



*RESPONSE TO THE SECOND CONSULTATION ON THE TECHNICAL STANDARDS
SPECIFYING CERTAIN REQUIREMENTS OF MARKETS IN CRYPTO ASSETS
REGULATION (MICA)*

1. AEFI PRESENTATION.

The Spanish FinTech and InsurTech Association (AEFI), founded in 2016, represents the **technology-based financial companies in Spain**. AEFI brings together more than 186 member companies and its mission is to create **a favourable environment for the development of Startups and companies in the FinTech and InsurTech sector at a national level**. To this end, it carries out communication, dialogue and collaboration work with the main *stakeholders*, especially with the regulator.

AEFI is organised into different **verticals representing the main financial trends within the FinTech ecosystem**: wealth management and advice; *crowdfunding/lending*; ***cryptocurrencies and blockchain***; alternative finance; personal finance; online customer identification; financial infrastructure; *insurtech*; *marketplaces* and aggregators; means of payment; *neobanks* and *challenger banks*; *regtech*; and transactional services/currencies.

Although the financial and insurance industry still has many challenges ahead, the fact is that the regulatory changes that are taking place in the European Union mean a **reinforcement of security, protection and trust for financial users**, creating a framework in which financial and insurance institutions are a key element for the proper functioning of the system. In this sense, one of AEFI's main objectives is to **encourage member technology companies to comply with the agreed Code of Conduct and Good Practices**, to protect and benefit the consumer.

2. RESPONSE TO THE PROPOSED TECHNICAL STANDARDS.

AEFI acknowledges the **important work carried out by ESMA in the definition of the Level II of MiCAR**. The opportunity to participate in the regulatory process through the public consultations and public hearings of the three packages is especially appreciated.

AEFI's aim is to contribute to the **enrichment of the regulatory debate**, in favor of a balanced development that reconciles the growth of the sector and the necessary guarantees for the protection of consumer interests and of the climate and the environment.

In this second public consultation package, a total of six Regulatory technical Standards (RTSs) and two Implementing Technical Standards are proposed. AEFI's overall assessment is positive, but room for improvement is detected in two RTSs, those affecting **adverse impacts on the climate and the environment** and the **periodic testing of the business continuity plans**.

In both cases, AEFI considers that there should be a **better conciliation of the workload for the industry with the principle of proportionality** in the strict sense enshrined in Article 5(4) TFEU.

AEFI's position is set out below. With regard to the second point mentioned above, as there is no perfect fit with the questions raised in the consultation document, the input will not answer specifically any of them. We thank you very much for your attention and remain at your disposal to discuss any of these issues in more detail.

- **RTS on content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment.**
 - *Q1: Do you agree with ESMA's assessment of the mandate for sustainability disclosures under MiCA?*

AEFI doesn't fully agree with ESMA's assessment.

MiCAR establishes that the crypto-asset white papers shall include information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset (art s 6.1.j), 19.1.h) and 51.1.g)). This makes particular sense **since it is the issuers themselves who have the best access to this information**.

In this regard, the **crypto-asset service providers (CASPs) shall make publicly available, in a prominent place on their website**, this information regarding each crypto-asset in relation to which they provide services. Although, **this information may be obtained from the crypto-asset white papers** (art. 66.5), it would be an excessive burden to recompile and copy and paste with no additional value added.

The text of the RTS does not differentiate between the obligations regarding estimates for persons drawing up the crypto-asset white paper and CAPS for estimates not readily available (art. 4.8). MiCAR clearly places the main responsibility for the development of the information on impacts on the climate and the environment on the white papers. However, the RTS lacks a clearer differentiation in the obligations of the CASPs in this regard. Estimating not readily available information from every CASP could lead to provide unaccurate and unconciliated information to the final user.

On the other hand, it is not entirely clear whether CASPs serving crypto-assets not covered by MiCAR must also provide this information. In the absence of white paper obligations for these cryptoassets, it does not seem appropriate to require CASPs to obtain the information through other means, as it departs from MiCAR's white paper approach and would create a heavy burden that would be very difficult to manage.

- *Q3: Do you agree with ESMA's approach to ensure coherence, complementarity, consistency and proportionality?*

AEFI doesn't agree to ESMA's approach to ensuring the above principles.

The obligation for CASPs to provide the two tables contained in the Annex to the RTS (art. 4.2) is an **excessive burden**. Taking into account the number of cryptoassets that CASPs may be serving at any one time, it is disproportionate for the CASPs to have to perform this task for each one. In line with what has been argued in the previous section, AEFI considers that the white paper should be the main source of information and that the persons drawing up the crypto-asset white paper are the best qualified to draw up the tables.

In this sense, it would be more appropriate for the CASPs to limit themselves to providing a link to the required information, which should perhaps be stored in a repository provided by ESMA to guarantee consistency. AEFI considers that this would not have a negative impact on investors awareness, as they could continue to have the required information publicly and prominently available.

On the other hand and as the RTS is currently drafted, the requirement that all CASPs should be subject to the same level of obligations with regard to information on adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset, **does not seem reasonable**. By way of example, CASPs providing services of exchange of crypto-assets vs those providing custody and administration of crypto-assets on behalf of clients clearly develop very different activities. The different nature of their relationship with the crypto-assets they service and with their clients justifies tailored obligations. However, this problem would be solved if it were possible to provide a link instead of providing the tables, as it would lower the burden for all CASPs.

- *Q4 & Q5: (...) 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? What are your views on the feasibility and costs of accessing data required to compute the sustainability metrics included in the draft RTS?*

In line with the above, AEFI considers that the information required for CASPs should be limited to that contained in the white papers.

- RTS on measures that crypto-asset service providers must take to ensure continuity and regularity in the performance of services.

AEFI shares the need for business continuity organizational arrangements; business continuity policy; business continuity plans; and periodic testing of the business continuity plan. As it is established in whereas (1), this is imperative to maintain orderly conditions in the crypto-asset market and to protect investors from adverse disruptions.

Regarding the periodic testing, this interest must be reconciled with the proper preparation of the plans and with not establishing an excessive workload for the CASPs, especially considering that these are not usually large companies. In this sense, the possibility to establish a transitional period of one year in which there is no obligation to carry out testing, and thereafter to establish a periodicity of once every two years, should be explored.