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| Reply form  on the second Consultation Paper for MiCA implementation |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **14 December 2023.**

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

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

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

# All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites crypto-assets issuers, crypto-asset service providers and financial entities dealing with crypto-assets as well as all stakeholders that have an interest in crypto-assets.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | The Luxembourg Bankers' Association (ABBL) |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Luxembourg |

**Questions**

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

<ESMA\_QUESTION\_MIC2\_1>

Not entirely

Article 66.6 MiCA refers to Article 66.5, which specifies the type of information CASPs must disclose. This information is specifically related:

1) To the principal adverse impacts,

2) On the climate and other environment-related adverse impacts,

3) Of the consensus mechanism,

4) Used to issue each crypto-asset,

5) in relation to which they [CASPs] provide services.

ESMA holds therefore a mandate to draft RTS standards on the content, methodologies, and presentation of information on the consensus mechanisms "used to issue each crypto-asset", and NOT consensus mechanisms "used to validate crypto-asset transactions" (see Art.66.5 MiCA).

We acknowledge that Article 66.6§2 MiCA provides that, in drafting its RTS, "ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste and greenhouse gas emissions". However, in our perspective, "to consider" or "take into consideration" does not equate to a mandate for ESMA to draft RTS on information about adverse impacts of consensus mechanisms used for transaction validation.

And yet, ESMA’s RTS (particularly Article 4) reveals a focus on consensus mechanisms "used for the validation of transactions in crypto-assets". In fact, the terms "consensus mechanisms used to issue" or the term "issue" of Article 66.5 MiCA are never used in the RTS.

This discrepancy may lead to several problems:

- Wording problem: The current language of the RTS does not align with the mandate outlined in MiCA.

- Mandate problem: The consensus mechanism used to issue a crypto-asset may differ from the one used for the validation of transactions, especially in cases where the crypto-asset was 'bridged' from one DLT to another (the crypto-asset transactions will then be governed by the consensus mechanism of the destination DLT, which may differ from the issuance DLT).

- Logical problem: Article 66.5 of MiCA suggests that information related to the consensus mechanism used to issue crypto-assets could be obtained from the crypto-asset white papers. However, if the disclosure concerns consensus mechanisms used for transaction validation, the white papers may not contain the required information.

Given these concerns, we are inclined to say that the RTS provisions should be revised in order to align with MiCA's mandate.

What concerns publication of ESG elements on the website, we are of the view that CASPs shall be allowed to make a reference to the white paper in order to comply with the requirement.

Considering public permissionless blockchains, it would be useful to have a publicly maintained database so that everyone can use the same information for sustainability disclosures.

We are of the opinion that all CASPs cannot be subject to the same set of obligations in order to promote a proportionate approach regarding sustainability disclosures.

**General Comments on the RTS:**

(1) EBA concluded that "specific language requirements […] would therefore go beyond the existing MiCAR mandate" (RTS complaints, p.26). However, ESMA decided otherwise (see Art. 3.4 RTS). Different standards for RTS standards…

(2) ESMA has not employed consistent terminology in its RTS. In the RTS on transparency data, ESMA uses the terms "free of charge and in a manner that is easily accessible, non-discriminatory, prominent, comprehensible, fair, clear and not misleading" (Art. 1.1 RTS); in this RTS on sustainability indicators it only uses the terms "free of charge" (Art.3.1 RTS). In the RTS on transparency data, ESMA uses the terms "easy to read and use a style that facilitates its understanding" (Art. 1.2 RTS); in this RTS on sustainability indicators it uses the terms "easy to read, using characters of readable size and using a style of writing that facilitates its understanding" (Art. 3.1 RTS). In RTS on transparency data, ESMA uses the terms "single document" (Art. 1.3 RTS); in this RTS on sustainability indicators it uses the terms "downloadable file" (Art. 3.1 RTS).

(3) In many RTS, definitions are provided in Annexes (RTS on transparency data contains no article with definitions, including not for the terms 'Automated Market Makers' and 'liquidity pools', 'smart contracts', 'permissionless and automatic way'). In this RTS on sustainability indicators, however, an article correctly provides beforehand all relevant definitions.

<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>

In our opinion, ESMA should be aware of the Proof of Stake vs Proof of Work initiatives undertaken by the industry itself that is meant to reduce the adverse impact on the environment.

In the spirit of harmonisation, we would advocate that, in a similar vein, issuers of a Central Bank Digital Currency (CBDC) should be subject to the same standards concerning sustainability impacts of consensus mechanism. For example, there is also an adverse environmental impact of the printing of Euro banknotes and minting of Euro coins and this could eventually also be part of sustainability impact assessment.

<ESMA\_QUESTION\_MIC2\_2>

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

<ESMA\_QUESTION\_MIC2\_3>

Not entirely

Page 12, point 3.3.1: A parallel is made here to SFDR/CSRD. If obligations under SFDR/CSRD appear to be less constraining, then it would make sense to support the application of a set of rules that does not exceed the SFDR/CSRD regime.

Besides, we would be in favour for the proportionality principle to ensure that the right CASP is subject to the right set of disclosure obligations. All CASPs will not necessarily have access to the same level of ESG information relating to crypto-assets and platforms, hence the necessity to adapt the regime depending on the role of the disclosing CASP.

<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>

TYPE YOUR TEXT HERE

<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>

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<ESMA\_QUESTION\_MIC2\_5>

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

<ESMA\_QUESTION\_MIC2\_6>

No, we do not agree

Page 14, §44: CASPs will be required to identify energy consumption of the DLT network nodes used to validate transactions, calculate GHG emissions and infer the production of waste/use of natural resources. For these elements, we would once again support a proportionate approach and expect that CASPs having a direct access to the abovementioned information may be subject to the obligation to disclose it. It is obviously not the case for custodians.

Proportionality may also be found in crypto-assets services the CASP is allowed to provide under MiCA, and the adverse environmental impact of the consensus system is best taken on by those CASPs that are allowed to provide the service of 'placing of crypto-assets'. A CASP broker(-dealer), custodian, and/or exchange may be at a too greater distance to reasonably be in a position to make a reliable assessment of the actual environmental impact of the consensus system regarding the different crypto-assets traded.

It is both plausible and probable that various entities involved in the crypto-asset industry, including the 'persons drawing up white papers' and the different types of CASPs (which are also established in different states), will arrive at divergent conclusions concerning energy consumption, greenhouse gas emissions, and overall sustainability indicators.

However, the RTS currently lacks effective mechanisms for harmonizing disparate information. Additionally, the RTS falls short in establishing a clear protocol for correcting inaccuracies in reported data. Finally, it fails to establish a scale of repercussions for different types of erroneous information.

<ESMA\_QUESTION\_MIC2\_6>

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

<ESMA\_QUESTION\_MIC2\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_7>

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

<ESMA\_QUESTION\_MIC2\_8>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_9>

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

<ESMA\_QUESTION\_MIC2\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_10>

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

<ESMA\_QUESTION\_MIC2\_11>

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<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>

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<ESMA\_QUESTION\_MIC2\_12>

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

<ESMA\_QUESTION\_MIC2\_13>

No

We do not agree with the definition of "permissionless distributed ledger technology".

In our perspective, it is incorrect to say that no entity controls the distributed ledger or its use or provides core services for its use.

No control at all entails no liability at all for anyone. Whereas, in a way, all DLT nodes have a certain control of the distributed ledger (or, at least, over its copies). Therefore, what really characterises a permissionless DLT is the fact that no central entity owes its network and software, or pre-approves a person to join the network.

See Definition permissionless blockchain, p. 15:

https://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf

Permissionless refers to the "permission" or the "approval" that is NOT required from an entity to join the DLT network, whereas the definition does not directly refer to this.

A reference to MiCA's definitions of 'distributed ledger technology', 'distributed ledger', and 'DLT network node' could also be included in Art. 1 of the RTS.

Furthermore, what about public permissioned blockchains for which node operators are known, whitelisted but independent from each other? Who can be held responsible?

Page 19, §62: liability regime. We would expect ESMA to adopt a more strict approach whereby a CASP may not be held liable for events which are out of its reasonable control. We refer to Article 75 (8) of MiCA and would expect the regime to apply without distinction between permissioned or permissionless DLT.

Citation (Article 75 (8) of MiCA):

“ 8. Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall be liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result of an incident that is attributable to them. The liability of the crypto-asset service provider shall be capped at the market value of the crypto-asset that was lost, at the time the loss occurred.

Incidents not attributable to the crypto-asset service provider include any event in respect of which the crypto-asset service provider demonstrates that it occurred independently of the provision of the relevant service, or independently of the operations of the crypto-asset service provider, such as a problem inherent in the operation of the distributed ledger that the crypto-asset service provider does not control.”  
<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>

For consistency with the DORA regulation, the approach makes sense, however, in our opinion, the terms 'critical or important functions' are not correctly used in Art.3 of the RTS.

Besides, it is also unclear why the RTS does not refer to other terms defined by DORA, such as "management body" used in Art. 5.3 RTS, and which are defined by Art. 3(30) DORA.

What concerns CASPs specifically: As defined by DORA, the terms 'critical or important functions' refer to 'financial entities' and to 'applicable financial services law'. It is unclear whether CASPs could be seen as 'financial entities' and whether 'financial services laws' are applicable to them, especially considering MiCA was adopted to regulate crypto-assets that "fall outside of the scope of Union legislative acts on financial services" (Recital (4) MiCA).

DORA provisions are indeed applicable to CASPs (and, incidentally, so are the terms 'critical or important functions') because Article 2.2 DORA understands CASPs as a 'financial entity' but only 'for the purposes of that Regulation' and NOT for the purposes of any other text. Two solutions could be envisaged: either a mutatis mutandis application of the terms 'critical or important functions', or a reference to CASPs as financial entities within the meaning of DORA.  
<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>

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<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>

We feel this topic is product agnostic. There should be an opportunity for harmonisation of standards across financial sectors to seek alignment with relevant requirements in place for investment firms and payment institutions, for instance.

Proportionality can be found in the crypto-asset services the CASP is allowed to provide under MiCA. For example, a 'trading platform' must meet different standards than a broker and/or a custodian. This could be addressed in MiCA under the Internal control mechanism, risk assessment and business continuity.  
<ESMA\_QUESTION\_MIC2\_16>

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

<ESMA\_QUESTION\_MIC2\_17>

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<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>

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<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>

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<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>

General remarks:

Article 1 begins by outlining ‘publishing’ rules, followed by ‘presentation’ rules, only to revisit ‘publishing’ rules once again. Furthermore, the publishing location is indicated in the last paragraph of the Article (CASP website), while the other “principles” are meant to condition the way with which these operating rules are to be published in that location. Therefore, we think it would be more logical to mention the publishing location at the outset.

Regarding the question, we do not have comments on the definition for the different trading systems, however, RTS provides neither explanation nor definition of CEX and DEX. Only in ESMA documentation.

Article 76 MiCA concerns the operation of a **trading platform** for crypto-assets. ESMA documentation defines **CEX** as a **trading platform** operated centrally. Conversely, a DEX is **not** defined as a trading platform, less so as one operated by CASPs. Therefore, are DEX (and AMM) covered by Art. 76 MiCA and should they be addressed by the RTS.

ESMA says it is aware of Recital 22 MiCA stating that “crypto-asset services provided **in a fully** decentralised manner without any intermediary” do **not** fall within the scope of MiCA. It also says that the exact scope of this exemption remains uncertain. In our perspective, such is not the question.

Standards and best practices for the relevant CASPs are to be found in the MiFID/MiFIR, also on OTC (enforcement at DEX level might be more challenging).

<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>

Not entirely

AMM are only mentioned twice in the RTS: in the Annex and in Recital (5) RTS. This Recital (5) RTS has redactional issues.

In turn, the Annex is where the AMM is defined – not defined in the main body of the RTS. There is no apparent reason to do so and we would suggest to define it in a introductory article. Furthermore, terms used to define AMM are not themselves explained or defined – “liquidity pools” and “smart contracts” and “permissionless way”.

Article 2-1 RTS also refers, both, to CASPs “**operating** a **trading platform**” and “**trading systems** they [CASPs] **operate**”. There seems to be a confusion between trading platforms and trading systems. A CASP operates a trading platform where, in turn, may be used or implemented certain systems. CASPs do not operate ‘trading systems’ per se, and it is not the operation of trading systems that are aimed by Article 76 MiCA. We also find inadequate to say that a CASP operates a trading system such as an AMM, that is based on a smart contract.

<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>

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<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>

No

MiCA gives ESMA a mandate to draft an RTS to specify the way transparency data is to be presented in relation to the **price**, **volume** and **time** of the transactions executed. There is no requirement in relation to the **publication** date and time and to also make public the venue of publication.

<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>

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<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>

Yes

We suggest to specify the stabilisation mechanism of a crypto-asset, in particular of Asset-Referenced Tokens (“[…] referencing another value or right or a combination thereof, including one or more official currencies”). Important post-trade transparency data as mechanism will have impact on the value of the crypto-asset after it has been sold.

<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>

From the data provider point of view, 10 minutes is an acceptable time lag to qualify as “close to real-time and technically possible”. Meanwhile, data-user expectations could be as short as 10 second delay.

<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>

We observe that the level of access to the data varies from one crypto-asset platform to another. A noticeable number of crypto-assets trading platforms currently charge a fee to access disaggregated data, while aggregated data remains free of charge. The price also depends on the profile of the data user: professional or retail.

<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>

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<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>

No

According to the publicly available information, the DTI Foundation (DTIF) is a non-profit division of a private financial technology firm with a mission of “solving market-wide problems by building market infrastructures for the new digital economy”.

We would like to inquire why this firm specifically has been chosen in the RTS to assign an ID for crypto-assets and whether other neutral alternatives could be proposed / considered? Furthermore, the firm that underpins the Foundation is located outside of the European Union. If for example, for any internal or external reason, the activity of the Foundation could be paused or halted, how this would impact the provision of crypto-assets IDs in EU?

Furthermore, the DTI, as the name implies, identifies all crypto-assets as ‘tokens’ (including coins). The difference between ‘tokens’ and ‘coins’ is not clearly operated. Coins are called ‘Native Digital Token’.

<ESMA\_QUESTION\_MIC2\_37>

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

<ESMA\_QUESTION\_MIC2\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_38>

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

<ESMA\_QUESTION\_MIC2\_39>

We would like ESMA to precise the following: For complex sets of smart contracts involving a series of transaction hashes to complete an “operational transaction”, which transaction hash should be considered?

<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>

Not entirely

Gas fees are relevant for the trade, but indeed are not accessible for all under the current regulations.

Recording of gas fees could be difficult or even impossible in case of the use of a third-party fee payer.  
<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>

TYPE YOUR TEXT HERE

<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>

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<ESMA\_QUESTION\_MIC2\_42>

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

<ESMA\_QUESTION\_MIC2\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_43>

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

<ESMA\_QUESTION\_MIC2\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_44>

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

<ESMA\_QUESTION\_MIC2\_45>

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>

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<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>

Yes

Prescribed length of reported addresses (seller, buyer, smart contract, etc.) are too small: 52 characters. For instance, Algorand addresses are 58 characters long, Stellar - 56 characters, while Cardano has 103 characters.

We propose the following: Align prescribed reporting length to SWIFT standards i.e. 140 characters.

<ESMA\_QUESTION\_MIC2\_50>

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

<ESMA\_QUESTION\_MIC2\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_51>

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

<ESMA\_QUESTION\_MIC2\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_52>

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

<ESMA\_QUESTION\_MIC2\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_53>

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

<ESMA\_QUESTION\_MIC2\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_54>

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

<ESMA\_QUESTION\_MIC2\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_55>

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

<ESMA\_QUESTION\_MIC2\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_56>

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

<ESMA\_QUESTION\_MIC2\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_57>

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

<ESMA\_QUESTION\_MIC2\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_58>

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

<ESMA\_QUESTION\_MIC2\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_59>

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

<ESMA\_QUESTION\_MIC2\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_60>

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

<ESMA\_QUESTION\_MIC2\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_61>

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

<ESMA\_QUESTION\_MIC2\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_62>

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

<ESMA\_QUESTION\_MIC2\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_63>

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

<ESMA\_QUESTION\_MIC2\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_64>

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

<ESMA\_QUESTION\_MIC2\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_65>

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

<ESMA\_QUESTION\_MIC2\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_66>

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

<ESMA\_QUESTION\_MIC2\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_67>

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

<ESMA\_QUESTION\_MIC2\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_68>

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

<ESMA\_QUESTION\_MIC2\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC2\_69>

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

<ESMA\_QUESTION\_MIC2\_70>

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>