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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:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
* 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.
* 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.
* 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.
* 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 | International Association of Trusted Blockchain Applications |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Belgium |

**Questions**

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

<ESMA\_QUESTION\_MIC2\_1>

Responses to Questions 1-12 have been covered by the joint INATBA response led by the Sustainability and Social Impact Working Group, and in collaboration with other assciations, namely ADAN, EBA, EUCi and tBt. We implore ESMA to review feedback from both of the documents. <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>

N/A – Please see Response to Q1.

<ESMA\_QUESTION\_MIC2\_2>

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

<ESMA\_QUESTION\_MIC2\_3>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<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>

N/A – Please see Response to Q1.

<ESMA\_QUESTION\_MIC2\_12>

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

<ESMA\_QUESTION\_MIC2\_13>

Disagree.

INATBA members suggest that the definition of “Permissionless'' should also include the ease of access one has to the technology and ledger. Without free and open access, a DLT cannot be permissionless.

ESMA’s proposed definition is: *‘permissionless distributed ledger technology’ means 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.*

Rightly so, the definition is framed in such a way in order for a permissionless DLT to subsist, no single entity can be seen as exercising control over the underlying ledger. The proposed definition further states that apart from control over the distributed ledger, such control also cannot extend over the use of such distributed ledger, and in the same vein, a single entity cannot exercise control to a degree where the provision of core services from its end is seen as fundamental and essential for the use of such distributed ledger.

In other words, it is not permissible for a single entity to provide core services for the use of a distributed ledger **without which that same distributed ledger cannot function or outright exist**, in order for the definition of a permissionless DLT to be met. Our members have proposed slightly amendment definitions in their own consultation responses.

<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>

Neutral.

Agree on the principle of consistency of terms between regulations. However, the term of DORA can be extremely wide and should probably be restricted to an ICT context when considering ICT topics. If not the risk of misinterpretation exists and, henceforth, a risk of over, or under, regulation in functions that should not be impacted in the same way as ICT.

It is important to clarify that there may be person(s) providing core services for the maintenance and proper functioning of a permissionless DLT; the best examples that come to mind are Blockstream vis-à-vis Bitcoin, and ConsenSys vis-à-vis Ethereum. Naturally, the presence of certain persons which may be seen as playing a bit more of an important development role versus others does not mean that without them the underlying distributed ledger network cannot be used. In our opinion, the word “important” should be removed when referring to such functions, and refer to them as “critical functions” in the true sense of the word if and where necessary.

<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>

Neutral.

An explanation of the consequence of a disruption will definitely help manage users’ expectations. It will not, however, ensure continuity per se, and might in fact, worsen the situation for the complaint CASP by enticing a panic.

Overall, these proposed mandates are appropriate, although it may well be difficult for CASPs to provide information on when the services are expected to be resumed. Instead of imposing an inflexible obligation on the CASPs under subparagraph (e) in Article 4(2), it may be amended to provide CASPs additional flexibility while they try to resolve their business problems.

<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>

Agree.

If the continuity needs to be ensured, a function needs to exist to make sure of it. The question, however, is somewhat tricky to solve in fully decentralized frameworks. How is this done?

As such, the establishment of a business continuity management (referred to as Business Continuity Management, BCM in already existing regulation such as MiFID II) function should only be applicable to significant CASPs. CASPs should also have a prescribed annual obligation to test their continuity frameworks, as suggested by ESMA.

<ESMA\_QUESTION\_MIC2\_16>

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

<ESMA\_QUESTION\_MIC2\_17>

No further organisational measures come to mind.

<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>

Neutral.

The concept of testing is good, however, it should be put in practice. Paper based testing is usually insufficient. Furthermore, basing testing on an audit process probably increases the costs further in an industry that emerges.

<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>

Neutral.

Proportionality is a sound basis. If criteria are used in the appendix of the RTS, are they objective enough (e.g. Thresholds, boolean criteria, …)

On that note, our members suggested that Point C of the Criteria for the self-assessment of crypto-asset service providers should be amended as follows:

* Sub-point (c)(v) should be removed - the number of DLT network nodes the crypto-asset service provider operates on a distributed ledger is irrelevant in terms of the technical complexity of the CASP’s platform.
* Sub-point(c)(vi) - how the private cryptographic keys of clients are secured under safekeeping – this should be amended to add “how the private cryptographic keys or other means of accessing crypto-assets of clients are secured under safekeeping”.

<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>

Strongly Disagree.

Not clear as to why ESMA has included any reference to DEXs in this consultation. DEXs would not be within the scope of MiCA as per Recital 22.

If an exchange purporting to be decentralised is deemed to be insufficiently decentralised by an NCA, then it should be treated as a CASP or CEX using an on-chain model rather than referred to as a DEX.

We urge ESMA to clarify that MiCA and the ESMA recommendations only apply to crypto-asset service providers as set out in MiCA, not where crypto-assets services are provided in a fully decentralised manner without any intermediary.

<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>

Not relevant for INATBA. Regardless, INATBA members believe that whatever is put in place, it needs to accommodate innovation.

<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>

Neutral.

The use of MiFIR principles to disclose information is a good basis. However, that should not lead in any way, shape or form, to an assimilation de facto of all crypto-assets to financial products because they are handled on a CEX or a DEX. An NFT on an apartment should remain in the scope of the real estate, not the financial products.

The principle of transparency, when extended, to products with less activity can be difficult to apply. Hence, pre-trade information should not always be an obligation. Post-trade, however, should be mandatory. As an example, if you create crypto-assets with the original drawings of comic-strips, there will be very little relevant pre-trade information as this market is usually going through auction mechanisms. However, post-trade information exists.

<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>

Disagree

It is important to note, first and foremost, that not all AMMs are fully permissionless in terms of the individual transactions that are executed. There are AMM examples where the actual exchange of crypto-assets is conducted in a permissionless manner, but the provision of liquidity, which may be classified as transfer of crypto-assets, is not permissionless. In other words, certain AMM protocols do not allow any and every user interacting with the protocol to create a liquidity pool of supported tokens.

In light of this, the definition of AMMs may perhaps be amended as follows:

*A decentralised protocol relying on liquidity pools and smart contracts which allows the execution of exchanges between crypto-assets in a permissionless and automatic way.*

A mathematical formula is probably not understood by the majority of retail investors. If the purpose is for the crypto-assets to be popular, information based on mathematical formulas, or any other technical element, is probably not efficient as it will probably not be fully understood.

<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>

Agree, but when applicable.

INATBA members would like to add that the blockchain/token standard of the relevant crypto-asset is an important description. There have been cases where trading platforms facilitate the trading of a wrapped version of the native crypto-asset - e.g. into an ERC20 or BEP20 – without making it clear to its users that they are trading alternative versions of these crypto-assets. Traders should be made aware of the token standard of the asset they are trading. This information should be in addition to the ID code, ticker & crypto-assets full name. Although the ID code is unique (according to the DIT) the token type should still be explicitly stated to clearly inform platform users.

<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>

Agree.

<ESMA\_QUESTION\_MIC2\_25>

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

<ESMA\_QUESTION\_MIC2\_26>

Agree. INATBA members believe that the order information should be made available to allow  investors to protect themselves

<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>

Agree with the principles stated in the text.

<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>

Agree. It is sufficient.

<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>

The order-type should be made available for post-trade transparency; i.e. limit orders, stop-limit orders, market orders, fill-or-kill etc.

Large market orders are often executed at various prices as they fill the ask-side of the CLOB. This means that a trader’s singular market order is executed partially at different prices. Post-trade, the trader should be made aware of both the average price of his trade (encompassing all of the sub-transaction executions) and the percentage/quantity of his transaction filled at each price.

<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>

For pre-trade, the trading mechanism needs to allow obtaining the information itself. (e.g. if an auction is used, does it still make sense). Post-trade, no challenges are foreseen at this stage.

<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>

This is a technical answer that depends from chain to chain. However, even if the blockchain based platforms do not have to handle a legacy issue, they should not be treated worse than the traditional platforms.

Additional question that should be discussed is whether or not this “timing of publication concept” is applicable for any type of crypto assets? Shouldn’t a “comply or explain” clause be included in the constraint?

<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>

Strongly agree but the explanation needs to remain understandable by retail investors. The information also needs to remain concise unless its efficiency is reduced.

<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>

Disagree. No, ESMA should not include more specific disclosure rules.

<ESMA\_QUESTION\_MIC2\_33>

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

<ESMA\_QUESTION\_MIC2\_34>

According to INATBA members, all significant crypto-assets trading platforms try to make their data available free of charge. However, gathering of past data, especially groups of data (e.g. 1 week of trade,...), is costly and hard to find.

Ultimately, NCAs, or a group of NCAs, should make some of this collected data available to the public for free, and after analysis.

<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>

Neutral.

INATBA members had two perspectives to share. First, a member argued that if the disaggregation goes down to a grouping of transactions per crypto-assets, why not. But if it goes down to each and every single transaction, especially for a daily data set, it doesn’t really make sense.

A different INATBA members stated that it is sufficient to disaggregate data on a crypto-asset per crypto-asset basis, which would then also make it easier to bundle data depending on the various crypto-asset taxonomies and other categorisation groups as the case may be.

<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>

Yes. Products, apart from specific exceptions, are often a variant of existing products. Reporting should therefore be aligned and, in order to reduce the development costs to a minimum, recycle existing reporting protocols. To some extent, the reporting protocol and tools that allow the formatting should probably be open source to reduce the  implementation cost to a strict minimum.

<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>

INATBA members have multiple concerns around the current level of adoption of DTIs, and their speed of issuance, which is too slow for crypto-asset innovation and issuance. A temporary ISIN-like option should exist. If CASPs are required to wait for DTIs before they can list a token, this risks driving users towards unregulated venues that allow instant trading.

Another option would be to create a data field within the reporting requirements for DTIs that are yet to be issued, i.e. ‘TBC’. If the token cannot be centrally assigned in a timely fashion, rules to establish a unique identifier should be laid out to allow for assignment of the DTI by the protocols/framework. These should be used for reporting.

Finally, the assignment of a DTI should not lead to any additional cost. Tokens should already be unique by design.There is no need for an additional authority to assign/validate the tokens after assignment. This would be extra costs for little value.

<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>

INATBA members believe that the token standard should be included. Example in the case of Ethereum-based tokens – ERC-20, ERC-1155, etc. A more efficient way of identifying crypto-assets on chain would be to use the token address/contract unique to that crypto-asset, which is available on a layer 1 blockchain/DLT, rather than relying on an centralised intermediary such as the Digital Token Identifier Foundation, as would be the case in ESMA’s proposal. Automated solutions are significantly more popular in the market. <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>

Slightly disagree.

If we start from a principle of technological neutrality, promoting one technology vs another does not make a lot of sense. What is required, however, is that each transaction, or partial transaction, needs to be uniquely identified on a single platform and that a correspondence needs to exist between the on and off-chain activities.

<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>

Neutral.

INATBA members suggested that “Gas”' is only an example of the cost of a transaction on-chain. Other fields might be better suited to identifying linked or high frequency transactions. INATBA members recommend additional research on this.

<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>

INATBA Members overall agree with this measure.

<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>

INATBA members stated that Article 2 of the RTS, sub-article 1, point (d), allows efficient technical exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data collected.

<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>

Disagree. By design, transactions should be linked to one another and uniquely identifiable. Why is it difficult to provide a number to them? If a number can be given to transactions, why is it so difficult to provide one for orders?

There are plainly of good practices that already exist in traditional finance that can be adopted, and a number of technical solutions that can expedite on-chain data collection process.

<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>

INATBA members suggested that the Method ID is included, i.e. the provision of details on the type of transaction and the function call for ERC20 tokens. For example, transfer, transferFrom, swap function calls.

<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>

Strongly agree. It is based on a common understanding in the financial markets. It can also be understood that way outside of a financial context.

<ESMA\_QUESTION\_MIC2\_45>

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

<ESMA\_QUESTION\_MIC2\_46>

For the purpose of this RTS, other notions should not be defined. However, the RTS should insist on the fact that these notions are the ones to report to and no other that can, by the use of a loose definition, be assimilated to order or instruction.

<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>

If the transmission is compatible with the speed of execution, there should not be an issue.

However, there should be no request for a full transmission when dealing with third countries. Transmissions, in full, should be auditable.

<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>

The same information as for the EEA countries but with a specific flag that highlights the EEA/Non-EEA destination and, potentially, the country of destination, when applicable. One could think about deFI protocols that are spread over several countries.

<ESMA\_QUESTION\_MIC2\_48>

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

<ESMA\_QUESTION\_MIC2\_49>

If the pseudonymization is a key principle of the protocol, a key should be transmitted. Not the whole information in plain sight. Only in case of control should the key be translated into plain information.

<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>

No.

<ESMA\_QUESTION\_MIC2\_50>

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

<ESMA\_QUESTION\_MIC2\_51>

A priori, no. If there is no possibility for short selling, then the report has always the same value, hardcoded. However, at later stages, platform evolving, short selling might become possible and the reporting might have to be amended. The platform itself might have to undergo some serious redesign to flag the short-selling throughout the whole flow.

<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>

Data elements designed for traditional financial instruments may not be suitable for crypto-assets. Data elements that have main focus on investor protection may not be as relevant for investors as a result this could lead to unnecessary regulatory friction for certain market participants.

<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>

N/A

<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>

Agree. Specific definition is needed, but also specific indicators to identify said transactions. Prescription is needed. Vague concepts will lead to inconsistent reporting, which must be avoided.

<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>

Agree. Fill-Or-Kill orders already exist on certain trading platforms.

<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>

It would be the most efficient way to do it as this technique is proven and probably merely requires minor adjustments.

<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>

In response to questions 57–65, it is critical to emphasise the significance of graphic design elements in crypto-asset white papers. It is also extremely important to understand that each project has unique characteristics, so whitepapers must differ from one another extensively to properly educate their readed on the protocol and token specifics. ESMA incorrectly assumes that the information required in MiCA white papers is mostly textual/descriptive, specific and repeatable in nature, and that the vast majority of white papers will not include any advanced graphic design elements other than a simple logo (section 242). This is not correct.

Crypto-assets are built on a variety of technical structures, including blockchain, directed acyclic graph, proof-of-work, proof-of-stake, and so on. Unlike in traditional finance, understanding the technology behind an asset is critical – how it works and what its technical strengths and weaknesses are is an essential part of the investment decision. Because of the need for technical explanations, crypto-asset white papers differ greatly from traditional finance disclosure documents. To explain technical features in crypto-asset white papers, graphical designs are required; otherwise, the descriptions become unintelligible.

It is common for crypto-asset white papers to include graphs, mathematical formulas (possibly embedded as images), and graphical designs that visualise the technological choices in each project. Even the Bitcoin white paper includes several images that explain the transaction sequence, block chain, transactions hashed in a merkle tree, and so on. Such visual elements are commonly used in crypto-asset white papers to explain technical features succinctly and accurately. It is also common for projects to visually explain how their technology differs from that of other projects, such as by visualising the differences between a blockchain (such as Bitcoin and Ethereum) and a directed acyclic graph (such as IOTA and Fantom). As a result, it is critical that ESMA's recommendations take into account the widespread use of graphical design elements in crypto-asset white papers.

Graphical design elements make technical information in white papers more understandable, particularly for retail investors. As a result, it is critical that the technical standards for white papers allow for graphical design content. The format and standards for reporting white papers should therefore not be limited to “free alphanumeric text”, as suggested by ESMA in Annex II, Tables 2, 3 and 4 (pages 234-297). INATBA members urge ESMA to allow white paper information to be provided in non-text format as well, in order to enable the visualisation of technical aspects.

In addition, it is important to take into consideration not only the investor’s perspective (to ensure  that the proposed white paper format does not constitute a barrier for readability by users / investors), but also to not create barriers for the issuers of crypto assets. Companies will need to invest resources to create white papers in the iXBRL format. It is not clear whether the PoC (section 236) will develop into a fully functioning product / template that would be made available to all issuers of crypto assets, but INATBA members recommend that ESMA provides easily accessible tools and guidelines to assist issuers in preparing MiCA white papers in the required format.

In order to provide a level playing field for all market participants, ESMA should provide sufficient resources and assistance to facilitate the use of the iXBRL format. Should this not be the case, ESMA estimates the costs of preparation of white paper in iXBRL to be between few hundreds and few thousands EUR. This is a large range and should be estimated more specifically. In case of costs amounting to a few thousands euro, increased by costs of training for employees and software support, it can constitute a barrier for smaller issuers of crypto assets.

<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>

While a closed taxonomy seems to enable easier machine-readability and exchange of the crypto-asset white paper, providing additional information may be crucial in many cases.

This is especially important when explaining the functionality of the underlying technology of a crypto-asset. As discussed above in the response to question 57, crypto-assets build on numerous different technical features and it is essential to clearly explain those features in the white paper. This means that crypto-asset white papers commonly include various graphical designs to explain the technology behind a crypto-asset, unique chapters and analysis that cater to the specific product they describe, and other unique characteristics.

Considering the fact that crypto-assets build on vastly different technical features, it is recommendable to enable the creators of the information to add new information that is unique to that project. In short, create a mandatory minimum, but not a mandatory maximum in the amount of information that the whitepaper can hold.

<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>

The planned format should not be implemented at the cost of transparency or the right of issuers to be able to fully explain their business model/technology behind the token. One option would be to enable submitting attachments in non-machine readable format or to enable issuers to add additional information to be able to explain the unique features of their project. This is important.

<ESMA\_QUESTION\_MIC2\_59>

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

<ESMA\_QUESTION\_MIC2\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_60>

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

<ESMA\_QUESTION\_MIC2\_61>

In general, the information listed in Annex 1 of MiCA aligns with the content of most crypto-asset white papers in the industry. However, we wish to highlight some important differences.

Crypto-assets white papers, such as the Bitcoin white paper or the Ethereum white paper, are generally intended as scientific and highly technical. The white paper's main purpose is to educate the public about the technical features of a specific blockchain project. This is in stark contrast to the structure presented in Annex 1 of MiCA, which prioritises investment-related aspects first (Parts A to G). Information about the underlying technology is only presented at the end of the list (Part H). In this way, MiCA modifies the structure of crypto-asset white papers and emphasises financial aspects rather than technological features.

In addition, white papers so far rarely contained 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.

Furthermore, financial and investment related information provided in white papers so far was typically much more generic than what is currently expected under MiCA. In many cases, investment related information was not presented in the white paper at all, such as in the Bitcoin white paper and the Ethereum white paper.

It should be noted that the level of granularity may create an entry barrier, especially for smaller projects. It is also likely that crypto-asset projects will continue to make available information that is no longer expressly within the scope of the relevant provisions for white papers under MiCA.

<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>

The need to include graphical designs in white papers may impact the costs for preparing the white paper in the iXBRL format. In any case, the cost to implement this is substantial for startups.

<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>

See the response to questions 57, 61 and 66. INATBA members recommend that ESMA allows for the inclusion of graphical designs and additional fields that are not currently covered by the proposal. This includes items such as a roadmap, unique value proposition, tokenomics, governance and more.

In addition, INATBA members suggested an amendment on Table 4 – disclosure template for whitepapers for e-money tokens – Part E, point E-3. INATBA members suggested that it should be changed to “*Other information on the technology used allowing for the holding, storing and transfer of* ***e-money*** *tokens, if relevant.”*

<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>

The information required is already quite granular. However, it is important to note that alphanumeric text is simply not sufficient to explain the technical aspects of a project. Graphical designs are needed to explain technical aspects clearly. It is therefore recommendable to enable the option to provide information in the form of graphical designs, and to have the flexibility to add new fields of information specific to each CASP.

<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, definitely.

<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>

Yes. Roadmap, unique value proposition, tokenomics, governance and more.

The scope of information does not include a clear category for "Tokenomics", which is a term commonly used in the crypto-asset industry. Tokenomics refers to the economic system or model surrounding a crypto-asset and encompasses various aspects of how a token functions within a blockchain ecosystem, including its creation, distribution, utility, and overall economic design. Tokenomics is a crucial concept for understanding the value and dynamics of a particular crypto-asset.

While the scope of information described in MiCA does include “Information about the offer to the public of crypto-assets or their admission to trading” (Part E) and “Information on the rights and obligations attached to the crypto-assets” (Part G), these categories do not fully encompass the description of a project’s tokenomics outside a new token offer to the public. Many crypto-assets have been on the market for several years and would not be subject to a new offer to the public. Therefore, INATBA members  recommend ESMA to include a distinct category for tokenomics in addition to information about offers to the public, or to allow issuers to provide a detailed description of the tokenomics of a project.

Tokenomics includes aspects such as:

* Token Supply and Distribution: Tokenomics looks at how tokens are created, how many are initially issued, and how they are distributed among participants. The distribution can involve factors such as initial coin offerings (ICOs), token sales, airdrops, or mining.

* Utility and Use Cases: The utility of a token refers to its purpose and how it can be used within a particular blockchain ecosystem. Tokens may have various functions, such as enabling access to a platform, facilitating transactions, or representing ownership of a specific asset.

* Scarcity and Incentives: The scarcity of tokens often affects their value. If the token supply is limited, it may create a sense of scarcity, potentially driving up demand. Tokenomics also considers the incentives provided to users, such as staking rewards or governance rights, which can influence user behaviour within the ecosystem.

* Governance: Some tokens are designed to provide holders with decision-making power over the development and governance of the blockchain network. Tokenomics includes the study of how governance mechanisms are implemented and how decisions are made within the community.

* Inflation and Deflation Mechanisms: Tokenomics examines the mechanisms in place to control the token supply over time. Some tokens have inflationary mechanisms, where new tokens are created to incentivise network participants, while others may have deflationary mechanisms, aiming to reduce the token supply over time.

* Burn Mechanisms: Some projects include mechanisms where tokens are intentionally destroyed or "burned," reducing the overall token supply. This can be implemented as a deflationary measure to potentially increase the value of existing tokens.

* Economic Models: Tokenomics considers the economic models that drive the sustainability and growth of a blockchain ecosystem. This includes revenue models, business partnerships, and the overall economic strategy of the project.

Each crypto-asset project has unique tokenomics tailored to its specific goals and use cases. Understanding the tokenomics of a project is essential for investors, developers, and anyone involved in the crypto-asset space, as it provides insights into the economic fundamentals and potential long-term viability of a project.

Furthermore, the scope of information described in MiCA and the ESMA recommendations does not include “Governance” in the sense that it is generally seen in crypto-asset projects. Many of the tokens that are publicly traded are governed by a decentralised community or include some form of community governance. Governance should not be viewed solely as a matter of corporate governance of the crypto-asset issuer. This aspect is not fully captured by the recommendations. Governance in the context of a crypto-asset project refers to the mechanisms and processes through which decisions are made and the project is managed, often in a decentralised way. It involves establishing a framework for decision-making, addressing conflicts, and ensuring the evolution and long-term sustainability of the project. Governance is particularly crucial in decentralised systems, where multiple stakeholders have a say in the development and operation of the project.

In particular, the following aspects are important for understanding the governance of a crypto-asset project:

* Decision-Making Processes:
  + Proposal Submission: Stakeholders can submit proposals for changes or improvements to the project.
  + Voting Mechanisms: Decisions are often made through voting by token holders. The weight of a voter's influence is typically proportional to the number of tokens they hold.
  + Consensus Building: Some projects may use consensus mechanisms beyond simple voting, such as quadratic voting or delegated voting, to ensure more inclusive and effective decision-making.

* Token Holder Participation:
  + Governance Tokens: Projects often issue governance tokens, which grant holders the right to participate in decision-making processes. These tokens are a form of representation and influence within the project's ecosystem.
  + Vesting Periods: To prevent short-term manipulation, some projects implement vesting periods, during which newly acquired governance tokens cannot be used for voting.

* Smart Contracts and Protocols:
  + On-Chain Governance: Some projects embed governance mechanisms directly into their smart contracts, enabling decentralised decision-making on the blockchain.
  + Upgradability: Governance may extend to the ability to upgrade the project's protocol or make changes to the underlying code. This can be crucial for fixing bugs, adding new features, or adapting to evolving needs.

* Proposal Funding:
  + Treasury Management: Projects often have a treasury that holds funds collected through various mechanisms (e.g., transaction fees, inflation). Governance may include decisions on how to allocate these funds for development, marketing, or other purposes.

* Community Engagement:
  + Forums and Discussions: Governance involves fostering open communication and feedback channels, such as community forums, where stakeholders can discuss proposals and express their opinions.
  + Transparency: Transparent communication of decisions and project developments is crucial for maintaining trust and ensuring the community is well-informed.

* Conflict Resolution:
  + Dispute Resolution Mechanisms: Governance structures should include mechanisms for resolving disputes and conflicts within the community, such as arbitration processes or community voting.

* Upgradability and Evolution:
  + Upgrade Proposals: Governance often encompasses the ability to propose and vote on protocol upgrades, ensuring the project can adapt to changing technological, security, and market conditions.

It is important for investors to understand the governance of a crypto-asset project, beyond just the governance of a specific entity. Governance encompasses much more than the corporate structure and internal policies of a corporate entity. It is important that ESMA’s recommendations capture the full scope of the governance of a crypto-asset project.

<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>

Disagree. INATBA Members had mixed opinions on this, with some agreeing while others disagreeing.

The main point made by members who disagreed was that there are issuers who are not always eligible for an LEI, as in the case of non-identifiable issuers. As such, a more bespoke solution or additional guidance should be sought.

<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>

The definition of “trading platform for crypto-assets” should be specified to mean a trading platform operated by a centralized Crypto-Asset Service Provider. <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>

Yes, the proposed requirements are fair.

<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>

No.

<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>

INATBA members were in agreement that social media and web-based platforms, such as Twitter (X), Discord, Telegram and crypto-asset focused websites, play a crucial role in the crypto-asset industry. Crypto-asset projects generally build on active, global communities of software developers and enthusiasts. Participants have come to expect information to be shared on social media platforms, including updates, announcements and important developments. It is therefore crucial that important information is shared on social media and web-based platforms as well.

<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>

Yes, social media and web-based platforms are widely used in the crypto-asset industry and most users are generally familiar with them.

We support ESMA’s proposal to differentiate between the publication of inside information on the website of the relevant party and the public dissemination of that information on the media relied upon by the public (typically social media). It is reasonable that the public disclosure of inside information should primarily take place on the official website. At the same time, the information should also be disseminated via social media to ensure that it reaches a wider audience.

Another member added that it would be unreasonable and unrealistic to expect the dissemination of data to take place through traditional media channels, which are not particularly popular within the crypto-asset industry.

<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>

Neutral. The means for dissemination should be flexible and should cover the media which are reasonably relied upon by the public. In most cases, projects in the crypto-asset industry tend to rely on social media and web-based platforms to disseminate information. Traditional, paper-based media is very rarely used due to it being slow, expensive and having a limited reach compared to online media.

<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>

Yes.

<ESMA\_QUESTION\_MIC2\_77>