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| Reply form on the Consultation Paper on guidelines on conditions and criteria for the classification of crypto-assets as financial instruments 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 **29 April 2024.**

**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 \_MIC3\_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\_MIC3\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MIC3\_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 guidelines on conditions and criteria for the classification of crypto-assets as financial instruments”).

**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**

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| --- | --- |
| Name of the company / organisation | European Principal Traders Association (FIA EPTA) |
| Activity | Other Financial service providers |
| Are you representing an association? |[x]
| Country/Region | Europe |

**Questions**

1. **Do you agree with the suggested approach on providing general conditions and criteria by avoiding establishing a one-size-fits-all guidance on the concepts of financial instruments and crypto-assets or would you support the establishment of more concrete condition and criteria?**

<ESMA\_QUESTION\_MIC3\_1>

FIA EPTA members welcome the aim to provide general conditions and clarity on the divergence between financial instruments and crypto-assets. However, FIA EPTA members believe that in the suggested approach by ESMA, there is too much focus and room for interpretation for NCAs, we believe that clear criteria from ESMA are critical to define the regulatory perimeter between MiFID II and MiCAR. We would suggest ESMA together with market participants to adopt a more pragmatic approach, with a view to ultimately publishing criteria and a list of MICAR crypto-assets.

The definition of financial instruments sits in a Directive and therefore has been subject to NCA interpretation which has led to different definitions concluding to legal uncertainty. Notwithstanding this, given the maturity of that market, ultimately the term is relatively well understood and workable. However, given the aim of MiCAR to harmonize regulation and introduce passporting of crypto-assets, the divergence with financial instruments and setting the criteria and publishing a list of MiCAR instruments is of the utmost importance.

Crypto-assets, however, are defined in a Regulation. Given this, FIA EPTA members believe clear ESMA guidance on the terms that all NCAs should follow. This is all the more important given how new and global the crypto-asset market is, market participants must have clarity on which assets fall into the scope of MiCAR.

<ESMA\_QUESTION\_MIC3\_1>

1. **Do you agree with the conditions and criteria to help the identification of crypto-assets qualifying as transferable securities? Do you have any additional conditions and/or criteria to suggest? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_2>

FIA EPTA members believe that more clarity would be welcome and would suggest the establishment of a database like ISIN to identify products and improve transparency. All financial instruments should have an ISIN, if an asset does not have an ISIN but does meet the Crypto-asset definition we would expect it to be a Crypto-asset in-scope of MiCAR. Having a Crypto ISIN-type database would ensure the regulatory perimeter between financial instruments in-scope for MiFID and Crypto-assets in-scope for MiCAR would be well defined and market participants would have clarity as to when they are subject to MiFID and when they fall under MiCAR.

<ESMA\_QUESTION\_MIC3\_2>

1. **Based on your experience, how is the settlement process for derivatives conducted using crypto-assets or stablecoins? Please illustrate, if possible, your response with concrete examples**

<ESMA\_QUESTION\_MIC3\_3>

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<ESMA\_QUESTION\_MIC3\_3>

1. **Do you agree with the conditions and criteria to help the identification of crypto-assets qualifying as another financial instrument (i.e. a money market instrument, a unit in collective investment undertakings, a derivative or an emission allowance instrument)? Do you have any additional conditions, criteria and/or concrete examples to suggest?**

<ESMA\_QUESTION\_MIC3\_4>

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<ESMA\_QUESTION\_MIC3\_4>

1. **Do you agree with the suggested conditions and criteria to differentiate between MiFID II financial instruments and MiCA crypto-assets? Do you have concrete conditions and/or criteria to suggest that could be used in the Guidelines? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_5>

Although the conditions and criteria are helpful, as mentioned above, we would support further clarity around the perimeter between financial instruments and Crypto-assets.

<ESMA\_QUESTION\_MIC3\_5>

1. **Do you agree with the conditions and criteria proposed for NFTs in order to clarify the scope of crypto-assets that may fall under the MiCA regulation? Do you have any additional conditions and/or criteria to suggest? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_6>

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<ESMA\_QUESTION\_MIC3\_6>

1. **Do you agree with the conditions and criteria proposed for hybrid-type tokens? Do you have any additional conditions and/or criteria to suggest that could be used in the Guidelines?  Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_7>

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<ESMA\_QUESTION\_MIC3\_7>