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| Reply form  on the second Consultation Paper for MiCA implementation |
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**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 | Kraken |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**Questions**

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

<ESMA\_QUESTION\_MIC2\_1>

**Mandate.** We note that ESMA’s sustainability disclosures mandate, as per the Level 1 text, is relatively limited and discusses the **‘**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’. While we believe that sustainability disclosures are important, in our response below, we also propose a number of areas where ESMA could be more proportionate.

**New requirements.** We appreciate that ESMA acknowledges the objective of a consensus mechanism to validate transactions in crypto-assets. However, it is important to consider that sustainability disclosure requirements is a new obligation and it is faced by a young and evolving industry. The lack of precedent (e.g. through voluntary disclosures) makes it difficult to build on industry best practices. As such, ESMA should, within its mandate, design the disclosure requirements to be flexible, future-proof, and reviewed in conjunction with technological developments. We would also foster a grandfathering regime that would allow a stepped implementation.

**Crypto and sustainability interplay**. The bitcoin network has been evolving, and technological advancements have led to increased energy efficiency. For example, where newer generations of mining requirements are designed to provide higher hash rates while consuming less power; or where miners leverage orphaned energy; or where Bitcoin can act as a battery for the energy grid. In addition, many crypto/bitcoin mining operations are increasingly powered by renewable energy sources. Miners are locating their facilities in areas where renewable energy, such as solar, wind, nuclear, or hydroelectric power, is abundant and affordable, thereby reducing their carbon footprint. We appreciate that many of these observations would need data in support and think that the market will evolve to satisfy this need in the coming years.

<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>

**Estimates.** The sustainability impact will be determined by a combination of factors, for many of which the data is not reported or readily available. This means that any resulting impact will be an estimate or a combination of estimates. We agree with ESMA, that both of the following should be considered in the estimates: 1) validating transactions and 2) maintaining a record of past transactions online - how many nodes/computers are involved and what is their energy consumption. However, we note that these will be hard to quantify as these nodes can exist in data centres, homes, offices, etc. There's no good way to know where these nodes are and the relative energy consumption as a result. <ESMA\_QUESTION\_MIC2\_2>

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

<ESMA\_QUESTION\_MIC2\_3>

**Level playing field with traditional finance.** We agree with ESMA’s approach of ensuring proportionality and consistency with existing approaches in traditional industries / financial services. Traditional financial industries are in the process of developing taxonomies and disclosures regimes to ensure progress towards net zero. Crypto-asset industry should be treated consistently with other energy-consuming sectors as opposed to being treated differently in new regulatory frameworks.

**No disclosure obligation at the point of validation.**  However, Where ESMA draws comparisons with the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR), we would like to point out an important difference between these and MiCA. Under these traditional finance regimes, it is understood that investors, asset managers, and other service providers cannot do their disclosures without the issuer disclosures. The issuer disclosure sits at the heart of these frameworks. MiCA is different. ESMA states that “issuance of a crypto-asset can be the ultimate result of this operation of validation” - but we note that at this given moment of validation, there is no obligation on the validator which is akin to CSRD or SFDR and this is why the disclosure here needs to be more proportionate.

<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>

**Estimates.** We agree. As per our response to Q2, the sustainability impact will be determined by a combination of factors, for many of which the data is not reported or readily available. This means that any resulting impact will be an estimate or a combination of estimates.

<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>

**Data providers costs.** We note that where the data is missing/not available, the drafter of a whitepaper will be able to provide estimates and details of the best efforts carried out to obtain the information by conducting additional research, cooperating with third party data providers or external experts or making reasonable assumptions. We believe that this is the right approach but note that it will increase operational costs for the preparers, especially given that the market for this data is relatively limited and concentrated.

**Flexibility**. We believe that ESMA should remain flexible on the way the computation is carried-out, because on one hand, in the short-term, external providers with a sole focus in this area might be best placed to develop solutions quickly. In the medium-term, more firms are likely to develop the required expertise, systems, and workforce to be able to produce such data reliably on their own. This will increase the competition and improve the quality of the data.

<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>

**Data issues.** While we agree with the approach in general, we find some of the disclosure metrics listed in the table in the RTS challenging - either leading to misleading data or unattainable in its entirety.

**Examples**. For example, DLT nodes used to calculate GHG emissions can be hidden behind a VPN, misrepresenting their geographic location. An individual can operate many nodes using many VPNs to create the appearance of a global, decentralised network. Thus, any attempt to geolocate nodes that revolves around IP tracking is ineffective and possibly counterproductive. We suggest not including any requirements that rely on accurate geolocation of nodes via IP address. In addition, the accuracy of some of the requested data types seems unattainable, such as “non recycled water ratio” given that there is no global consensus and mechanisms to collect such data.

**Jurisdictions with lower environmental standards.** Environmental disclosure requirements which are complicated and where data is missing will push issuers to jurisdictions that do not require them at all or who have lower environmental and reporting standards. Such regulatory dumping or arbitrage would run counter to the aim of this regulation. We suggest reducing the number and complexity of the metrics to simplify compliance such that issuers are not driven away.

<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>

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<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>

**Simplification of the indicators.** The indicators are very detailed and will be difficult to understand by retail investors. We propose not adding any additional indicator. On the contrary, we suggest reducing the number and complexity of the metrics (DLT nodes used to calculate GHG emissions) to simplify compliance and to ensure that issuers are not driven away. For more detail see our response to Question 6.

<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>

**Clear marking of “optional”.** We suggest that they are clearly marked as “Optional” in the RTS, as currently it states “Additional”, which could be misleading.

**Limited value to consumers of the optional disclosures.** While sustainability disclosures are important, the industry will be very busy implementing the mandatory measures included in the RTS. The optional indicators will not contribute in a meaningful way to an average retail consumer’s understanding of the impacts. They don’t add value from a consumer protection perspective and potentially bring additional undue burden on the industry. The indicators may add value for data companies or other businesses, who may collect and analyse this data in the future. We believe they can be maintained as optional, but not be made mandatory.

<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>

**Template**. The template is fit for purpose. As per our response to Q9, the optional disclosures should be marked “optional” and not “additional” to avoid any confusion. <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>

**Methodology.** We believe that there should be one clearly stated methodology to calculate mandatory disclosures. Even if data were available for a specific crypto-asset, if the preparers of the disclosure document use different methodologies, they may arrive at different values and results, which could mislead the regulators and the consumers. <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>

**Methodology & Data**. Yes, clarity about methodology will be paramount for the reasons outlined in our response to Question 11. Any sources of data which ESMA finds of the right quality and granularity would be useful as well - in particular for the mandatory disclosures. However, we note that the market for these data solutions are relatively limited and concentrated, and relying on such external data sources will increase operational costs of the disclosure preparers.

<ESMA\_QUESTION\_MIC2\_12>

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

<ESMA\_QUESTION\_MIC2\_13>

**MiCA RTS defines** **permissionless DLT** as “*a technology that enables the operation and use of distributed ledgers in which no entity controls the distributed ledger or its use or provides core services for the use of such distributed ledger, and DLT network nodes can be set up by any persons complying with the technical requirements and the protocols*.”

**Definitions**. The concepts of permission and centralization are often linked but they are still distinct and exist on their own distinct spectrums. We suggest differentiating  between permissioned / permissionless and centralised / decentralised on a continuum. The RTS definition conflates the two. There can theoretically be permissionless + centralised DLT systems. Permission only covers "access" to the protocol, i.e. these parts of the definition:

* The use of the DLT is not controlled; and
* DLT nodes can be set up by any person complying with the technical requirements.

MiCA defines distributed ledger as an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism. Including a different and narrower definition that is not included in the MiCA text to comply with business continuity requirements is a substantial change in the scope of MiCA business continuity requirements that should not be set through RTSs but through the ordinary parliamentary procedure.

Additionally, this new definition narrows the scope of business continuity obligation and targets one specific type of distributed ledger, one in which *no entity controls the distributed ledger or its use or provides core services for the use of such distributed ledger, and DLT network nodes can be set up by any persons complying with the technical requirements and the protocols*. We are of the opinion that such a definition would set specific additional burdens when using permissionless blockchains that would be lifted when using permission blockchains. Such a difference seems to be at odds with the principle of technological neutrality.

We suggest deleting the concept of permissionless DLTs entirely. Alternatively, we suggest including a definition of "permissionless, decentralised DLTs" (PDDLTs) instead of simply "permissionless". We also suggest that "core" services are removed from the definition, because it is impossible to generate a universal definition of what "core" means.

<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>

**DORA** **defines a critical or important function** as “*a function, the disruption of which would materially impair the financial performance of a financial entity, or the soundness or continuity of its services and activities, or the discontinued, defective or failed performance of that function would materially impair the continuing compliance of a financial entity with the conditions and obligations of its authorisation, or with its other obligations under applicable financial services law*”. While we agree with this approach in principle, it is important to ensure that CASPs are able to identify their own critical or important functions in line with the principle of proportionality, with guidance from ESAs and/or relevant NCAs. <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>

**Disruption communications to clients.** We believe that this communication obligation should be triggered only if the disruption directly impacts the services a CASP provides to its clients. There might be disruptions in the network which will have no material impact on the services a CASP provides, informing clients about such events could be misleading. The clients could be led to believe that their assets are at risk, which could then in turn lead to market events and instability.

**Timeliness of the disruption communications to clients.** ESMA uses terms such as “regularly” or “timely” for the purposes of the disruption notifications. We note that there might be delays given that  CASPs might not always immediately know when the services are expected to be resumed, the reasons, and the impact of the incident on a permissionless DLT.

<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>

**Business continuity measures.** We believe that the proposed RTS strikes the right balance. CASPs should have business continuity measures in place in line with the principle of proportionality and their specific operations, as opposed to having a dedicated business continuity management function, as this goes beyond MiCA level 1 text. <ESMA\_QUESTION\_MIC2\_16>

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

<ESMA\_QUESTION\_MIC2\_17>

**Additional measures.** No additional organisational measures should be considered at this stage for specific CASP services.

<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>

**Internal audit.** Yes, we consider an annual testing of the business continuity plans via an internal audit function to be appropriate.

<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>

**Internal risk assessment.** We support the first paragraph of Article 6, where CASPs take into account the degree of their use of permissionless DLT in the execution of their services for the purposes of their business continuity plans.

**Self-assessment.** This requirement goes beyond the MiCA Level 1 and creates overly prescriptive processes and documentation for CASPs. Given that CASPs will be required to have business continuity plans and to take into account the degree of their use of permissionless DLT, we believe that the proposed self-assessment is duplicative to these obligations and could be removed from the RTS. If the self-assessment obligation is maintained, we suggest that CASPs themselves select the criteria used for self assessment. <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>

**Definitions**. We agree with ESMA’s definitions of CEX and DEX in general. However, we believe that the distinction between the two concepts could be further clarified. We list some examples below.

On the description of **CEX**:

* Regarding the statement *“Transactions on CEXs are generally documented electronically and then validated on the related blockchain at a later point in time.”*, we note that transactions on CEXs are recorded electronically by the platform but it is not necessarily validated on blockchain. Contrary to DEXs, **CEXs do not require blockchain interaction** in handling and settling an exchange transaction.
* Similarly the sentence *“At the same time, centralised crypto exchanges would also have access to the public keys of users.”* could be misleading. We would like to clarify that public keys are viewable and usable by anyone on-chain. Neither CEXs nor users have exclusive knowledge or use of public keys. CEXs create wallet addresses where the users deposit crypto assets into, which is then recorded as a balance on the platform. CEXs control the **private keys** for these wallets.
* The sentence *"As on traditional exchanges, the market is “made” by professional actors (i.e. market markers)."* could also be misleading. With CEX, contrary to traditional exchanges where the market is not only “made” by professional actors (i.e. market makers), on CEX **any individual** can make a market by placing a limit buy/sell order which enters the order book, thereby contributing to market making.

Therefore, we note that the main differences between a CEX and a DEX can be summarised as:

* **Custody of asset**: CEXs maintain custody of assets and log transactions in internal databases or ledgers that the CEXs host. These ledgers debit and credit balances that the user is entitled to withdraw against at their convenience, subject to the CEX’s ability to service them (i.e. no down time, not a weekend for fiat transactions). With DEXs, as noted in the definition, a user connects to a DEX via a wallet that they have the private keys for.
* **Interaction on-chain**: DEXs use blockchain technology to not only match orders but also to settle the orders. CEXs do not need to interact on-chain to process or settle a trade. A CEX only interacts with chains when a user deposits or withdraws crypto. In both cases, either the CEX receives the funds on-chain or distributes the funds on-chain.

<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>

**Trading systems.** Kraken has, among other, a spot/margin matching engine/backend. The matching engine operates a Central Limit Order Books (CLOB) based on price-time priority. Kraken offers access to both individual and institutional clients via:

* Graphical User Interface (GUI) platforms (web and mobile).
* Application Programming Interface (API) - REST
* Application Programming Interface (API) - Websockets
* Application Programming Interface (API) - FIX Engine

**Types of orders.** Majority of orders used by crypto exchanges are limit orders (an order to buy or sell a security at a specific price or better). A buy limit order can only be executed at the limit price or lower, and a sell limit order can only be executed at the limit price or higher, which include standard types such as:

* limit
* market
* stop-loss
* stop-loss (limit)
* take-profit / market-if-touched
* take-profit (limit) / limit-if-touched
* trailing stop loss
* trailing stop loss limit
* iceberg

We note that some venues refer erroneously to other **order** **instructions** as order types, even though they're **not order types** themselves (they're combinations thereof, or relationships between orders, or algorithmic orders), e.g.:

* time in force
  + immediate-or-cancel (IOC)
  + good-till-cancelled (GTC)
  + good-till-date (GTD)
* reduce-only
* one-cancels-other
* one-triggers-other
* TWAP, VWAP

We consider the activity to be CEX, as the order books are centrally maintained off-chain, and trading/settlement is done, among others, via the exchange using client assets that have been pre-funded and are in the custody of the exchange.

<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>

**Yes**. We consider the data to be made public appropriate.

<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>

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<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>

**Pre-Trade Data.** We believe some of the proposed pre-trade information for disclosure to be burdensome on CASPs as many additional fields could affect the performance of our data feeds, without providing any additional value or information. We list these below:

* “Venue” and “Trading system” - this information could be derived automatically from looking at which venue or trading system the data is coming from without needing explicit disclosure.
* “Quantity currency”, “Price currency”, and “Price notation” - this information is redundant in the case of FX or crypto pairs and would only be relevant for securities or other instruments which may be priced or traded in a particular currency.
* “Number of orders and quotes” - this would only apply if the data is coming from an aggregated feed.

Kraken already discloses information in their public API under “Public Messages”, from which most of the proposed and relevant data fields are obtainable (**see below link** as an example). For example, our "trades'' data feed shares the following information: price, volume, time, side, order type, miscellaneous, pair (e.g. BTC-USD). The way we structure our API endpoints are optimal from a speed and bandwidth perspective.

<https://docs.kraken.com/websockets/#message-trade>

<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>

**Harmonisation of data**. We agree in principle with the harmonisation of the data to allow investors to use, compare and aggregate the information published from different trading platforms for crypto-assets. However, harmonisation could take the form of having the data available, just spread across APIs that allow CASPs to optimise the performance of the infrastructure. Furthermore, we suggest that the number of fields is reduced for simplicity and scalability. Please see our response to Question 24.

<ESMA\_QUESTION\_MIC2\_25>

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

<ESMA\_QUESTION\_MIC2\_26>

**Reserve and Stop Orders**. We welcome ESMA’s proposal to allow trading platforms in crypto-assets to offer these order features to their clients when meeting the outlined conditions. We agree that otherwise, under MiCA, clients would not have access to these risk management tools which would put them at a considerable competitive disadvantage.

<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>

**Post-Trade data.**  Similar to our response under question 24, many additional fields may slow down the performance of our data feeds and would not add much to the end user, given that they might be derived from the core data.

We suggest the following fields to be disclosed. Simplicity is key for any further harmonisation of data.

* Market (e.g. BTC-USD);
* Price (in quote currency), quote currency is derivable from the Market, which is the second half of the Market field. Our asset pairs endpoint (linked below) can also be used for a map of our Market <> base/quote currencies;
* Volume (in base currency), or quantity. For reference, "volume" is more conventionally used in our WebSocket API;
* Side of the transaction (buy/sell);
* Type of order (limit or market order).

For reference, our asset paris endpoint can be found in the following link:  https://api.kraken.com/0/public/AssetPairs

For reference, please see the Kraken API in the following link: <https://docs.kraken.com/rest/#tag/Market-Data/operation/getRecentTrades>

Please also see our response to question 24.

<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>

**Simplification.** The table should be simplified to include fields per our response to Question 27.

<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>

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<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>

**Simplification.** Simplicity as per our response to Question 27 is key for any further harmonisation of data. Many additional fields may slow the performance and don’t add much to the end user, given that they might be derived from the core data.

<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>

**Delay**. We believe that the publication should indeed take place as close to real-time as is technically possible. If any (technical) delay is permissible, crypto should be treated at least similar to equity instruments and a 1 min delay should be allowed, as opposed to 30 seconds per ESMA’s suggestion.

<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>

**Yes**. We agree with ESMA’s approach with regards to the trading platform’s operating conditions.

<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>

**No**. We believe that further detail is not necessary for the stated purpose. <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>

**Data free of charge.** The market for crypto-asset market data is still nascent. There are currently varying practices among the crypto-assets trading platforms, some offer their data free of charge, real-time, others do not.

<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>

**Disaggregation**. We agree with the proposed disaggregation measures, i.e. trading platforms offer separate pre- and post-trade data, disaggregated to the individual crypto-asset level, while being able to offer bundles of data in addition. We seek clarification regarding the trading platforms making data available for minimum periods of one week, as it is unclear what ESMA envisages happens with the data after the one week period. <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>

**API.** We support APIs which are comprehensive and well-defined and refer to which data fields need to be included. Nevertheless, the requirements on the common messages, common APIs, and others should allow for custom data above the required fields/parameters. Overly prescriptive standards should not restrict the ability of new entrants in the market. Competition in the crypto space is important and should not be jeopardised by requirements which would be too difficult to meet.

<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>

**Harmonised identifiers.** We believe that the harmonisation should be rolled out carefully and gradually to avoid any market disruption. We believe CASPs should not be precluded from trading before a standard is set or should not be required to include multiple identifiers that are different in different jurisdictions into raw feeds. While we see some benefits in identifiers, we are also mindful of the fact that the DTI would be issued by a third party which would create dependencies. Any third party is also likely to be less knowledgeable about the specificities of crypto trading. We note that in the tradfi space, the governance and non-discriminatory approach in assigning identifiers was not always transparent, competing identifiers emerged etc.

<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>

**Attributes**. We believe that the attributes should be kept simple, in order for the identifier not to mislead the public or the regulators - e.g. including complex attributes could result in some accidental similarities in various crypto assets and their subsequent problematic grouping. <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>

**Identifiers**. We agree that a transaction hash is an appropriate identifier for transactions executed on-chain. For off-chain transactions, we believe that there is no upside to standardising identifiers across venues.

<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>

**Gas fees record only on-chain.** We believe that this should only apply to on-chain systems as gas fees are not associated with off-chain trades.

<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>

**On-chain data.** We agree with the inclusion of the data elements such as: “Quantity’, ‘Transaction hash’, ‘Wallet addresses’, ‘Smart Contract addresses’, ‘Gas fee’, ‘Gas Limit’, ‘Travel Rule info’, and ‘Type (deposit or withdrawal)’.

**Challenging data elements.** We believe, however, that certain data elements are not fit for purpose:

* ‘Current Total Supply’ which could be challenging for CASPs to obtain accurately and do not add a significant value to the user;
* ‘Data size’ seems to be applicable only in certain cases (certain ethereum transactions which can have an attachment increasing the gas fees) and should be kept optional;
* ‘To’ and  ‘From’ fields seem to be recorded in addition to the “Wallet addresses” field and including both could be duplicative and confusing.

**Timestamps**. With regards to timestamps, we would like to suggest that it means timestamp when the CASP created the transaction request and not the exact time of when the transaction ends up in a block, because:

* Not all transaction requests end up in blocks which end up in the majority chain;
* It would force CASPs to check the blockchain at some point (not determined when) to read and write back the timestamp of block creation by the miner/validator which they don't control.
* Settlement on-chain can fail and failed settlement has to be recorded as well.

<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>

TYPE YOUR TEXT HERE

<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>

**Definitions**. The definitions of “undertaking a transaction”; "transaction” and “executing a transaction” are clear. However, we would appreciate additional clarity regarding the scope and record keeping requirement of failed and majority rejected transactions. We note that transactions can fail for multiple reasons and not all of them relevant for the functioning of the market, for example when a client has an insufficient balance in their account.

<ESMA\_QUESTION\_MIC2\_45>

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

<ESMA\_QUESTION\_MIC2\_46>

**No.** We believe no additional definitions are needed.

<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>

**No**. We support ESMA promoting supervisory convergence in this regard, as the current common understanding across EU Member States may differ with regards to reception and transmission of orders.

<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>

**LEI**. ESMA proposes that a CASP shall not undertake services, activities, orders or transactions etc. on behalf of a client who is eligible for the legal entity identifier code, prior to obtaining the legal entity identifier code from that client. We note that certain clients trading in crypto-assets are not regulated financial institutions and as such they may not be in possession of LEI. CASPs have no power to enforce a client eligible for an LEI to obtain it. If a CASP has to halt all service offering to these clients, we anticipate market disruption. We suggest that ESMA allows for an interim period where other (venue internal) identifiers are permissible and reviews this requirement later, as crypto-asset markets mature.

**Natural persons.** For clients not eligible for LEI (natural persons), we believe that “national ID” (aka personal number etc.) which is typically stated on an ID document is an appropriate identifier. However, any personal data should not be kept raw/identifiable, instead it should be an encrypted/hashed version of such data which the venue can share with the  regulator.

<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>

**Yes**. Please see our response to Question 49.

<ESMA\_QUESTION\_MIC2\_50>

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

<ESMA\_QUESTION\_MIC2\_51>

**Short selling flag.** No, as long as this is for internal record keeping purposes, disclosed to the regulator upon request, and not disclosed to the public. Disclosure to the public could be disruptive to the market.

<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>

The record keeping list is very extensive and given that MiCA has been drafted with a clear intention to be a lighter touch regime than MiFID, we believe that the list needs to be shortened in line with the feedback we have provided in the responses to this consultation.

<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>

**No**. We believe no additional data elements are necessary for the stated purpose. <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>

**Fill-or-kill**. Fill-or-kill strategies may apply to trading in crypto, but they are mutually exclusive with the possibility for partially filled orders. These orders are either completely filled or cancelled.

<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>

**Format**. We do not object to the proposed iXBRL format, given that ESMA has provided an Excel file with a button that can create an XBRL file without the use of complicated software tools (in this case, using a simple Macro in an editable Excel).

**Costs**. We are not able to provide quantitative estimates of costs associated with production of whitepapers. We agree that the technology costs will be minimal (server, storage), however, Kraken currently lists 200+ assets and does not produce whitepapers in this format, therefore, we assume that costs will include:

* Increasing a number of FTE responsible for relationship management with the issuers, given that we will most likely need to source and verify the information.
* Hiring and training several FTE responsible for (likely manual) filling out of the data and maintaining it up to date.
* Increased compliance costs associated with compliance checks.

<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>

**Yes**. We support a standalone simple document.

<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>

**Other documents.** We currently prepare documents which contain some elements of a whitepaper in the UK (<https://www.kraken.com/legal/uk/asset-statements>) and Canada (<https://www.kraken.com/legal/ca-asset-statements>). However, these documents are published in pdf format and outline broadly what the project is, players involved, tokenomics, general risks, and specific risks.

<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>

**Other Whitepapers.** Produced by Kraken: See the example mentioned in our response to Question 60. Produced by third parties: Kraken does not use or publish any whitepapers created by third parties on our website.

<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>

**Costs**. We are not able to provide quantitative estimates of costs associated with production of whitepapers. Kraken currently lists 200+ assets but does not produce whitepapers in this format, therefore, we assume that costs will include:

* Increasing a number of FTE responsible for relationship management with the issuers, given that we will most likely need to source and verify the information.
* Hiring and training several FTE responsible for (likely manual) filling out of the data and maintaining it up to date.
* Increased compliance costs associated with compliance checks.

<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>

**Crypto-assets other than EMT or ART.** Kraken only provides comments on the content of Table 2 Disclosure templates for white papers for crypto-assets other than asset-referenced tokens or e-money tokens, as Kraken does not issue EMTs or ARTs. Please see our response to Question 64 for the details.

<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>

**Liability.** We understand that the liability as per the Article 15 of MiCA is not specifically addressed by this consultation paper, but wish to highlight possible implementation issues to ESMA, as MICA offers some specific approaches to whitepapers and associated liabilities. For example, the preparer is not always the issuer, instead, it might be the offeror. In the scenario where an offeror has prepared a whitepaper on a specific crypto-asset and additional offerors have used this very whitepaper, the liability always sits with the original preparer. This means that the incentive to be the first mover in drafting a whitepaper is greatly diminished. In another scenario, where a number of offerors decide to draft their own whitepaper, the client might meet with different versions/data in the whitepapers, particularly where the whitepaper data relies on estimates (sustainability) or risk assessment (could be bespoke from the point of view of different offerors). Given the limitations imposed in the Level 1, ESMA could address these issues in its Q&As.

**Scope**. The scope of information requested (Annex II, Table 2 of the consultation) **Part A and Part B** is not  fully applicable across the spectrum of crypto assets. For example, many issuer teams do not always have a legal personality, they may maintain anonymous presence whether for security or privacy reasons.

Similarly, for **Part D to Part I**, we also list some of the proposed fields which we view as challenging to complete and would like additional clarity or further explanatory descriptions:

* Part D: “Information about the crypto-asset project”:
  + Point 3 *“Details of all natural or legal persons (including business addresses or domicile of the company) involved in the implementation of the crypto-asset project, such as advisors, development team and crypto-asset service providers*”.
  + Point 4 *“Where the crypto-asset project concerns utility tokens, key features of the goods or services to be developed”* - not all tokens have utility.
  + Point 5 *“Information about the crypto-asset project, especially past and future milestones of the project and, where applicable”* - this information is not always readily available or in many cases does not exist.
  + Point 6 *“Where applicable, planned use of any funds or other crypto-assets collected”* - this information is not always accessible, as access depends on the structure of the project.

* Part E: “Information about the offer to the public of crypto-assets or their admission to trading”:
  + Some CASPs do not facilitate ICOs, in which case this section would not be relevant for CASPs.

* Part G: “Information on the rights and obligations attached to the crypto-assets”:
  + Point 1 “*A description of the rights and obligations, if any, of the purchaser, and the procedure and conditions for the exercise of those rights*” - we would ask for clarification on whether this is the token utility.
  + Point 7 *“Restrictions on the transferability of the crypto-assets that are being offered or admitted to trading”* - this seems to be not relevant from a technical perspective, given that transferability is a smart contract functionality, i.e. if it is not transferable it is not tradable which would mean that it is not listed on a CASP.

* Part I: “Information on the risks” - we would like to get clarity on the level of detail required for the description of the risks.

<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>

**Yes**. An editable template provided by ESMA would ensure uniform implementation of the requirement.

<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>

**Definitions**. We welcome MiCA’s market integrity provisions, and agree with the proposed definition of “inside information”. Given the absence of transparency waivers in MiCA, as opposed to e.g. MiFID, we would appreciate further Level 3 guidance on specific situations that could constitute inside information, e.g. large trade orders by influential traders, before they enter the exchange order book.

**Clarifications**. We suggest clarifying what information that “directly concerns them” means**.** MiCA requires that all three categories of persons (issuer / offeror / person seeking admission to trading) disclose information that “directly concerns them”. However, there are situations where information concerns more than one of the three parties, for example both issuers and offerers could be *partially* directly concerned with inside information around listed assets. We would appreciate further Level 3 guidance on where the obligation should sit in situations such as (i) pending regulatory actions or decisions on a specific crypto-asset; (ii) planned listing or delisting of crypto-assets; rumours about partnerships between issuer of an asset with large brands, celebrities and others. In these cases, both issuer and exchange can be partially concerned.

<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>

**Website**. We believe that the ESMA proposed downloadable written statements in the language in which the white-paper of the crypto-asset is drafted and in a language customary in the sphere of international finance - i.e. English, where the website allows the investors to opt in for push notifications or alerts is fit for purpose.

<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>

**Alerts**. Alerts can get noisy for the users. Users of multiple applications would get inundated with alerts containing the same information, which could be duplicative and confusing. Any alerts in applications should be strictly opt-in, to ensure that the appropriate parties have been informed and to achieve the desired customer experience.

<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>

**Service provider’s website and own applications.** The public relies on the information found on the websites of service providers and apps on their mobile devices. This ensures the dissemination to the most appropriate audience. For example a website is accessible to the widest public without a login, while in the application, the information could be more tailored to the type of client and the service they use.

<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>

**Social media and web-based platforms which aggregate information** are a useful source of information as well, but they should ideally only mirror/link to what was published on the website/in their own app. This means that they are fit for further dissemination, but this should be an optional addition for issuer / offeror / person seeking admission to trading, not an obligation. With regards to social media, the issuer / offeror / person seeking admission to trading may be in control of its account, but in case of the web-based platforms, which are usually operated by third parties, the issuer / offeror / person seeking admission to trading will have a limited control over how the information is disseminated and whether that would fulfil the regulatory requirements. ESMA states that for this purpose social media and web-based platforms used for this purpose should grant non-discriminatory and free access to information, however we note that they are not in scope of MiCA and their compliance with this provision cannot be reasonably expected.

**Traditional media.** ESMA does not provide any clarification regarding what “traditional media” is, but if we consider traditional media channels, such as printed newspapers or television, we believe that these are not fit for purpose to be included as a channel for dissemination of the information.

<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>

**Please see our response to Questions 73-74** which address the proposed means for dissemination of inside information.

<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>

**No.** We believe that no additional means need to be considered. <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>

**Delayed disclosure.** ESMA’s proposal seems sensible and broadly aligned with the EU's Market Abuse Regulation. We agree that a person who has delayed disclosure of inside information should inform the competent authority immediately of the existence of the delay, provide a written explanation of how the conditions allowing delayed disclosure were met, store information in a manner that ensures accessibility, readability, and maintenance in a durable medium, inform NCAs in writing using secure electronic means specified by the NCA, and finally include elements in the notification such as specifics on the person that is responsible for the communication of the delayed disclosure and if the conditions allowing the delayed disclosure were respected.

<ESMA\_QUESTION\_MIC2\_77>