| 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.

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**General information about respondent**

| Name of the company / organisation | Bitpanda GmbH |
| --- | --- |
| Activity | Crypto Broker |
| Are you representing an association? | ☐No |
| Country/Region | Vienna, AT |

# Introduction

First and foremost, Bitpanda would like to thank ESMA for its work and essential contribution to MiCA as a whole, and now its pivotal work on Level II and III legislative acts. We are grateful for the opportunity to, once again, contribute to this second public consultation. We are always open and enthusiastic to share our expertise. We believe proper and mutual understanding and collaboration to be key to the successful implementation of any legislative act.

With regards to the consultation on the second set of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) under MiCA, we welcome the direction, but would like to highlight certain concepts and provisions which we believe are essential to address and revise in order to fully secure the effectiveness and spirit of MiCA and help the industry to comply with them. In some parts the RTS and ITS seem to go beyond the Level 1 text and introduce burdensome and negatively far-reaching topics to the industry which ultimately may not produce the intended effects. In particular, we would like to draw your attention to the following topics:

* Sustainability requirements
* Record keeping

In terms of sustainability standards, we are concerned that the adoption of an “isolated” requirement will not properly reflect the realities of Proof of Work (PoW), while unnecessarily overburdening industry with requirements that will need third party intervention. We fear here that the important objectives pursued will be marginalised or missed. Finally, we need to remember that different subjects have distinct obligations under MiCA and legislative measures should not disproportionately expand these, for example since sustainability disclosures are part of the white paper, these should be the responsibility of those entities that fall under the obligation to prepare the white paper, such as issuers, and not simply CASPs in general. CASPs should, therefore, be able to rely on the sustainability disclosures in the white paper, given that only issuers will have access to the in-depth data required to assess sustainability characteristics of particular consensus operations. Therefore, we fear that we, inadvertently, risk submitting everyone to the same obligations where this may not be warranted or appropriate.

Another important point here is that, in our view, retail users will not base their investment decisions solely on sustainability indicators. This is because investment is not an isolated process and other relevant factors are considered, with the white paper and additional investigation being essential elements of the decision-making process. The chosen consensus mechanism concept, such as PoW in Bitcoin, is not a one-dimensional issue, and also touches upon a wider monetary and societal shift. An increasing number of investors understand this. Moreover, simplicity should be a governing factor of any sustainability requirements (e.g., implementing a traffic light rating approach). It will enable the industry to provide concise and truthful information with references that will enable further investigation. This will positively impact investors' awareness and help them in truly exploring sustainability.

In relation to record keeping for CASPs, we would like to underline that we are not in favour of the current draft proposal. We believe that a national client identifier can be both cumbersome and, more importantly, is not strictly necessary from the practical perspective of record keeping in times of wide digital presence and footprint of individuals. We believe that an alternative approach focusing on Personally Identifiable Information (as is established under the EU Transfer of Funds Regulation - Travel Rule) would ultimately better accomplish the intended aims of the proposal, while also providing simplified, enhanced harmonisation. In other words recording the full name of the user and his birthdate should be more than sufficient and enables all necessary identification. We clearly understand the value of standardisation, however we would like to highlight that MiCA does not contain obligations regarding regulatory reporting. Record keeping is internal for CASPs and should not be overloaded for the potential case of an audit. The approach ESMA has taken is currently taking the assumption that all user data would be shared on a regular basis with the NCAs (similar to MiFIR), although Art. 68 (9) of MiCA only requires CASPs to maintain sufficient record keeping. Therefore, this should be understood much more generally and not overloaded with standardisation.

ESMA recognised in Recital 2 of record-keeping RTS (1. Sentence) that CASPs should be free to determine the manner in which they keep records of data relating to orders and transactions. However, and to our regret, we believe that the content of the proposed rules contradicts this assertion of flexibility. By way of example, there is a requirement, from the outset, to collect up to 27 different personal identifiers instead of simply using the full name of the customer (as is required by the Travel Rule). Thus, importantly, the proposed obligation is also not in line with the Travel Rule - how should we match Personal Identifiable Information (PII) with national Identifier. We strongly urge for an harmonised regulation across all relevant “Crypto-regulations” and to avoid creating differences between Travel Rule and MiCA Level 2. In any event, we strongly believe that CONCAT, as Priority 1, should be allowed for all countries. Regrettably, ESMA seems to overlook the fact that there is no legal obligation to share all customer data, even if required by an NCA (as decided by the Austrian constitutional court VfGH 17.12.2009 B 504/09). All data requests must be tailored and there is no general obligation to report all data under MiCA (as mentioned above). Therefore, the record keeping obligation should not be driven with this purpose in mind. Art. 68 (9) of MiCA states that an NCA must simply be capable of ensuring compliance with the regulation, which we understand as they need to be able to e.g. identify the customer - where the full name combined with date of birth is sufficient..

Furthermore, Art. 68 (9) of MiCA merely - to our understanding - ensures that CASPs have adequate records and can show all trades in the system. Based on all of these reasons, MiCA does not require a standardisation as proposed by ESMA. Another point is that this seems to be a “copy & paste” from MiFIR RTS, which is inapt since MiCA has explicitly no Regulatory Reporting obligation in this regard. A regulatory reporting obligation via a “backdoor” in Level 2 is neither in line with Art. 68 (9) and its reasoning nor with the general rules of EU law (level 2 only clarifying level 1 text, not overstepping). We, therefore, strongly urge the reconsideration of such an obligatory standardisation of record keeping or at least find a more balanced approach.

Bitpanda welcomes MiCA as a balanced approach between various interests and stakeholders. We believe that MiCA is a gateway to the new, secure and innovative future both for investors and crypto compliant firms. We have always strived for readiness and to serve as a role model for Compliance and Regulatory matters. It is, therefore, imperative for us that we continue the spirit of balanced approach, neutrality and practicality, which will help us not only to be compliant but also to ensure that investors remain properly protected and educated on the crypto space and related elements. With this, we believe that we will also secure the general principles of MiCA as a prime example and essential blueprint for international regulation of crypto-assets.

Finally, we would like to firmly emphasise that MiCA is already proportionate at Level 1. We, therefore, strongly urge against, and have material concerns from an EU legal perspective in respect of implementing far-reaching rules at Level 2 that go beyond the letter and spirit of MiCA. In other words, a simple “copy and paste” from other regulations should be avoided and the specificity and proportionality of MiCA needs to be strictly observed with all such rules. Neither record keeping in the sense of MiFIR is implied at Level 1, nor an overarching obligation for CASPs to go beyond the white papers for sustainability.

**Questions**

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

<ESMA\_QUESTION\_MIC2\_1>

*Executive Summary of sustainability of RTS*

* We welcome further clarity from the ESMA mandate on the sustainability requirements stemming from MiCA. We also welcome and understand the political direction with this regard.
* Bitpanda’s DNA is built around a Regulatory Compliance- and Security-first approach. Our goal is to enable investors to securely invest in crypto-assets and connect Traditional Finance with the Crypto industry. We want to be compliant with sustainability requirements and understand the value of ESG. We want to educate and spread a proper understanding of it.
* However, we believe that the current proposed version of RTS on sustainability will not fully enable us to do so. In short, we would like to stress that we must go beyond the negative perception of the PoW mechanism, which continues to be at a misplaced disadvantage. Key indicators, unfortunately, become one-sided if we do not apply a more holistic approach. If we want to achieve impartial and balanced results, we need to consider more nuanced elements as well as offsetting mechanisms (See Q.2). If we, however, fall into one-sided information, this will neither be conducive to awareness nor will it incentivise investment into environmentally friendly protocols.
* We want to highlight in all clarity that security - especially for retail customers - should not be overlooked. Reducing the security level of the blockchain, as we e.g. saw in some instances with the selection of Proof of Stake or “Proof of Trust” simply for the sake of sustainability, is a misapplication of the underlying technology. We must highlight that PoW is not “by coincidence” resource consuming, but by design to ensure the highest degree of security. Other energy-intensive industries and goods, such as the internet, christmas lights, precious metals mining, transport and others are not questioned for their utility and objective merely on the grounds of sustainability. Lastly, we would like to reiterate the importance of clarification, whilst remaining within the parameters of MiCA.
* It is important to remember that consensus mechanisms are chosen by issuers based on an in-depth understanding of their operations and with the benefit of targeted data. Issuers are, hence, best placed to deliver detailed data and should be considered as the key-responsible for all ESG topics. Also they are the only decision makers in this case - the only decision CASPs are facing is if they want to list the Asset or not. This has no material effect on the ESG, as the transactions are happening on DLT-basis already before being listed by an CASP. This highlights that CASPs should not be the target of such overarching ESG regulation.
* Overall, we would like to articulate some important points that should be taken into account and which we believe have not been given due weight in the current assessment.

*Assessment Section 3.1and Article 4(2) RTS*

**Answer:**

* Sustainability is one of the requirements of a white paper under MiCA. MiCA does not provide a general requirement for CASPs to prepare sustainability information. Article 66 (5) of MiCA merely states that a CASP must publish on its website sustainability information of consensus mechanisms, and that such information *may* be obtained from the crypto-asset white paper. We understand Art. 66 (5) of MiCA as requiring CASPs to make available sustainability information but that it is expressly permissible to draw this directly from the relevant white paper. Level 1 explicitly states that the white paper is an appropriate “single source of truth” and there is no suggestion in MiCA that CASPs need to go BEYOND the white paper content.
* We cannot therefore expect CASPs not falling under the requirements of white paper preparation to provide/draft sustainability beyond what is available. Seen differently, this would mean that CASPs not falling under the requirement of white paper will have to draft sustainability disclosures from the ground up. This elides the obligations of the different market participants. The cost, effort, burden and bureaucracy would be beyond what is reasonable in light of the objective pursued. **Therefore we understand this as level 2 going beyond MiCA Level 1.**

*Assessment Section 3.2.1*

**Answer:**

* We believe that certain comments regarding the sustainability of consensus mechanisms risk producing one-sided, potentially biassed results that will further deepen the misunderstanding and negative perceptions that already exist. This is especially true with regards to PoW. We need to avoid a repeat of the situation that nearly saw PoW and Bitcoin banned during legislative negotiations. Bitcoin is an essential cornerstone in the crypto assets environment. Therefore, it is essential to remain technological-agnostic and consider current available data and operations. We are concerned, however, that elements of the draft proposals reinforce this unhelpful position. For instance:
  + Section 3.2.1 point 11:“*PoW consensus mechanism typically based on use of computing power*, *can be deemed more impactful from a sustainability point of view*”.
  + Preamble point 9 of RTS 9.2.1: “to *incentivise the use of more environmentally friendly consensus mechanisms and to prevent greenwashing (...) Mandatory indicators are those considered to be the most conducive to investor awareness on the impact of consensus mechanisms”.*
  + Preamble point 10 of RTS 9.2.1: “(...) *quantitative metrics should display gross energy consumption and emission, without reflecting potential off-setting mechanisms”. Finally, in* and also Article 4 (9):  *“The effect of off-setting mechanisms shall not be taken into account when computing the metrics in Column 3 of Tables 1 and 2 of the Annex.*
* Such statements fail to take account of the actual working, features, advantages, and underlying utility of PoW or the overarching net effect. We consider the role of the RTS should be to promote investor awareness and encourage a balancing of energy questions against the relative security aspects together with social and monetary utility of the consensus mechanisms. This needs to also include comparison with other goods and services (See also our response to Q.2).

*Assessment Section 3.2.2 and 3.2.3*

**Answer:**

* We welcome the recognition of difficulties and challenges associated with collecting granular data on sustainability matters. Likewise the intention to provide harmonisation of reporting requirements.
* We believe, however, that the obligations proposed in the current version of RTS (e.g., point 17) will be unreasonably burdensome. Inevitably, CASPs will need to contract third party services. This is because specialised service and expertise is needed that goes beyond the standard capabilities of most CASPs. ESMA is adding additional challenges with the proposed RTS and we therefore recommend reducing the amount of data currently required as part of the sustainability element of the white paper.
* We would also like to reiterate that data should not be limited and isolated (point 17). We should always consider different resources, analysis, reports, and schools of thought. Those currently available already provide comprehensive analysis and comparison with the environmental footprint of other industries. Importantly, there are also data and studies available on offsetting mechanisms and environmental benefits of using PoW. Here, we need to ensure that such findings are taken into account regardless of what metrics or reporting standards were used. We have to therefore ensure that investors are aware and have access to all sets of data. On top of this, we should be encouraged to consult various resources and to conduct further investigations - ultimately investors are the ones who make an informed decision.
* As for the presentation, any information needs to be presented in the simplest possible way. In this regard, a short but insightful executive summary with further references for investigation and simple comparison with other goods constitutes a good approach.

<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>

* It is important to see what is the added-value of the consensus mechanism to the objective pursued and why this form outweighs any potential energy cost. In other words, the utility to society when energy is spent. This concerns, for example, PoW and Bitcoin. This is important to avoid misjudgment and misunderstandings that were already present and which contributed to the near banning of PoW in legislative preparation of MiCA. The better approach is to ensure preservation of tech-agnostic principles and overall neutrality, and objectivity.
* The features that are important: the different sources of energy consumption and whether it is environmentally harmful, whether energy consumed displaces other uses, the utility and objective pursued (ex., social financial inclusion in unbanked and remote places, life-saving humanitarian aid), offsetting mechanism and net effect, security, extra usage (ex. utilisation of energy that would otherwise be wasted - remote location, excess of produced energy or grid overload, methane capture, gas flaring, heating - homes, flowers), comparison with other goods and services (gold mining, production of dishwasher etc.), possible profitability of energy producers that can sell energy that cannot be stored, network development, improvement, and ability to use renewable energy and helping the grid. This can be obtained from miners reports, and independent research, consultancies bodies and others that already conducted and continue to conduct and update specific research on energy consumption.

<ESMA\_QUESTION\_MIC2\_2>

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

<ESMA\_QUESTION\_MIC2\_3>

**Answer:**

* We welcome that sustainability disclosure requirements strive to ensure harmonisation and alignment with other rules (CSRD, SFDR) in order to ensure synergy and consistency with existing frameworks.

* We would like to further reiterate that the sustainability analysis is the requirement of white paper and that we should maintain the clear separation of obligations between persons drawing up crypto-asset white papers (issuer) and CASPs (See our response to Q1 and introduction)
* Additionally, we would like to highlight here the issue of proportionality. It seems to us that it is not adequate to demand the same level of detail for all crypto-asset white papers. Different forms of simplified information regarding sustainability should be made available. From a truly proportional approach, CASPs should not be required to provide additional sustainability information beyond that set out in the white paper.
* The concerned parts of the RTS should, hence, be clarified (eg., Art. 3, Art. 4(2), Table 1 and 2 of Annex, and others similar). CASPs should only provide information based on the information available from the white paper - information needs to be reduced to what is available at the issuer level as the issuer is the only one having the needed data.

<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>

**Answer:**

* Yes, we support the estimates/approximations and possibility of value range. Such an approach illustrates the understanding and recognition of difficulties in obtaining information. We would like to stress, however, that this should be applicable irrespective of timeframe (the example in question refers to the entire calendar year). Consequently, mitigation and proportionality measures should not be restricted here.
* Estimates should be streamlined. Simple reference to various sources - different schools of thoughts and research bodies rather than conducting “less” strict estimations. CASPs should be able to simply refer to such sources/information. The principle of best effort and estimates should be based on the concept of equipping investors with a good and neutral overview on energy consumption that will allow them subsequent investigation. This will strengthen the proportionality and neutrality principle together with the recognition of CASPs being “**facilitators**” in pursuing further information. The same as CASPs need to warn about risks of investing in crypto assets, the same should apply to information concerning sustainability (See also response to Q1 and introduction).
* Overall, this, once again, highlights what has been stated at the beginning - CASPs who offer multiple assets should not be required to go beyond the white paper. They should be allowed to create an easier way to compare the data for retail users (e.g. traffic lights or similar), but they must be able to rely on the content of the white paper. Every other liability cannot be applied to CASPs as they do not have adequate and reliable data.

<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>

**Answer:**

* It is not inconceivable that the cost of meeting the sustainability requirements is immensely significant and will pose a serious challenge for CASPs financially as well as operationally. Similarly, the access to data can be very difficult given the nascent industry and potential different metrics from what is currently proposed together with the fact that sustainability is predominantly the requirement of white paper and certain subjects, such as issuers. We are strongly concerned about the possibility such measures will make CASPs' operations infeasible.
* In addition, some CASPs will be held responsible for the content of the white-paper (incl. created general perception on sustainability) and the role of the CASP risks devolving into an independent investigator of data rather than the more appropriate role of mere “**facilitator**”. We are aware that the mandate is set but we would urge you to be as flexible as possible as mentioned above. Lastly, as mentioned earlier, CASPs should not be obliged to provide sustainability information beyond that which is available in the white paper provided by the issuer.
* Only the issuer has sufficient insight to effectively choose its token's consensus mechanism. The only choice for CASPs is whether or not it wishes to offer a particular crypto-asset for sale. Then the asset is already on the market and the consensus mechanism is already live and used. Therefore the only meaningful way to regulate is to hold the issuer - and only the issuer - accountable for the consensus mechanism. The CASPs cannot gather the required data, and thus should not be held accountable for publishing information beyond that which is set out in the white paper as mentioned earlier. CASPs, once again, must be able to rely on the white paper's content.

<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>

**Answer:**

* We would like to refer to our previous answers above that express our opinion on practical approach and alternatives likewise points that we should address and remember about when considering sustainability and its various elements.

<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>

**Answer: Incentive structure**

* The definition of the incentive structure is correct. However, and this reiterates the points mentioned above, we see and understand ESMA’s point 11 in Section 3.2.1 that “*PoW can be deemed more impactful*”, but want to clearly state that another dimension is regrettably missed. The high amount of energy used also adds more safety to the network as previously mentioned. For the complete explanation and reasoning, please see previous answers above. Here, in short:
  + This shows a potential bias and not tech-agnostic approach. Security, and other vital social and business advantages of PoW incl. environment (as mentioned - using otherwise wasted or unused energy), should not be blindly compromised merely for one-sided sustainability reasons.
  + The cited statement channels a potentially flawed understanding of PoW based on the number of computing power disregarding other factors - generalisation leads to misunderstanding. In reality, PoW is less impactful than many other industries and commonly-used products while its benefits justify energy usage.

**Answer: DLT GHG emission**

* For the indicators that ESMA proposed, we would advise following the example of current research bodies that deal with comprehensive energy analysis of crypto-assets. What is also important is that investors are educated the same as concerns investing in crypto-assets.

<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>

**Answer:**

* We would like to underline, once again, that we do not think that the proposed indicators are conducive to investors' awareness. Please revisit our above-mentioned responses incl. the alternative approach. Here, we would like to reiterate that we find them very burdensome on the one hand - an encyclopaedic assistance of third-parties will be inevitable, but on the other hand the impact pursued might not be as expected. As highlighted in earlier examples, retail users do not typically base their investment decisions on the provided information alone. We therefore might be stuck in a - for the industry - very burdensome and cost intensive process, which has no meaningful impact on combating climate change.
* In terms of customer assistance in growing awareness, we believe that investors, especially retail investors, will not fully benefit from them since the topic itself is very complex and requires substantial technical knowledge. Additionally, we do not think that investors will place a crucial decision-making emphasis on the question in which project to invest, on the basis of PoW vs PoS. This is because the concept of consensus mechanism goes beyond energy consumption. In fact, it is a core enabler of monetary change and evolution.
* We believe that it would be useful if CASPs would have more flexibility in providing a high level overview of the nature and status of crypto-assets rather than being obliged to conduct investigations and prepare analyses on the basis of limited data and relevant experience. CASPs are simply enablers of investments. In that regard, the white paper is more important for investors in making investment decisions, and production of the white paper is properly the responsibility of the issuer.

<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>

**Answer:**

* In our opinion, we do not find the suggested optional indicators fit for purpose. We believe that our proposed approach, mentioned in the earlier responses, will adequately equip and prepare investors for making conscious decisions and will be effective in educating on the current state of events.
* Overall, we see value in simplicity, especially for CASPs where users could potentially be comparing hundreds of crypto assets, before taking an investment decision. We therefore see the value of a traffic light approach or similar. However, it is essential that CASPs are not responsible for the underlying data, since they do not have access to it, as all of this is only available to the issuer. Therefore, once again, CASPs need to be able to rely on the white paper content and should in no instance be required to go beyond the information of white paper.
* We therefore do not agree here to make the optional indicators mandatory in the medium as the obligation itself will offer no added-value .

<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>

**Answer:**

* The template is clear and fit for purpose if we want to use the draft proposed metrics. However, we would suggest having an 'executive summary' field of the results (this will facilitate understanding). There should also be a disclaimer informing that offsetting, mitigating measures and other factors as mentioned earlier (ex. new ways of using otherwise stranded energy) are not explicitly taken into account if the draft proposal will not be changed. The best option, however, would be to leave some discretion as to how to present the data.

<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>

**Answer:**

* We acknowledge the proposal for providing guidance and clarity to the industry by means of the calculation guidance under ESRS. However, in conformity with the spirit of our previous answers, we would like to reiterate that such calculation based on ESRS will not bring the intended effect. The industry will have less room to manoeuver and a reduced ability to use already available or upcoming reports and studies since there is no guarantee that others follow such calculations.
* Investors have to be made aware that there are important neutral and tech-agnostic reports (for example provided by dedicated research bodies or from issuers) that may deliver findings differently including - method of calculation and factors taken into account. This is very important given that there is a lot of misinformation on this topic. Therefore, we believe that the concept of following calculation guidance should be more of an option. Otherwise we exclude or at very least marginalise credible sources of information that can be compared with each other.
* We believe that such an approach will meet the objective of providing investors with the “best” information. Investors will also be encouraged to investigate more. We will therefore avoid the impression that the calculation and key indicators presented to them, as currently proposed, are definitive and the source of all truth.

<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>

**Answer:**

* Yes. We welcome further clarity, especially given the novelty and challenges for the crypto industry associated with sustainability. We believe this is needed. ESMA also acknowledges that information is not readily accessible.
* As for methodologies and data, we refer to our answer in Q11. In short:
  + we need open and flexible approach
  + we need to be tech-agnostic
  + we should aim for simplicity, especially concerning CASPs
  + we need to use issuer reports and expertise; CASPs need to be able to trust in the white paper content, as they have no further data to evaluate the impact of the crypto-asset
  + we need to use reports and comparison of various research bodies, consultancies and analysis already conducted and which are in constant update. They provide a complete picture considering factors that are omitted in the current package proposal (ex. Cambridge Bitcoin Consumption Index, Bitcoin Mining Council, consultancies study etc.)
  + we need to utilise and learn from miners' data
  + we need to create a culture of “do your own research and investigation”. Ultimately it is the customer that needs to make a decision. We can be facilitators and point them in the right direction instead of providing an one-sided set of data that does not portray the whole picture. Here, again, simplicity (e.g. a traffic light rating) seems the key.

<ESMA\_QUESTION\_MIC2\_12>

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

<ESMA\_QUESTION\_MIC2\_13>

**Answer:**

* We understand the reason and direction that ESMA has taken. We welcome that intention to provide further clarity. This is indeed relevant in the context of liability. We have to highlight, however, that such definition is absent from MiCA and DLT pilot regime. Using the Lev. II to introduce such a definition is problematic from the perspective of MiCA and DLT. In addition, the definition of permissionless is not universally agreed at EU level.
* We believe therefore that greater clarity can be achieved, without creating a new concept that is absent from the main legislative acts. Consequently, we do not agree with ESMA assertion in point 75 that “*(...) this does not capture the further distinction between permissionless and permissioned blockchains. And while adequate for the RTS on authorisation, it is not granular enough for this RTS*.”
* As for “permissionless” definition, ESMA refers to Financial Stability Board (FSB) clarification found in a recent consultative document (FSB, Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative document, 11 October 2022) and the international Organisation for Standardisation (ISO). It appears to us, however, that ESMA’s proposed definition through this RTS expands and elaborates on the meaning. Essentially, it includes more examples, description than in the referred sources. In addition, the proposed definition differs from the “permissionless” definition and position adopted by ESMA in its “*Guidelines on standard forms, formats and templates to apply for permission to operate a DLT Market Infrastructure*” (ESMA70-460-206). This guideline, in fact, precedes the FSB definition. To this effect, ESMA acknowledges in points 37-40 that:
  + “*The terminology in the field of DLT is still evolving and this makes ESMA reluctant to provide definitions which may risk not to cover future innovations.* And “*ESMA sees merits in clarifying the meaning of the terms “permissioned”, “permissionless” and “private” and “public” used in Table 2 with respect to the DLT networks, in order to share a common understanding with the applicant*”.
* Therefore, instead of creating new concepts beyond MiCA and DLT as well as avoiding fragmentation, we should simply follow the example from the ESMA Guidelines cited above (ESMA70-460-206) by making a reference to them.

<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> 9.2.2 RTS

**Answer:**

* First of all, we welcome that ESMA closely aligns ICT matters with DORA and avoids any duplication. Accordingly, Art 68(7) shall be closely aligned with DORA requirements without substituting DORA or duplicating what is already known there. DORA is *lex specialis* and clear reference should be made where required in any matter related to ICT. Since MiCA states that CASPs shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services, one of which are specific requirements under DORA, we, indeed, believe that this approach makes sense.
* Further, we also welcome the proposal that business continuity management be inspired by RTS of MiFiD II (point 65 of the consultation paper - Assessment section). We urge, however, to take proportionality into account as MiCA uses, in some aspects and on purpose, a “lighter touch” than MiFID II.
* We would also like to reiterate that anything that falls outside the scope of MiCA (i.e. does not have a legal basis therein) should not be part of RTS. In this respect, in point 66 of the assessment, ESMA acknowledges that Article 1 “definitions” are not found in Level 1 as well as two other miscellaneous Articles (Articles 2 and 7) to address principles for the treatment of DLT infrastructures and proportionality (See also Q13 for beyond MiCA scope points).
* We do welcome proportionality in business continuity applications. Here, we would like to suggest to make this more evident as in under MiCA Article 68(8) “ *taking into account the scale, the nature and range of crypto-asset services provided*”. In addition, we would like to suggest that the self-assessment minimum timeframe under Article 6(2) of the proposed RTS be extended to at least every 2 years so as not to inflict unnecessary burden. Given the nascency and volatility of the market, it would be more effective giving more credible results and analysis,

<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>9.2.2 RTS

**Answer:**

* We understand the idea of ESMA and the rationale behind (further level of protection and clarification in the context of liability for business continuity issues of CASPs) being inspired by Article 11 (1)(d) of DORA. However, we would underline that this does not have a concrete legal basis either under MiCA nor in DORA. In fact, Art. 11 (1)(d) is directed to operators of DLT market infrastructures, competent authorities and ESMA rather than CASPs. Therefore, DORA does not differentiate between different DLTs nor speak about communication.
* In principle, a business continuity plan will first and foremost consider the steps to preserve the operations as well as end-service and mitigating actions. The step of informing clients about disruptions in service is inherent and, certainly, best-practice. This is true regardless of DLT characteristics (permissionless or not).
* Making distinction between DLTs for the purpose of communication with clients, which again falls beyond the scope of MiCA and DORA, risks creating fragmentation, incongruencies and double standards. For CASPs it is of utmost importance to keep clients informed and aware irrespective of the type of disruption and technology, which is the industry best-practice.
* All in all, we do not see it as necessary in light of ensuring continuity of services - MiCA and DORA do not speak of it. Importantly, the step of informing clients is always present irrespective of underlying technology in disruption. Effective communication with clients is inherently embedded in business continuity plans and constitute best-practice and inviolable principle.

**Additional observations:**

* We acknowledge ESMA points 73 and 74. Nevertheless, the best practice is to inform clients on the overall risk without specifically targeting particular technology (preservation of tech-agnostic stance) - this, in fact, conforms with Article 66 MiCA “*act honestly, fairly and professionally in the best interests of clients*”.
* We agree with the point that CASPs are not accountable for problems inherent in the operation of the distributed ledger that the crypto-asset service provider does not control (Article 75(8) MiCA) and that this should be pointed out (again conforms with Article 66 MiCA).

<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>

**Answer:**

* We do not believe in such need. And MiCA does not envisage such a role. This would go, therefore, beyond MiCA scope. In general, the ICT lead is in charge of the preparation of the continuity plan. The same person will also ensure and monitor regulatory compliance of the plan including testing given his/her expertise. We believe that the current practice and set-up works well.

<ESMA\_QUESTION\_MIC2\_16>

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

<ESMA\_QUESTION\_MIC2\_17>

**Answer:**

* No. We believe that MiCA and DORA fully and adequately cover the organisational requirements.

<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>

**Answer:**

* Yes, we do consider it appropriate. This is common and standard practice.

<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>

**Answer:**

* We would propose to make it more clear that this stems from Art. 68(8) of MiCA and reflect the rationale from MiCA. In addition, as explained and pointed out above, we would avoid creating new definitions of “permissionless” DLT beyond MiCA and DLT regime. Article 68(8) should be tech-agnostic. In any case, business continuity needs to consider any elements (whether it is permissionless or not).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

**Answer:**

* As mentioned already as part of our introduction, we firmly believe that the current draft proposal on record keeping is overstretching the goal of MiCA. The idea of record keeping is understandable and justified. However, not as standardised as planned and proposed by ESMA. If we were to adopt this approach, it will incur a significant administrative burden for customers and CASPs alike - these are significant **impairments, perhaps even blockers, and**  are not **covered** by the legal basis of MiCA and **cannot** be introduced via the “backdoor” of RTS.
* Importantly, Art. 68 (9) of MiCA does not specify any particular approach or requirements. It only expresses the obligation that CASPs shall arrange for record keeping, which ESMA shall supervise. MiCA, therefore, does not require a standardisation and harmonisation as proposed by ESMA, granting discretion to CASPs on how they will meet this requirement. Hence, there is no legal basis under MiCA for this. Nor is there reporting obligation under MiCA as opposed to MiFiR. To this, it seems to us that the current method seems to be a “copy & paste” from MiFIR RTS. Importantly, at the national level, there is similarly no legal obligation to share all customer data, even if required by an NCA (as decided by the Austrian constitutional court VfGH 17.12.2009 B 504/09).
* Having articulated that, ESMA, in fact, agrees and recognises in Recital 2 of record-keeping RTS (1. Sentence) that CASPs should be free to determine the manner in which they keep records of data relating to orders and transactions. Unfortunately, this is not reflected in the proposed draft (see Article 9 of RTS) and associated Annexes. For example, Table 2 (181 ff) is not feasible and not fitting for exchanges, e.g. no according order types, only buy/sell orders are common etc.
* As a fallback option - so if ESMA sees the need to standardise: If we aim to achieve standardisation and harmonisation, a CONCAT approach for all jurisdictions would be preferable. Proposed national identifiers are burdensome and ineffective - there are huge discrepancies and fragmentation between national set-ups. In reality, this is a large blocker for CASPs and retail markets. We also need to highlight that the Travel Rule is already using a different identifier (PII) - the full name of the customer is deemed sufficient here. We strongly want to highlight that using the name would be sufficient for record keeping - and that there is no reporting obligation at hand. The same goes for LEI, where very small businesses that do not have LEI and should not be blocked.
* Another relevant point is that we struggle to see how CASPs can ensure to record "all marketing messages" (also Annex 1 p.169), for instance, in light of internal communication and affiliate marketing and also “where to draw the line” (e.g. Linkedin post of employees or C-Level?). Again, this is a disproportionate and highly overloaded suggestion that does not present any added-value to the consumer.
* We, therefore, strongly urge the avoidance of obligatory standardisation of record keeping or at least find a more balanced approach. A significantly better solution already exists. Personal Identifiable Information (as is established under the Transfer of Funds Regulation) is a better fit for the intended purpose and provides the simplified enhanced harmonisation ESMA is seeking. It will also avoid confusing, national fragmentation and lack of synchronisation between different EU laws. PII is significantly more straightforward and workable and, therefore, aligned with flexibility and discretion under MiCA Art. 68 (9) for CASPs.

<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>

**Answer:**

* We would like to inform you that we found some incorrectness. Firstly, using Corda and Hyperledger Fabric as examples. Those are fictional concepts that have no value in the real world and have never been used anywhere in production. In this respect, it is not relevant to include them in the analysis. Instead, systems that move billions of dollars each day should have been used, like Bitcoin or Ethereum, which have nothing in common with the first mentioned company database products.
* Based on this context the only option is to talk about Ethereum transactions in isolation. Coins and tokens undergo splits, forks and updates. When there is a hardfork that creates multiple new assets it's not on a foundation to decide which one of the resulting chain is the real asset - that won't work in a lot of cases so there will be ambiguity until the free market has reached a consensus. E.g. in the case where Ethereum split into Ethereum POW and Ethereum as we now know it POS it is technically not clear which asset is Ethereum as they both emerged from this hardfork. There is also the problem that some splits can cause harm to the privacy or security of the original asset if used and can therefore be acknowledged but should not be utilised e.g. by exchanges.
* Further, ambiguity is also based on timing, as chains have ambiguity on finalisation and in theory there is no reason for big block reorganisations even on Bitcoin. On faster blockchains reorganisations of blocks happen even quite frequently so determining price and fee might have to happen at a later time. Reorganisation can mean different transactions, different fees and different prices or transactions being dropped all together. Based on all of this, we are not entirely sure how reorganisations, that go a long way back, would be handled with such a system.

<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>

**Answer:**

* Unit is a very vague general concept in a sense that subunits can technically be used and are used by exchanges e.g. for NEO chain where there is no divisibility on chain of the token. This doesn't necessarily change this information here, but it might be an important detail to mention. Furthermore, not to stifle innovation it might be interesting to mention here that units can change for coins especially if they are just smart contract tokens. For Proof of Work coins the current estimated hashing power might be an interesting indicator for decentralisation.

<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>

**Answer:**

* We generally agree that txhashes are the right choice, but the question is what they should identify exactly. In cases where an on-chain transaction sends cryptocurrencies to multiple parties at once, one txhash will represent a multitude of actual transactions possibly relevant for multiple users.
* Also txhashes on chains with a similar history after a fork can represent different transactions in the sense that there are still accidentally some transactions done on Bitcoin and forks of Bitcoin at the same time. They will have the same transaction hash, same values and inputs and outputs, but of course in dollars determined totally different prices and also consequences when sending. They can also land on-chain much later if they are still valid.
* Part of a transaction might be available on an exchange for depositing while other parts might not be. Therefore, accidentally sending more funds with the same txhash doesn't mean they will get acknowledged or credited by an institution.

<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>

**Answer:**

* We do not agree here. We also do not entirely understand this question. Gas fees do not order a transaction; they are payments to miners (fees required to conduct a transaction or execute a contract), but ultimately miners determine the orders of transactions. Furthermore gas fees are a term for the Ethereum chain, but are not used in Bitcoin which has a very different way of charging fees by actually leaving out a part to send off an unspent output that can be claimed by the miner.
* As mentioned, this whole schema only works for Ethereum and has to be rethought for every other chain. We ask ESMA to reconsider and find more adequate terminology.

<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>

**Answer:**

* No, gas fees is the name for Ethereum fees only. Therefore, a more general “transaction fee” would make more sense. Some chains do not have transaction fees or at least claim they do not opt for (IOTA). “To” and “From” fields work for exchanges, but as transactions can be very complex on-chain, they will likely not work. For example, an on-chain transaction can say that two persons can spend a coin, and then only one of them spends it later on.

<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>

**Answer:**

* Gas Fees - is Ethereum specific naming.
* Timestamps - depends whether the block is in to be assumed finalised state
* A transaction with the same hash can be on one chain earlier and on another later also. Therefore, there has to be a timestamp for each. And txhashes are then not unique but only unique per asset.
  + Same can be achieved - and probably easier than the transaction time would be using the Digital Token Identifier (DTI) instead.
  + Using timestamps is always questionable for identification as then you need to reconcile the timestamps between different layers. E.g CASP internal timestamps might differentiate from DLT based timestamps due to the nature of the services.
* Gas Limits - that is totally Ethereum & EVM (Ethereum Virtual Machine) chain specific and does not exist on most other chains in this form.

<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>

**Answer:**

* A “vout” or some form of an identifier of the unique order of outputs inside a transaction hash if there are multiple outputs for multiple users.
* Special conditions like locking conditions and finalisation of transactions could be included**.**

<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>

**Answer:**

**As highlighted in Q.36 and because it is of key-importance for us, here once again:**

* As mentioned already as part of our introduction, we firmly believe that the current draft proposal on record keeping is overstretching the goal of MiCA. The idea of record keeping is understandable and justified. However, not as standardised as planned and proposed by ESMA. If we were to adopt this approach, it will incur a significant administrative burden for customers and CASPs alike - these are significant **impairments, perhaps even blockers, and**  are not **covered** by the legal basis of MiCA and **cannot** be introduced via the “backdoor” of RTS.
* Importantly, Art. 68 (9) of MiCA does not specify any particular approach or requirements. It only expresses the obligation that CASPs shall arrange for record keeping, which ESMA shall supervise. MiCA, therefore, does not require a standardisation and harmonisation as proposed by ESMA, granting discretion to CASPs on how they will meet this requirement. Hence, there is no legal basis under MiCA for this. Nor is there reporting obligation under MiCA as opposed to MiFiR. To this, it seems to us that the current method seems to be a “copy & paste” from MiFIR RTS. Importantly, at the national level, there is similarly no legal obligation to share all customer data, even if required by an NCA (as decided by the Austrian constitutional court VfGH 17.12.2009 B 504/09).
* Having articulated that, ESMA, in fact, agrees and recognises in Recital 2 of record-keeping RTS (1. Sentence) that CASPs should be free to determine the manner in which they keep records of data relating to orders and transactions. Unfortunately, this is not reflected in the proposed draft (see Article 9 of RTS) and associated Annexes. For example, Table 2 (181 ff) is not feasible and not fitting for exchanges, e.g. no according order types, only buy/sell orders are common etc.
* As a fallback option - so if ESMA sees the need to standardise: If we aim to achieve standardisation and harmonisation, a CONCAT approach for all jurisdictions would be preferable. Proposed national identifiers are burdensome and ineffective - there are huge discrepancies and fragmentation between national set-ups. In reality, this is a large blocker for CASPs and retail markets. We also need to highlight that the Travel Rule is already using a different identifier (PII) - the full name of the customer is deemed sufficient here. We strongly want to highlight that using the name would be sufficient for record keeping - and that there is no reporting obligation at hand. The same goes for LEI, where very small businesses that do not have LEI and should not be blocked.
* Another relevant point is that we struggle to see how CASPs can ensure to record "all marketing messages" (also Annex 1 p.169), for instance, in light of internal communication and affiliate marketing and also “where to draw the line” (e.g. Linkedin post of employees or C-Level?). Again, this is a disproportionate and highly overloaded suggestion that does not present any added-value to the consumer.
* We, therefore, strongly urge the avoidance of obligatory standardisation of record keeping or at least find a more balanced approach. A significantly better solution already exists. Personal Identifiable Information (as is established under the Transfer of Funds Regulation) is a better fit for the intended purpose and provides the simplified enhanced harmonisation ESMA is seeking. It will also avoid confusing, national fragmentation and lack of synchronisation between different EU laws. PII is significantly more straightforward and workable and, therefore, aligned with flexibility and discretion under MiCA Art. 68 (9) for CASPs.

<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>

**Answer:**

* Please see our extensive and key reply under Q.36 and Q.50.

<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>

**Answer:**

* Bitpanda does not have a strong preference on this, but generally welcomes machine-readable format for MiCA white papers. Nevertheless, we would like to point out that xBRL is very complex. To this, other tools should be considered and allowed such as CRR reporting or common data Extraktion. It is important that we have some discretion as to the format, templates, or to make references to other documents etc. (same as for instance with templates for complaints handling in Package 1). To this end, it will be very helpful if there is flexibility in that regard. Such an open approach will allow the industry to adjust to different environments without favouring any particular format. With this in mind, we would like to highlight, for instance, the necessity to allow for PDFs, as this is the usual way of format for retail users.
* We also welcome the intention of ESMA to launch an independent study to evaluate the level of appropriateness of this format and alternatives. Again, we propose to adopt flexibility.
* Overall we recommend not to overly stretch the wording “machine readable” in Level 1. We do not believe that it was the intention of the lawmaker to include a too technical white paper that then Retail users could not understand easily. We therefore urge you to reconsider if “data extracting” would suffice for the sake of avoiding a programming language overall.

<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>

**Answer:**

* We agree.

<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>

**Answer:**

* No such white paper was prepared.

<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>

**Answer:**

* We are convinced that the white paper under MiCA will differentiate strongly from the one drawn up prior to it given MiCA focus. Additionally, we believe that additional information previously used, will be also used, e.g. as marketing communication, but we do not see an issue here as the marketing rules apply accordingly in this case.

<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>

**Answer:**

* Generally, the data fields seem, especially for “other crypto-assets”, to be overstretched. Neither proportionality nor the stance in MiCA Level 1 (''overview document”/”general information” - see also Recital 24 MiCA) were taken into account. The current draft indicates a stronger orientation on the Prospectus Regulations as opposed to MiCA Level 1.
* Furthermore, we believe that telephone numbers (N. A8, Part A on page 238) should not be mandatory, as other means of communications are entirely adequate. We refer to the decision of the European High Court (C-649/17, vzbv/Amazon EU) in this matter. Further, if at all, an LEI (N. B6, Part B on page 242) should not be required at all times. It might be burdensome for small issuers to request a LEI. Similarly, national additional identifiers (N. B7, Part B on page 242) seem overly burdensome. We would propose a proportional system, e.g. thresholds or exempting some issuer (See our response to question 67).

<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>

**Answer:**

* Yes, this would be very appreciated.

<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>

**Answer:**

* As a general point: ensuring the right balance between machine-readable and retail-user readability. We should opt for a flexible and open approach avoiding limitations. We need to be accommodative and be able to adjust to a changing environment. Any relevant references should also be enabled so that investors can further explore topics beyond the white paper.

<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>

**Answer:**

* No, we do not agree. This seems potentially overly burdensome for parts of the industry, especially for small entities that want to issue other crypto assets. For proportionality reasons, either a threshold should be included or the obligation for an LEI should be evaluated as a whole. Nevertheless, clear explanations are needed here to avoid ambiguity, for example, concerning a situation: blocking of a transaction or account when a threshold is reached. Alternatively, it might be feasible to define certain assets or products that would require an LEI or could be exempted from this obligation.

<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>

**Answer:**

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>