|  |
| --- |
| Reply form on the second Consultation Paper for MiCA implementation |
|  |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. 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 **14 December 2023.**

**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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_MIC2\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. 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.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_MIC2\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MIC2\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**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 publically 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 [Legal Notice](http://www.esma.europa.eu/legal-notice).

**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 | German Banking Industry Committee |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Germany |

**Questions**

1. : Do you agree with ESMA’s assessment of the mandate for sustainability disclosures under MiCA?

<ESMA\_QUESTION\_MIC2\_1>

In principle, we welcome ESMA's mandate to make proposals on sustainability disclosures under MiCAR. However, we have come to the conclusion that a full implementation of the proposed sustainability indicators based on figures is currently not feasible. Our market experience shows that sufficient data - neither in the required quantity nor quality - will not be available at present or in the near future. We would therefore welcome it if ESMA were to grant a transitional period in order to be able to fulfil the requirements by providing adequate data.

<ESMA\_QUESTION\_MIC2\_1>

1. : In your view, what features of the consensus mechanisms are relevant to assess their sustainability impacts, and what type of information can be obtained in relation to each DLT network node?

<ESMA\_QUESTION\_MIC2\_2>

Information pertaining to DLT network nodes comes with inherent uncertainties, exemplified by the ability of software to transmit IP addresses that may differ from the actual location. This discrepancy raises questions about the accuracy of attributing a specific geographical location (and, thus, a proxy to estimate greenhouse gas (GHG) emissions) to a node based solely on its IP address.

In the realm of mining pools, individuals pool their computational power, potentially spanning different countries. Relying solely on the origin of the mining pool may not comprehensively represent the diverse geographic locations contributing to the network. The global nature of these pools challenges the conventional practice of associating them strictly with a single country.

Furthermore, focussing on the country of origin does not necessarily take all countries involved in the validation process into account. Moreover, the "country approach" as a proxy is very imprecise, as the nodes cannot be clearly assigned even at country level. Accordingly, it is not clear whether the validator node that validates a transaction is operated with electricity from renewable or fossil energy sources.

If the "country approach" is nevertheless used, investors should be informed and educated about the currently still rudimentary data situation and its possible negative effects. As already described, it is possible that the transaction in the corresponding token in a country was validated using either renewable or fossil energy sources. However, this cannot be specified based on currently available data.

We would therefore welcome the idea of not relying on average values for emissions at the level of individual countries, as proposed, but rather opening up the possibility of taking individually determined sustainability indicators into account in the sense of a market-based accounting approach where CASPs can choose to use a more granular approach, if available.

Public-permissionless DLTs, by their very nature, lack information about the specific nodes within the network. This absence of detailed node information poses challenges for understanding the geographical distribution and energy consumption patterns of the nodes.

Attempting to contact DLT network nodes directly is often an unfeasible task. The decentralized and pseudonymous nature of these nodes makes it difficult to establish direct communication channels, adding another layer of complexity to assessing and managing the network.

Certifying the energy consumption of nodes, including the source of the electricity used, at the Point-of-Usage is currently a daunting challenge. This lack of certified information makes country-based energy consumption estimates inherently biased and tends to portray a negative perception of the environmental impact of DLT networks. For example the time dimension also plays a role: current studies, such as that of the UN University, use data from 2020/21, when China still accounted for a very large share of global mining/validator nodes through energy generation from coal-fired power generation. In our view, this share is likely to have fallen drastically because of the mining ban implemented in China in 2021. The effects resulting from the ban on the share of fossil or renewable energies are still unclear, furthermore highlighting the inadequacy of the available data.

The treatment of various blockchain layer solutions remains unclear. For instance, is it true that layer-2 technologies like Lightning really have a substantially lower energy consumption. The question arises as to how distinctions can be made and considerations be given to these different layers in assessing energy usage across DLT networks.

A significant portion of cryptocurrency transactions occurs off-chain, limited to bookkeeping entries (such as trades or transfers within an omnibus wallet provided by a service). However, even in these cases, electricity is consumed. The challenge lies in understanding and combining the energy consumption associated with off-chain transactions into an overall assessment of the environmental impact.

In summary, navigating the complexities of DLT network nodes involves grappling with uncertainties related to their geographic locations, mining pool compositions, lack of information in public-permissionless DLTs, communication challenges, and the difficulties in certifying and assessing energy consumption. Additionally, distinguishing between different blockchain layers and accounting for off-chain transactions further complicates the overall evaluation of the environmental footprint of these networks.

<ESMA\_QUESTION\_MIC2\_2>

1. : Do you agree with ESMA’s approach to ensure coherence, complementarity, consistency and proportionality?

<ESMA\_QUESTION\_MIC2\_3>

We do not agree with ESMA's approach as it will lead to a bias in the comparability of results regarding sustainability indicators between crypto-assets and financial instruments with crypto-assets as underlying.

In our view, the proposed approach of the consultation paper is aimed at a network infrastructure. In contrast, the reporting obligations under the SFDR focus on the issuer. In our view, the two different approaches lead to a bias in the comparability of the results.

To clarify: In the case of DLT-based financial instruments, the DLT component of the financial instrument is not taken into account, although the technical basis is identical to a crypto asset. A similar unequal treatment arises with derivative crypto products (e.g. Bitcoin certificates).

With regard to investor protection, the comparability of the results is important, as customers sometimes view crypto assets as an investment alternative to financial instruments.

The comparability of the results should be based on the issuer of crypto assets.

If no issuer exists or is evident, a qualitative disclosure at an abstract level (functioning of the consensus mechanism) appears to be more expedient, although this is also considered rather difficult due to the individual infrastructure applied (layer-2 technology, omnibus wallets).

<ESMA\_QUESTION\_MIC2\_3>

1. : Do you agree with ESMA’s approach to mitigating challenges related to data availability and reliability? Do you support the use of estimates in case of limited data availability, for example when data is not available for the entirety of a calendar year?

<ESMA\_QUESTION\_MIC2\_4>

We share ESMA's view that the requirements should be relaxed due to limited data availability and reliability.

However, we do not support the idea of using estimates in the case of low data availability.

In this context, we expressly point out that quantitative disclosures based on estimates can lead to fictitious accuracy in the disclosure that is susceptible to giving a misleading or at least incomplete picture of the energy sources used in the validation process.

This also supports our assessment, as reliable data sources are currently not available or only available to a very limited extent, especially in the case of public-permissionless DLTs.

Depending on the calculation method and the data sources, the results to be published can also vary significantly between the individual market participants. Different publications by market participants on the same crypto asset are not in the interests of consumer protection and can lead to investor uncertainty and increase greenwashing risks.

Therefore, in the case of a public-permissionless DLT, we support considerations regarding a comprehensible calculation method or logic, even if this deviates from the standard.

<ESMA\_QUESTION\_MIC2\_4>

1. : What are your views on the feasibility and costs of accessing data required to compute the sustainability metrics included in the draft RTS?

<ESMA\_QUESTION\_MIC2\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_5>

1. : Do you agree with ESMA’s description on the practical approach to assessing the sustainability impacts of consensus mechanisms? If not, what alternative approach would you consider suitable to assess these impacts?

<ESMA\_QUESTION\_MIC2\_6>

No. We do not agree with the proposed approach to assessing the sustainability impact of consensus mechanisms. The current approach outlined in the Consultation Paper is geared towards network infrastructure, whereas SFDR, in contrast, focuses on the issuer. Consequently, there are distinct methodologies at play, resulting in a lack of comparability in the outcomes. The divergence in these approaches highlights the inherent differences in assessing and addressing issues related to network infrastructure and issuer concerns. As a result, direct comparisons between the results obtained through these divergent methodologies is not possible – the results are not comparable.

However, in the context of customer protection the importance of comparability in results is of utmost importance, particularly because some customers view cryptocurrencies as an alternative investment to traditional financial instruments. This highlights the need for a comprehensive approach to evaluating and disclosing information related to DLT-based financial products.

In the context of DLT-based financial instruments, it's essential to note that the DLT component of these instruments is often not taken into consideration, despite the fact that the technical foundation constitutes a form of cryptocurrency.

The unavailability of data, especially in public-permissionless DLTs like Bitcoin and Ethereum, raises the risk of greenwashing. This lack of transparency can potentially lead to misleading claims about the environmental impact of these technologies.

Uncertainties surround also information about DLT network nodes. For instance, IP addresses can be manipulated through software, transmitting a location different from the actual one. This adds complexity to understanding the geographical distribution and energy consumption patterns of these nodes (please refer also to our answer under question 2).

In addition, the wear and tear of hardware vary depending on factors such as the miner and the type of hardware used. Without reliable external data sources, estimates regarding the environmental impact become speculative, heightening the risks of greenwashing practices.

The traceability or verification of environmental claims is currently technologically challenging due to the inherent "system complexity" of DLT. This complexity makes it difficult to precisely track and verify the environmental impact of DLT-based financial instruments, posing a significant obstacle to transparency and accountability in this emerging sector.

<ESMA\_QUESTION\_MIC2\_6>

1. : Do you agree with the definitions proposed in the draft RTS, in particular on incentive structure and on DLT GHG emissions? If not, what alternative wording would you consider appropriate?

<ESMA\_QUESTION\_MIC2\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_7>

1. : In your view, are the proposed mandatory sustainability indicators conducive to investor awareness? If not, what additional or alternative indicators would you consider relevant?

<ESMA\_QUESTION\_MIC2\_8>

We do not agree with ESMA's assumption that the sustainability indicators proposed will sensitise potential investors in their investment decisions.

However, we support the idea of creating incentives to raise awareness by means of freely accessible information, so that the investor engages with the issue of sustainability. Furthermore, we believe investors should know about the lack of data availability and that in the end it cannot be specified whether the investor’s transaction in the respective crypto-asset is validated by a note that is run with renewable or fossil energy.

<ESMA\_QUESTION\_MIC2\_8>

1. : Do you consider the proposed optional sustainability indicators fit for purpose? If not, what additional indicators would you consider relevant? Would you agree to making these optional sustainability indicators mandatory in the medium run?

<ESMA\_QUESTION\_MIC2\_9>

We do not agree with ESMA's proposal to introduce optional sustainability indicators as we consider the proposed indicators to be sufficient... Further indicators do not offer any added value at the current stage, as they contain redundant information, for example (energy mix vs. carbon intensity). There is a risk that a meaningful focus on a small amount of meaningful sustainability information will be lost, and investors will be confronted with a multitude of indicators. Technological development is rapid and will open new possibilities for the presentation of further sustainability indicators with a more accurate database in three years' time until the planned review.

<ESMA\_QUESTION\_MIC2\_9>

1. : Do you consider the principles for the presentation of the information, and the template for sustainability disclosures fit for purpose? If not, what improvements would you suggest?

<ESMA\_QUESTION\_MIC2\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_10>

1. : In your view, are the calculation guidance for energy use and GHG emissions included in the draft European Sustainability Reporting Standards relevant for methodologies in relation to the sustainability indicators under MiCA? If not, what alternative methodologies would you consider relevant? For the other indicators for which the calculation guidance of the ESRS was not available, do you consider that there are alternative methodologies that could be used? If so, which ones?

<ESMA\_QUESTION\_MIC2\_11>

The focus should be exclusively on the issuer. To ensure comparability of results, an approach analogous to the Sustainable Finance Disclosure Regulation (SFDR) should be adopted in this context.

In emphasizing a singular focus on the issuer, the intention is to streamline the assessment process and direct attention to the entity responsible for the financial instrument. This approach aligns with the principles of the SFDR, which advocates for transparency and standardization in disclosing environmental and social aspects of financial products.

By mirroring the SFDR methodology, which emphasizes consistency and comparability in reporting, the evaluation of DLT-based financial instruments can benefit from a standardized framework. This not only enhances transparency but also facilitates easier comprehension and comparison of environmental, social, and governance (ESG) aspects across different financial instruments.

In essence, adopting an issuer-centric approach and aligning with the SFDR offers a structured and standardized way to assess and communicate the environmental impact of DLT-based financial instruments, ultimately contributing to greater transparency and comparability in the market.

<ESMA\_QUESTION\_MIC2\_11>

1. : Would you consider it useful that ESMA provides further clarity and guidance on methodologies and on recommended data sources? If yes, what are your suggestions in this regard?

<ESMA\_QUESTION\_MIC2\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_12>

1. : Is the definition for permissionless DLT in Article 1 sufficiently precise?

<ESMA\_QUESTION\_MIC2\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_13>

1. : Throughout the RTS, we refer to ‘critical or important functions’. The term is borrowed from DORA and does not just capture ICT-specific systems. Does this approach make sense?

<ESMA\_QUESTION\_MIC2\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_14>

1. : Do you consider subparagraph (e) in Article 4(2) on external communications with clients in the event of a disruption involving a permissionless DLT appropriate for the mandate (i.e., does it constitute a measure that would ensure continuity of services)?

<ESMA\_QUESTION\_MIC2\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_15>

1. : Should this RTS also specify that CASPs should establish a business continuity management function (to oversee the obligations in the RTS)? In your view, does this fall within the mandate of ‘measures’ ensuring continuity and regularity?

<ESMA\_QUESTION\_MIC2\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_16>

1. : Are there other organisational measures to be considered for specific CASP services?

<ESMA\_QUESTION\_MIC2\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_17>

1. : Do you consider the obligation for CASPs to conduct testing of the business continuity plans in Article 4(4) via an internal audit function appropriate for the mandate?

<ESMA\_QUESTION\_MIC2\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_18>

1. : In Art. 68(8), CASPs are required to take into account the scale, nature, and range of crypto asset services in their internal risk assessments. Is there support for this general principle on proportionality in Article 6? Do you support the proposed self-assessment under Article 6(2) and in the Annex of the draft RTS?

<ESMA\_QUESTION\_MIC2\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_19>

1. : Do you agree with the description provided for the different types of CEX and DEX listed?

<ESMA\_QUESTION\_MIC2\_20>

We would like to question the assessment made in paragraph 92 of the consultation paper: While the initial assertion suggests a departure from data-centric business models typical of traditional trading platforms, skepticism arises about the sustainability of this deviation. The belief that these platforms will abstain from data-related activities in the long run may be overly optimistic. In the rapidly evolving digital ecosystem, data has become a valuable commodity with far-reaching implications.

The phrase "data is the new gold" underscores the significance of data in contemporary markets. It encompasses not only the potential for monetization but also the strategic insights and competitive advantages derived from robust data utilization. Considering this, it seems improbable that platforms, will entirely abstain from capitalizing on the value inherent in data.

As technological landscapes shift and business models adapt, the dynamic nature of the industry suggests an eventual convergence toward incorporating data into these platforms' operations. Therefore, the statement that the business model of these trading platforms does not rely on the selling of trading data should be viewed with caution, recognizing that, over time, the allure of data's multifaceted value may lead to a shift in strategy.

<ESMA\_QUESTION\_MIC2\_20>

1. : For trading platforms: Please provide an explanation of (i) the trading systems you offer to your users, (ii) which type of orders can be entered within each of these trading systems and (iii) whether you consider these trading systems to be a CEX or a DEX (please explain why)?

<ESMA\_QUESTION\_MIC2\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_21>

1. : Do you consider the trading systems described, and the transparency obligations attached to each trading system, in Table 1 of Annex I of the draft RTS appropriate for the trading of crypto-assets? Do you offer a trading system that cannot meet the transparency requirements under the provisions in this Table? Please provide reasons for your answers.

<ESMA\_QUESTION\_MIC2\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_22>

1. : Regarding more specifically AMMs, do you agree with the definition included in Table 1 of Annex I of the draft RTS? What specific information other than the mathematical equation used to determine the price and the quantity of the asset in the liquidity pools would be appropriate to be published to allow a market participant to define the price of the assets offered in the liquidity pool?

<ESMA\_QUESTION\_MIC2\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_23>

1. : Do you agree with ESMA’s proposals on the description of the pre-trade information to be disclosed (content of pre-trade information) under Table 2 of Annex I of the draft RTS? If not, please explain why. If yes, please clarify whether any elements should be amended, added and/or removed.

<ESMA\_QUESTION\_MIC2\_24>

From our point of view it is unfortunate, that MiCAR does not provide for pre-trade transparency waivers and that ESMA cannot create an exemption in the RTS, for example for large orders, as it is outside the scope of the Article 76(16)(a) mandate. It would certainly be sensible to establish exceptions to pre-trade transparency requirements – particularly for thinly traded assets. There should be no difference in this regard compared to traditional financial instruments.

Recognizing the potential challenges posed by illiquid markets, introducing exceptions to pre-trade transparency rules appears to be a logical consideration. Thinly traded assets, much like their traditional financial counterparts, may face difficulties in meeting standard pre-trade transparency requirements due to lower trading volumes and limited market activity.

<ESMA\_QUESTION\_MIC2\_24>

1. : Do you agree with ESMA’s proposals to require a specific format to further standardise the pre-trade information to be disclosed (format of pre-trade information)? If not, please explain why and how the pre-trade information can be harmonised. If yes, please clarify whether any elements should be amended.

<ESMA\_QUESTION\_MIC2\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_25>

1. : Do you agree with the proposed approach to reserve and stop orders?

<ESMA\_QUESTION\_MIC2\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_26>

1. : Do you agree with the proposed list of post-trade information that trading platforms in crypto assets should make public in accordance with Tables 1, 2 and 3 of Annex II of the draft RTS? Please provide reasons for your answers.

<ESMA\_QUESTION\_MIC2\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_27>

1. : Is the information requested in Table 2 of Annex II of the draft RTS sufficient to identify the traded contract and to compare the reports to the same / similar contracts.

<ESMA\_QUESTION\_MIC2\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_28>

1. : Is there any other information, specific to crypto-assets, that should be included in the tables of Annex II of the draft RTS? Please provide reasons for your answers.

<ESMA\_QUESTION\_MIC2\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_29>

1. : Do you expect any challenges for trading platforms in crypto assets to obtain the data fields required for publication to comply with pre- and post-trade transparency requirements under Annex I and Annex II of the draft RTS?

<ESMA\_QUESTION\_MIC2\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_30>

1. : What do you consider to be the maximum possible delay falling under the definition of “as close to real-time as is technically possible” to publish post-trade information in crypto-assets? Please provide reasons for your answer.

<ESMA\_QUESTION\_MIC2\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_31>

1. : Do you agree with ESMA’s approach on the requirements to be included in the draft RTS in relation to a trading platform’s operating conditions? Please provide reasons for your answer.

<ESMA\_QUESTION\_MIC2\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_32>

1. : Do you consider that ESMA should include in the RTS more specific disclosure rules regarding a trading platform’s operating conditions, in particular in relation to co-location and access arrangements?

<ESMA\_QUESTION\_MIC2\_33>

The requirement that the operating rules for trading platforms should be published on the crypto-asset service provider’s website and should be provided in a single document is essential. Also traditional trading platforms fall under such rules.

<ESMA\_QUESTION\_MIC2\_33>

1. : From your experience, are all crypto-assets trading platforms making their data available free of charge? If not, what specific barriers have you encountered to access the data (e.g., price, level of disaggregation).

<ESMA\_QUESTION\_MIC2\_34>

Please refer to our answer under question 20. The proposals made in paragraphs 141 – 144 are good and sensible. However, we have a strong concern that maintaining this might be challenging. We are afraid that there's too much business involved in the sale of data by trading venues for it to be sustainable.

<ESMA\_QUESTION\_MIC2\_34>

1. : Do you agree with the level of disaggregation proposed in the draft RTS? Please provide reasons for your answer.

<ESMA\_QUESTION\_MIC2\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_35>

1. : In the context of large number of CASPs and possible different models of data access, what kind of measures (common messages, common APIs, others) would you consider feasible to ensure effective and efficient access to data?

<ESMA\_QUESTION\_MIC2\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_36>

1. : Do you agree with using the DTI for uniquely identifying the crypto-assets for which the order is placed, or the transaction is executed? Do you agree with using DTI for reporting the quantity and price of transactions denominated in crypto-assets?

<ESMA\_QUESTION\_MIC2\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_37>

1. : Are there relevant technical attributes describing the characteristics of the crypto-asset or of the DLT on which this is traded, other than those retrievable from the DTIF register? Please detail which ones.

<ESMA\_QUESTION\_MIC2\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_38>

1. : Do you agree with using the transaction hash to uniquely identify transactions that are fully or partially executed on-chain in orders and transactions records? Please clarify in your response if this would be applicable for all types of DLT, and also be relevant in cases where hybrid systems are used.

<ESMA\_QUESTION\_MIC2\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_39>

1. : Do you agree that a separate field for the recording of “gas fees” should be included for the purpose of identifying the sequencing of orders and events affecting the order?

<ESMA\_QUESTION\_MIC2\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_40>

1. : Do you agree with the inclusion of the above data elements, specific for on-chain transactions, in both RTS?

<ESMA\_QUESTION\_MIC2\_41>

The regulations concerning record keeping are largely technical in nature. However, it's crucial to note that the concept of record keeping is not new. While the technical feasibility of preserving the required information, such as ensuring the recognizable classification of Crypto Assets, is paramount, our current ability to make a comprehensive assessment in this regard is limited.

Record Keeping has long been a cornerstone in regulatory frameworks, ensuring transparency and accountability. In the context of emerging technologies like cryptocurrencies, the technical nuances become even more critical. The challenge lies not only in preserving the necessary information but also in ensuring that intricate details, such as the distinct identification of Crypto Assets, are technically achievable.

As we navigate this regulatory landscape, it becomes evident that the technical implementation of Record Keeping requirements presents a multifaceted challenge. The recognition of Crypto Assets, for instance, necessitates intricate technical solutions to accurately identify and categorize these assets within the regulatory framework.

At present, our ability to comprehensively assess the technical feasibility of such Record Keeping obligations is constrained. The dynamic and rapidly evolving nature of the cryptocurrency space, coupled with the diversity of crypto assets, makes it challenging to provide a definitive evaluation. It remains imperative for regulatory bodies and technological experts to collaborate closely to bridge this understanding gap and establish feasible technical standards for effective Record Keeping in the realm of emerging financial technologies.

<ESMA\_QUESTION\_MIC2\_41>

1. : Are some of the proposed data elements technology-specific, and not relevant or applicable to other DLTs?

<ESMA\_QUESTION\_MIC2\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_42>

1. : Do you consider it necessary to add a different timing for the provision of identification codes for orders in the case of CASPs operating a platform which uses only on-chain trading?

<ESMA\_QUESTION\_MIC2\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_43>

1. : Please suggest additional data elements that may be included to properly account for on-chain trading.

<ESMA\_QUESTION\_MIC2\_44>

We do not want to suggest additional data elements. On the contrary, we aim to draw attention to data elements that we find problematic.

The complex trade component ID already poses significant challenges in the traditional financial world, especially where parties involved are not familiar with each other.

Also, the implementation of an identifier resembling to the *transaction record number* in the context of the European Market Infrastructure Regulation (EMIR), the record tracking number (RTN) is already a complex undertaking, requiring extensive communication between the trading parties along the trading chain. It raises questions about the feasibility of achieving success in a similar implementation here. The intricate nature of these identifiers, combined with the decentralized and often pseudonymous characteristics of crypto asset transactions, suggests potential difficulties in establishing and maintaining such regulatory requirements within the crypto asset space.

<ESMA\_QUESTION\_MIC2\_44>

1. : Do you find the meaning of the defined terms clear enough? Should the scope be adjusted to encompass or exclude some market practices? Provide concrete examples.

<ESMA\_QUESTION\_MIC2\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_45>

1. : Are there other aspects that should be defined, for the purposes of this RTS?

<ESMA\_QUESTION\_MIC2\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_46>

1. : Do you anticipate practical issues in the implementation of the proposed approach to reception and transmission of orders?

<ESMA\_QUESTION\_MIC2\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_47>

1. : What transaction information can be retrieved in cases where a CASP execute the order on a third country platform/entity?

<ESMA\_QUESTION\_MIC2\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_48>

1. : Do you anticipate problems in retrieving information about the buyer/seller to the transaction?

<ESMA\_QUESTION\_MIC2\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_49>

1. : Do you anticipate practical issues in the implementation of the methods for client identification that are used under MiFIR?

<ESMA\_QUESTION\_MIC2\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_50>

1. : Do you anticipate practical issues in the implementation of the short selling flag?

<ESMA\_QUESTION\_MIC2\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_51>

1. : Do you consider that some of the proposed data elements are not applicable/relevant to trading in crypto-assets?

<ESMA\_QUESTION\_MIC2\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_52>

1. : Do you consider that additional data elements for CAPS operating a trading platform are needed to allow NCAs to properly discharge their supervisory duties?

<ESMA\_QUESTION\_MIC2\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_53>

1. : Do you believe that a specific definition of routed orders should be provided as it applies to orders that are routed by the trading platform for crypto-assets to other venues? Should this definition include CASPs operating a platform which uses only on-chain trading?

<ESMA\_QUESTION\_MIC2\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_54>

1. : Do you believe that fill-or kill strategies as referenced in MiFID II apply to trading in platforms for crypto-assets? Do they apply to partially filled orders?

<ESMA\_QUESTION\_MIC2\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_55>

1. : Do you agree with using messages based on the ISO 20022 methodology for sharing information with competent authorities?

<ESMA\_QUESTION\_MIC2\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_56>

1. : Do you agree with the criteria proposed for identifying a relevant machine-readable format for the MiCA white paper and consequently with the proposal to mandate iXBRL as the machine-readable format for MiCA white papers, subject to the outcome of the study referred to in paragraph 239?

<ESMA\_QUESTION\_MIC2\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_57>

1. : If yes, do you agree that the white paper should be required to be a stand-alone document with a closed taxonomy (i.e., without extensions nor complex filing rules)?

<ESMA\_QUESTION\_MIC2\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_58>

1. : If not, please elaborate your answer and propose alternative solutions that would best meet the criteria identified in section 7.3.

<ESMA\_QUESTION\_MIC2\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_59>

1. : Are you currently preparing white paper documents in a different machine-readable format? If yes, which one?

<ESMA\_QUESTION\_MIC2\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_60>

1. : How different is the white paper mandated by MiCA and further specified in this Consultation Paper from any white paper which you have drawn up or analysed prior to MiCA? Do you think that any additional information that used to be included in white papers prior to MiCA but that is no longer allowed under the relevant provisions of MiCA for the white paper will continue to be made available to investors as marketing communication?

<ESMA\_QUESTION\_MIC2\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_61>

1. : Do you agree with ESMA’s estimate of the cost of preparing a white paper in iXBRL format? If not, where would you put the estimate of a preparing a white paper in iXBRL format (not considering costs of information sourcing which should be considered as base scenario)?

<ESMA\_QUESTION\_MIC2\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_62>

1. : Do you agree with the proposed template for presenting the information as indicated in the Annex to this CP? We welcome your comments on the proposed fields and values/descriptions to be included in the fields - please provide specific references to the fields which you are commenting in your response and pay specific attention to the areas where additional explanatory description of the information is provided.

<ESMA\_QUESTION\_MIC2\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_63>

1. : Are there additional data elements in the table of fields that would benefit from further explanatory descriptions to ensure that the information provided by a given issuer/offeror is understandable and comparable to the information provided by other issuer/offeror of the same type of crypto-asset? If yes, please elaborate and provide suggestions.

<ESMA\_QUESTION\_MIC2\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_64>

1. : Would you deem it useful for ESMA to provide an editable template to support preparers with the compliance of the format requirements proposed in the draft ITSs?

<ESMA\_QUESTION\_MIC2\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_65>

1. : Are there any other data elements that you would consider relevant to ensure that investors can properly compare different crypto-asset white papers and NCA can perform their classifications on the basis of harmonised information?

<ESMA\_QUESTION\_MIC2\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_66>

1. : Do you agree with ESMA’s conclusion that an issuer, an offeror or a person seeking admission to trading of crypto-assets should always be eligible for an LEI? If not, please provide a description of the specific cases

<ESMA\_QUESTION\_MIC2\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_67>

1. : Do you agree with the proposed metadata elements, also considering the mandatory metadata expected to be mandated in the context of ESAP?

<ESMA\_QUESTION\_MIC2\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_68>

1. : Do you have any feedback in particular with regards to the metadata on the “industry sector of the economic activities” and its relevance for the ESAP search function?

<ESMA\_QUESTION\_MIC2\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_69>

1. : Do you agree with the listed definitions? Would you consider useful to clarify any other term used in the ITS?

<ESMA\_QUESTION\_MIC2\_70>

In the realm of insider information, it is generally acknowledged that, depending on the specific crypto asset, certain pieces of information may qualify as insider knowledge. This phenomenon is particularly pertinent to digitized assets, where the nuances of information disclosure become more complex. As in the case of traditional financial markets, certain assets or securities may have information that is not widely disseminated, creating opportunities for insider knowledge. In the context of asset reference token information to the underlying asset may influence the token and thus, qualify as exclusive insider information.

However, in the context of cryptocurrencies such as Ether or Bitcoin, we find it currently challenging to conceive of information that would exclusively be accessible to insiders without reaching the wider crypto community.

Cryptocurrencies operate on decentralized and transparent blockchain networks, where transaction histories and asset movements are publicly accessible. The essence of blockchain technology, which underpins cryptocurrencies, inherently promotes openness and inclusivity. Consequently, the information associated with cryptocurrencies is often available for scrutiny by the entire crypto community rather than being confined to a select group of insiders. For instance, in the case of Bitcoin, transaction details and supply metrics are publicly available and can be monitored by anyone with access to the blockchain. Similarly, for Ethereum, smart contract interactions and token transfers are transparent and accessible to the broader crypto community. In summary, the nature of cryptocurrencies, rooted in blockchain transparency, challenges the conventional concept of exclusive insider information. The decentralized and community-driven ethos of cryptocurrencies promotes a level playing field where information is typically accessible to the entire community, diminishing the traditional boundaries associated with insider knowledge in more centralized financial systems.

Nevertheless, also with regard to crypto assets there may be information to be qualified as insider information according to Art. 87 (1) MiCAR, such as the information as to whether a trading venue / market place intends to list or delist a crypto asset or whether someone intends to by or sell a larger (price-influencing) package.

<ESMA\_QUESTION\_MIC2\_70>

1. : Do you agree with the proposed requirements for publication on the website of the issuer, offeror or person seeking admission to trading? Would you consider necessary any additional requirements regarding the publication on the website?

<ESMA\_QUESTION\_MIC2\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_71>

1. : In your view, is there any obstacle for the website of the relevant parties to allow for specific alerts?

<ESMA\_QUESTION\_MIC2\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_72>

1. : In your view, what are the media most relied upon by the public to collect information on crypto-assets? In case you are an issuer, offeror or person seeking admission to trading, please specify/add which media you would normally use to communicate with investors and the reasons supporting your choice.

<ESMA\_QUESTION\_MIC2\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_73>

1. : Should a social media or a web-based platform be media reasonably relied upon by the public, what are the risks that you see when using them to achieve dissemination of inside information in relation to crypto assets? Should the dissemination rather take place through traditional media channel?

<ESMA\_QUESTION\_MIC2\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_74>

1. : Please comment the proposed means for dissemination of inside information? Please motivate your answer by indicating why the means they are/are not valuable tools for dissemination purposes.

<ESMA\_QUESTION\_MIC2\_75>

We do not agree with the introduction of social media into this context, since it raises significant uncertainties. From our point of view, the Market Abuse Regulation (MAR) and Market in Crypto-Assets Regulation (MiCAR) need to be aligned in this respect. Currently, the MAR only recognizes the website as a publication medium. Ensuring alignment is crucial, as many market participants will fall under both MAR and MiCAR.

The inclusion of social media is questionable for several reasons. Firstly, social media platforms that allow user exclusion are not be deemed suitable. However, this exclusionary feature is prevalent among most platforms. Informational disclosure on social media harbours the risk of mixing with marketing activities, as issuers use their social media accounts primarily for marketing purposes. There is therefore a risk that readers will not perceive the legal significance of the information, even if it is labelled accordingly.

In addition, the use of push alerts should not be required, as they introduce unnecessary bureaucratic complexities. Here again, attention should be paid to alignment between MAR and MiCAR.

<ESMA\_QUESTION\_MIC2\_75>

1. : Would you add any means of communications for the persons subject to the disclosure obligation to consider when disseminating inside information? Please motivate your answer.

<ESMA\_QUESTION\_MIC2\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_76>

1. : Do you agree with the technical means for delaying the public disclosure of inside information as described?

<ESMA\_QUESTION\_MIC2\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_77>