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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 | World Gold Council |
| Activity | Choose an item. |
| Are you representing an association? |[x]
| Country/Region | UK |

**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>

The World Gold Council supports ESMA’s approach, as outlined in the draft Guidelines, regarding the conditions and criteria for the qualification of crypto assets as financial instruments. We strongly recommend avoiding a one-size-fits all approach due to the distinct characteristics of various crypto assets.

Specifically, when considering individual crypto assets, it is important to account for their unique characteristics, design, and associated rights. In the case of gold tokens, those backed by gold ETFs would be classified differently from tokens fully backed by physical gold which can be redeemed. The former would be categorised as financial instruments, while the latter would be classified as asset referenced tokens.

Moreover, a one-size-fits-all approach would likely restrict national authorities when classifying emerging crypto assets, given the rapidly evolving market and continual development of new asset types.

Therefore, we support ESMA’s approach to provide national competent authorities with overarching guidelines, on the basis of which the national competent authorities would assess individual crypto assets on a case-by-case basis.

<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>

More specific language around the criteria to identify crypto assets as transferable securities would be helpful in achieving more consistent classifications of crypto assets.

Specifically, we propose explicitly stating that digital twins of real-world assets which are not financial instruments, such as for example physical gold, should remain classified as non-financial instruments. As for “native” crypto assets, exclusive to blockchain, we agree with ESMA’s approach.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

ESMA defines crypto assets that may fall under more than one legal classification as hybrid-type tokens “combining, spanning or associating several characteristics, component and purposes (e.g. means of payment, utility-type, investment-type) and may perform distinct functions after issuance”.

For clarity, we propose making a clear distinction between “native” crypto assets and “digital twins” of existing real-world assets. With regard to “native” crypto assets, that is, new products which can only be offered on blockchain and which do not have their real-world counterparts, we support ESMA’s proposed approach. For “digital twins” of existing real-word assets, tokenised non-financial instruments, such as for example physical gold, should maintain their classification as non-financial instruments, irrespective of their functions throughout their life cycle after issuance (e.g. whether they serve investment, settlement, collateral, or payment purposes).

<ESMA\_QUESTION\_MIC3\_7>