongly believe that in all cases a proper handling of complaints is useful not just for general purposes of investor protection, but for CASP reputation enhancement as well, in order to ultimately foster public trust in DLT and reliability of DeFi / MiCA investments. It also increases legal certainty reducing administrative burdens and preventing unnecessary litigation costs.

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?

It is obvious that the post option will not be chosen by the majority of clients, but we believe that it is still efficient to manage its inherent paper-handling costs, since the benefit of facilitating this faculty to a minority of clients brings more satisfaction and confidence to non-native digital users, thus favoring good MiCA and CASP reputation. In exchange, managing paper would not be costly or slow.

Contrarily, answering back by post mail could be inoperative and inefficient for the concerned entity. A rule setting the obligation of the complaining client to receive and read electronic communications containing the answer or decision issued by the concerned CASP could be inconsistent with the possibility of filing and sending postal documents containing the complaints.

1.2. Recommendations

We recommend Alastria members that do not belong to the category of financial institutions and wish to become CASPs within the scope of MiCA provisions, to bring as much transparency as possible when filing the templates proposed by ESMA, in order both to enhance market compliance and foster the confidence of clients and related stakeholders in the soundness and legality of the applicant's activity.

Alastria CITT and securities-law experts in the Alastria legal committee also recommend to incorporate those related data useful for ESMA supervision that are specially linked to ordinary investment-service activity, although not expressly demanded or required in the templates. Transparency is never excessive, and not is the additional cost of incorporating cohesive additional info related to general aspects of the core business essential for a proper supervision and surveillance of CASP activity, without prejudice to industrial secrecy and full respect of competition-law mandatory laws and regulations.

We strongly recommend financial institutions belonging to the Alastria ecosystem, particular those present at the Alastria Board, to carefully comply with the principle of full disclosure and transparency when filing the templates to explain procedures and data related to the proposed questions, at the same level of detail applied when supplying mandatory information and specific data concerning securities–law provisions sent to NCA, company-law registration requisites or capital requirements brought for examination by financial authorities in accordance with BCA provisions.

2. CONFLICTS OF INTEREST

2.1. Rationale

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?
Conflicts of interest are difficult to identify and properly classify, therefore uneasy to prevent and resolve. In the case of CASPs, some Alastria members have identified specific problems in this realm, namely those concerning the relationships between CASP providers, between a CASP and issuers of tokens or CASPs (ITO / STO / ICO offerors and persons on whose behalf these ones act), and inner group or in-company conflicts between administrators or managers or employees or groups of them, among them or with respect to the CASP as an entity; the same applies to conflicts observable with clients of the CASP (cf. pars. 104 and 105 of ESMA Consultation Paper).

In the case of multi-services provided by CASPS, the probability and intensity of the risks associated to those conflicts raises, and it is boosted in narrow correlation with legacy professional customs and practices of coworking in the financial sector, which can only be solved by a culture of transparency and Independence when appointing collaborators and staff. Malpractice does not only affect financial institutions within this context, but non-financial corporations too, and this is extraordinarily relevant in the case of real assets like real state properties or agricultural commodities underlying CAs. As ESMA opportunely outlines in the Consultation Paper (sub par. 26), integrated services historically "led to conflicts of interest" between the objectives of the different services or entities"; this problem is present not only at an intra-group transaction level, but at the level of cross-professional provision of CASP services. MiCA recent history clearly shows how lack of

prevention and identification of conflicts results in severe investor losses and reputational cost for both CASPs and MiCA.

Since art. 72 MiCA (cf. ESMA Consultation, par. 102) compels a CASP to "implement and maintain effective policies and procedures", effectiveness should be measured, and this requires sufficient expertise to analyse cost and benefits of measures adopted in both identification (as this entails deep knowledge of the typology, origin and nature of conflicts) and prevention (as this implies the disposal of a wide range of costly and permanent resources), irrespective of the application of specific rules for the solution and mitigation of arisen conflicts (like ex post disclosure or authorisations). The unambiguous spirit of art. 72 MiCA is, as shown in Consultation, par. 103, compelling CASPs in conflicts to effectively prevent and reduce conflicts, even when the preventive measures to be implemented are costly. The rationale behind this consideration leans on the assumption that MiCA integrity and investor safeguard are to be prioritised even when applying the principle of proportionality.

All the aforesaid supports the central idea that specific circumstances, relationships or affiliations must be taken into consideration to identify, prevent and manage a conflict detrimental to the client (art. 2 RTS) or to the CASP (art. RTS). The main objection that can be posed to arts. 2 and 3 of RTS is that both of them essay an open list of conflictive relationships or situations, but both lists have been designed, from a private-law and company-law technical perspective, in a non-systematic manner. They are somewhat diffuse, vague and aimless, and can encompass situations far from deserving to be reputed as conflictive. In particular:

- In the case of art. 2.1 (a) RTS, the CASP is likely to increase its net worth at the expense of the client, but this happens naturally in the CASP-client ordinary contractual relationship, irrespective of the present of a conflictive situation. The key point is the illicit advantage taken from operating as a double counterparty in different contracts (e. g., CA order execution and CA dealing), and this is not explained neither in art. 2 RTS nor in other articles, without prejudice to the sole reference to the unlawfulness or illegality of the CASP's conduct found in Recital 2 RTS, wherein the lack of an objective and independent exercise of its (contractual or statutory) functions is mentioned.

- This observation applies exactly the same in case of having an "economic interest in a person, body or entity with interests conflicting with those of the CASP" (art. 3.1.a). Again, the conduct of the CASP's counterparty or related person is not illicit because of existing an opposition of interests (which is natural in contracting), but for the unfairness of the advantageous positions of such person when extracting a benefit from serving an interest of third parties whose interest is hidden for the CASP, or his/her/its own particular interest, also hidden from the eye of the CASP, then requiring communication or disclosure as a fundamental measure of prevention or as an ex post remedy to prevent the extraction of unlawful

opportunities by the concerned person. Contrarily, the cases contained in art. 3 (b) to (e) RTS clearly show the contractual or social relationship potentially harming the interests of the CASP. And the same applies in the cases shown in art. 2 (b) to (e) - in the securities law jargon, the factual situation covered in 2 (c) is typical and commonly known as *frontrunning*-, exception made of the one shown in 2(d), commented below.

- The case of the potential conflicts associated with the factual situation described in art. 2 (d) is a clear sample of legal indetermination, since carrying the same business implies competition, but the bona fide rules present in EU competition rule to prevent from unfair competitive conducts should be enough to prevent potential damages or losses of the affected client. Strictly, competition does not create itself a conflict of interests in a private-law sense, unless there is a specific intention to harm or prejudice in the CASP (or connected person) as a counterparty of its client; anyway, implementing a duty of communication of the coincident activity is a desirable practice, beyond mandatory rules. Thus, the situations of high likelihood to make gains, avoid losses, business or interest coincidence and similar should be considered only as early signs or hints of conflictive situations or relationships, not as conflicts per se, as properly shown in art. 3.2 RTS.

Therefore, we believe that the RTS should specify, in each of the aforementioned cases, the existence of an actual or current source of contractual relationship, social or political commitment or personal relationship originating a duty of compliance, fulfilment, service or attention which directly or indirectly impacts on the results of the conducted CASP activity or the fulfilment of the investment-service contract by the client.

Apart from this, other specific conflictive situations or relationships could be incorporated to the open repertoire or enumeration in both arts. 2 and 3, namely:

- Multi-service provided by the CASP or persons related with the fulfilment of the contracts related to crypto-asset service and close DLT activities (custody of wallets, token token cryptokey custody and management, execution of collateral, exercise of client's rights on reserve underlying ART, exercise of rights in rem connected to CAs on real assets, auditing services, DeFi exchange services, DLT architectures or BaaS services related withe the provision of services within the CASP activity, amongst other).

- Proxy connection with financial markets ruled by MiFID but involving DLT-based token contracting activity, particularly if there is a contractual provision of commitment with multiple activities (cf. Recital 10 RTS).

- Engagement in auxiliary or complementary services not encompassed by MiCA but presenting potential contractual or non-contractual conflicts, particularly when the CASP presents itself as an exchange or DeFi platform but is actually engaged in

such activities (e. g., legal counseling, strategic consulting, multi-advisory activities). such as operating a trading platform in crypto-assets,

- Participation in market-making or offering margin trading in DeFi, particularly when involving the CASP, directly or indirectly, in Automated Market Maker in DeFi facilities or exchanges. The same applies in DeFi financial-derivative activity, and in investment-fund connected contracting or societal activity.

- Participation in the governance of CEX or DEX DeFi exchanges or in regular MTS or facilities ruled under MiFID – MiFIR wherein DLT-based activity is performed.

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?

In our view, art. 3 RTS could be completed, respectively, in the realms of conflict identification, prevention and "management" (strictly, and in a private-law technical broader sense, "solution", which encompasses disclosure as considered in article 8 RTS), as follows:

a) With respect to identification of conflicts it is to be noted that art. 3.1 RTSD refers to the sources of the conflict as a human relationship (personal or professional) from which a damage could be inflicted to the CASP, but it should be noted that the identification of the conflict requires specific measures like:

   - A principle of proof or clear indication that the conflict is arising or could arise in case the affected subject or persons do not anticipate in the corresponding communication in accordance with disclosure regime on conflicts in force in the CASP and duly published.

   - An exhaustive examination of the sources of activities from which the conflict is arising or may arise in case of medium or long term contracts or stable political, social or personal relationships.

   - The identification of the persons (employees, directors, managers) participating in both relationships; with the CASP, client or third relevant parties in case of indirect conflicts arising from double or multiple connections.

   - A previous analysis of the legal nature of the conflict and its nature (arising from brokerage services or CA order execution, market abuse rules could be applicable), paying attention to the mono- or multi-contractual relationships involved, or the extra-contractual duties concerned (like in non-contractual liability scenarios, as in the case of auditing or consultancy activity).

- The intervention of corporate bodies in case that the conflict affects clients or related persons who are contracting parties with administrators, managers or relevant employees within the CASP. Such governance bodies should be helped by inner or external legal experts duly trained and qualified on this specific matter.

b) Concerning prevention and ex ante efficient measures to impede the proliferation of conflicts:

- CASP self-prevention is not mentioned in art. 3 or wherever. Inner corporate governance rules and specific guidelines and procedures should encompass systematic periodical examinations of conflictive positions in key situations like relevant staff changes or nominations, M&As, capital structure variation, restructuring or participation in new DLT or DeFi-related activities, inter alia.

- A set of specific documents directed to CASP manager can be implemented, and they are useful in medium and big-size CASP structures wherein a considerably high number of managers can exchange positions or tasks. Among such documents we may cite: (i) responsible previous declarations of absence of conflict; (ii) specific obligations to declare potential conflicts within the concerned corporate body; (iii) responsible declaration affirming to know and fulfil inner or self-regulatory policies and procedures on conflicts of interest and the ways to communicate them for further examination in dubious cases.

c) In the field of management and optimal ex post solutions to arisen conflicts: we watch a significant lagoon within the proposed text, since there is no combination of standard measures as in classical company-law anti-conflict rules like "disclose and abstain", "disclose or abstain" and others. In particular, a disclose or abstain option rule facilitates a prompt disclosure and eventual ex post abstention recommended by CASP governing bodies, previous notification and rejection of authorization to operate within conflictive position.

Preauthorization or ex post specific permission rules may be combined in a proper and effective manner, considering that article 8.2 RTS refers mainly to disclosure in general, ex art. 72 (2) MiCA.

In all cases, the due descriptions of the arisen conflict materialising a specific level of disclosure from the concerned subject or Enterprise when required and available in accordance with the standard of disclosure required shall include:

a) Services, contracts and activities actually generating the conflict.
b) Legal and economic nature of conflicts.
c) Description and nature of the associated risks.
d) Additional measures to be set in order to prevent (ex ante) ensued additional conflictive positions or mitigate resulting ex post damages; this is crucial in

CASP double activity concerning market making and/or DeFi CEX order execution.

It is to be noted that art 8.3 RTS does not specify what a "relevant device" is (e. g. electronic devices for website publication) used for disclosure, but is evident that online permanent client availability of this info requires and presumes the universal use of internet. 8.4 updating rule is complementary, but "measures taken to mitigate" are not determined. Thus, board or managerial intervention according to guidelines designed by legal experts is crucial for ex post mitigation in parallel with the application of abstention or rules, or after recusal by authorised persons within the ecosystem.

Finally, it is to be noted that art. 9 RTS sets additional requirement in the case of token or crypto pricing services. It has not been introduced systematically, mixing ITO services of pricing (art. 9 a), simultaneous brokerage in secondary market (9 b) and coincidence of token distributor and token issuer or offeror. We understand that pricing activity is a sensitive point in the conflict-generation chain. Therefore, CA pricing services should be treated separately from order execution services. The additional requirement in art. 9 should not place at the same level multi-contractual situations as a source of conflict (namely the simultaneous participation in brokerage or ICO / ITO and pricing activities) and the inner-group combined activities of placing.

2.2. Recommendations

Alastria recommends its members with intention to provide services as CASPs to set systematic policies, procedures and legal guidance containing solid and internationally recognised best practices on conflicts of interest, so as to achieve their:

- Prompt identification, deducted from relevant "activities and situations" (art. 8.2 a RTS), particularly any kind of direct or indirect (through connected persons) participation in DeFi business competing with the CASP

- Adequate inner societal organic previous debate in case of doubts on the existence of a conflict; such debate is essential in case of indirect conflicts wherein proxies or representatives acting on behalf of several institutions take part in the provision of CASP services

- Accurate legal classification and qualification of the nature of the conflict so as to implement measures impeding a negative impact on the affected entity or client, and an exhaustive assessment of such impact in accordance with available and standard information communicated by the subject in conflict.

- Ex ante or ex post (depending on the case) effective procedures for the resolution of conflicts identified as such by independent legal experts- Such procedures should be standard and published in advance, in order to conveniently and promptly

react when "measures taken to prevent of mitigate the conflict" (art. 8 2.d RTS) are to be taken.

In the case of big companies, in-company legal advisor should co-work with external experts in order to exchange and improve the lists of best preventive procedures and solutions (irrespective of the provided measures of recusal, disclosure, abstention of the subject in conflict, or authorisation by the potentially damaged entity), in accordance with ESMA guidelines, within the framework of MiCA and RTS developments.

In the specific field of identification of conflicts, we recommend that CASP in the Alastria community suspecting the existence of an in-company or outer conflict to consult experienced practitioners capable to implement a set of measures capable to achieve:

a) A clear and sound distinction and separate treatment of direct conflicts (wherein a person in directly involved in contradictory obligations with respect to the CASP as a legal entity and him/herself or third contracting parties) and indirect conflicts, more difficult to detect as far as there is one or more contracting parties, proxies or intermediaries interposed between the CASP and its counterparty, when at least one of these is suffering the conflictive position.

b) Adequate, proportionate and effective inner policies and procedures based upon company-law principles and international corporate governance best practices in order to identify the concerned subjects in conflicts, in accordance with the nature, legal relevance and potential economic consequences of each observable actual or potential conflict.

3. CASP ACQUISITIONS

3.1. Rationale

RTS on the proposed acquisition of a qualifying holding in a CASP intends to facilitate the public prudential assessment of a CASP acquisition in order to authorise it or not according with the "reputation" (RTS on the proposed acquisition of a qualified holding in a CASP, Recital 1)

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?

Alastria CITT and legal committees believe that information laid down in art. 1 is enough for the adequate and proportionate achievement of the purported aims of the ESMA RTS.

In the case of trusts it is to be noted that this institution is not commonly used in Spain and in other civil-law jurisdictions, since a fiduciary unfolding or splitting of property is not

envisaged in property private-law discipline, although it is growingly utilised by financial intermediaries under diverse legal wrapping (fiduciary guarantees, fiduciary Ventures, joint account schemes…). It is essential for ESMA purposes that the ANC of the target CASP knows the identity and relevant data concerning trustee managers; the key is that such data, as laid down in art. 3 RTS, are "relevant". And in our view, the most relevant ones are, among those mentioned in the text, those related with professional experience "in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in points (a) and (b) of Article 2" for the case of natural persons, in order to know the identity of beneficiaries or protectors of the trust assets and their sovereignty and autonomy to control its key assets.

The rest of items laid down in art. 1 RTS suffice to duly inform on the reputation of ultimate beneficiaries of the trust (like in the case of legal persons in general, ex art. 1.2 k RTS), whatever is the nature of legal person's ultimate beneficial owners -cf. 3(6)a(i) and 3(6)c of Directive EU 2015/849-. What ultimately matters is the proper assessment of the acquirer's reputation and related investment policies, restrictions imposed on investments and relevant investment decisions, including CASP exit strategies. In this respect, imposing a higher degree of granularity can be deemed impossible or excessively costly for the acquirers or trustees, thus deterring them to serve more basic transparency items.

In the case of AIFs and its managers (AIFMs), and in the case of collective investment via UCITS as well, similar considerations are applicable. The details of the investment policies and restrictions should be more or less detail in accordance with the nature of the legal firms, considering in particular:

- The scope and purpose of investment for ultimate beneficiaries, whose personality and investment purposes must be analysed by CASP-supervising NCA.
- The relative volume of the CASP investment and its relevance within the context of the fund or their managers' investment strategies and in-company policies.

Again, the rest of data required have a variable-geometry granularity depending on the concrete contents of relevance, to be judged by the required acquiring addressees (namely "persons responsible" influencing investment and exit inner AIF or UCITS decisions). As a sample we may cite the "relevant education and professional training"; what is relevant (like in a Curriculum Vitae) depends on the will of the addresses, the same way that assessment depends on the judgement of ANC competent staff within bodies and committees. Details of "performance" in CASP firms can be relevant or not depending on many variable and heterogeneous circumstances, thus frustrating the purpose of the granularity level present in the text.

In the case of sovereign funds (SWF), essential governmental data and national investment policies concerned are crucial for the ANC assessment, considering that political decisions are involved. Granularity is proportional and sound in our view within this particular realm. DLT and ICT experience are even more crucial to ensure the consistency and expertise of the SWF representatives and managers with respect to the CASP investment, thus facilitating a positive and sound assessment of the coherence and commitment of the acquirers in each particular political-economic context, deductible from "details of any influence exerted by...public body". Obviously, ANC should not expect much on transparency served by means of this technical request, but its mention within art. 1.5 RTS does not seem inefficient or distorting at all.

With specific regard, we harbor reservations regarding the requirement stipulated in point (e) of Article 6 RTS, which pertains to "the content of any intended shareholders' agreements with other shareholders in relation to the target entity." We are concerned that this requirement may be overly intrusive for the transaction parties, potentially necessitating the divulgence of sensitive and confidential business information that may not be warranted for the ANC's evaluation. Instead, we propose specifying the particular information within the shareholders' agreement that should be disclosed, rather than mandating the provision of the entire agreement.

In summary, granularity present in RTS for trust, UCITS, AIF and SWF managers could be considered excessive and costly for respondents, but it is not. In fact, all data are complete and necessary for proper assessment, irrespective of the indetermination of legal concepts inserted, as "relevance" or "influence".

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?

Yes. If the indirect acquirer controls an existing holder of qualifying holding in the target CASP, the submitted info should be the same as in direct acquisitions. But if the qualifying holding is determined by multiplication in a holding chain, required info should be simplified (cf. Recital 13 RTS).

However, the assumption of "more limited influence" in the case of applying the multiplication criterion should be carefully discussed on a case-by-case basis, without prejudice to the application of the rules contained arts. 9 to 11 expressing quantitative and qualitative criteria that could vary significantly in content according with the circumstances – e. g., in items such as the "overall aim" in art. 11.2 a, or the "general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions", ex art. 11.2.d-.

Anyway, it seems to Alastria CITT representatives that the measurement of the impact of the acquisition on the governance of the target CASP is essential for the correct

assessment of the acquisition and its convenience for investors, DeFi market and public in general. In particular, the measurement of the "overall IT and technology architecture" impact -art.11.4.(c) RTS- is crucial in a DLT / DeFi environment like Alastria consortium. Such data should be communicated even in acquisitions of qualifying holdings under 50%.

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?

Yes, and wallets and addressee identifiers used for fiat-CA exchanges are a crucial point (art. 8 f). To this respect, we believe thar further concrete details should be required, particularly on the:
- Nature or type of wallet (custodial or non-custodial)
- DLT networks, architecture and protocols wherein related Smart contract is deployed and ledger transactions are performed and registered
- Wallet management contracts approved or signed throughout the CASP-acquisition financing process.

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

Yes. The informative restriction is proportionate and have enough justification, either in order to avoid unnecessary duplicated assessment (cf. art. 12. 1 and 12. 2 RTS).

Alastria members that purport to invest on EU CASPs should carefully consider the possibility of a deeper analysis of the reduced information required within a previous consultation to CITT or Alastria Legal members. The same applies in the case of Alastria members presumably affected as CASP targets, in order to better prepare optimal legal defenses in accordance with ESMA and CNMV applicable criteria.

3.2. Recommendations

In the case of intended acquisitions of Alastria members operating as CASPs in accordance with MiCA regime, coming from particular kinds of investors acting as natural or legal persons involved in trusts, ATFs, SWFs or UCITs, the legal and CITT committees recommend to cooperate with ANC (in Spain CNMV) in order to ensure the full application of ESMA RTS proposal criteria, conveniently adapted with the due granularity corresponding with concrete investment situations, in accordance, inter alia, with:

a) Previous personal or professional relationships between the acquirer and the CASP
b) Percentage of participation in capital intended on the target entity.
c) Degree of stability and eventual general social or political intentions behind the investment, particularly in the case of SWFs.
d) Expertise of the acquirer's management bodies and advisors, particularly in DeFi and DLT.