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| Reply form to the Consultation Paper on certain requirements of the Markets in Crypto Assets Regulation (MiCA) on detection and prevention of market abuse, investor protection and operational resilience – third consultation paper |
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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 **25 June 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 \_MIC4\_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\_MIC4\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MIC4\_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 | The Bank of New York Mellon |
| Activity | Banking sector |
| Are you representing an association? |[ ]
| Country/Region | Belgium |

**Questions**

1. Do you agree with ESMA’s analysis on the personal scope of Article 92 of MiCA? Are there other types of entities in the crypto-asset markets that should be considered as a PPAET (e.g. miners/validators)? Do you believe that CASPs providing custody and administration of crypto-assets on behalf of clients should also be considered as PPAETs for the purpose of this RTS? Please elaborate.

<ESMA\_QUESTION\_MIC4\_1>

Our opinion on whether CASPs providing custody and administration of crypto-assets should be considered PPAETs is the following.

MiCA has a very broad definition of a CASP, and identifies a long list of activities that are carried out by a CASP. A CASP carrying out some of these activities should certainly be considered as a PPAET. However, it is also the case that a CASP carrying out other activities in this list, such as purely custody and administrative activities, should not be considered a PPAET.

As ESMA points out in paragraph 14, MiCA requires that a PPAET “have arrangements, systems and procedures to prevent, detect and report to NCAs possible market abuse cases”. This is a requirement that it would be impossible for a CASP carrying out purely custody and administrative activities to meet, and would be a barrier for the provision of such CASP services.

For a CASP it will be critical to have an understanding of the precise list of CASP activities that will result in a CASP being treated as a PPAET. The consultation paper, notably in paragraph 37 on page 13, and in Recital 2 on page 41, does not give a precise list. In their final form, the RTS should provide clarity on this point.

With respect to such a list, we wish to highlight that CASPs providing custody and administrative services, and that within the framework of these services also provide services relating to the exchange of crypto-assets for funds, and to the exchange of crypto-assets for other crypto-assets, should not be treated as a PPAET. One important reason is that MiCA treats stablecoins (EMTs) as crypto-assets, and it is to be anticipated that as part of many administration processes CASPs will exchange EMTs for fiat currencies, and/or for other EMTs.

<ESMA\_QUESTION\_MIC4\_1>

1. Do you agree with the proposed elements that should constitute appropriate arrangements, systems and procedures to detect and prevent market abuse? If not, please specify the article of the draft RTS and elaborate.

<ESMA\_QUESTION\_MIC4\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_2>

1. Do you agree with the proposed STOR template as presented in the Annex of the RTS?

<ESMA\_QUESTION\_MIC4\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_3>

1. Is there any parameter or naming convention that in your view should be modified to facilitate the identification of suspicious orders/transactions/behaviours involving crypto-assets?

<ESMA\_QUESTION\_MIC4\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_4>

1. In Section II of the Annex, would the concept of ‘location’ be applicable to a distributed ledger? For instance, would the IP address of miners/validator nodes in the network be useful in a context where it can be masked through VPNs?

<ESMA\_QUESTION\_MIC4\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_5>

1. Is there any other element or information relevant to crypto-asset markets that in your view should be included in the template? Please explain.

<ESMA\_QUESTION\_MIC4\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_6>

1. Please provide information about the estimated costs and benefits of the proposed technical standard, in particular in relation to the arrangements, systems and procedures to prevent and detect market abuse.

<ESMA\_QUESTION\_MIC4\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_7>

1. Do you agree with ESMA’s approach regarding consistency between the MiCA and MiFID II suitability regimes? If you think that the two regimes should diverge, where and for which reasons?

<ESMA\_QUESTION\_MIC4\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_8>

1. Do you think that the draft guidelines should be amended to better fit crypto-assets and the relevant crypto-asset services? In which regard? Please justify your answer.

<ESMA\_QUESTION\_MIC4\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_9>

1. Do you agree with the approach followed by ESMA regarding periodic statements provided in relation to portfolio management of crypto-assets?

<ESMA\_QUESTION\_MIC4\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_10>

1. Do you agree with the approach taken by ESMA in the draft guidelines for crypto-asset service providers providing transfer services for crypto-assets on behalf of clients as regards procedures and policies, including the rights of clients? Please also state the reasons for your answer.

<ESMA\_QUESTION\_MIC4\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_11>

1. Do you think that the draft guidelines address sufficiently the risks for clients related to on- and off-DLT crypto-asset transfers? Please justify your answer.

<ESMA\_QUESTION\_MIC4\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_12>

1. Are there any additional comments that you would like to raise and/or information that you would like to provide, for example, on whether other relevant points or clients’ rights should be considered?

<ESMA\_QUESTION\_MIC4\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_13>

1. Do you support ESMA’s interpretation of the term, ‘systems’ in the mandate? If not, please explain your understanding of the term (and provide examples if possible).

<ESMA\_QUESTION\_MIC4\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_14>

1. Are there other ‘appropriate Union standards’ beyond those identified in the consultation paper that you consider relevant for this mandate? If yes, please list them and provide a rationale for why they would be relevant.

<ESMA\_QUESTION\_MIC4\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIC4\_15>

1. Do you agree with the inclusion of minimal administrative arrangements in Guideline 2 (i.e., no reference to implementing a risk management framework)? If no, please explain whether you would consider either *fewer* or *more* administrative arrangements appropriate.

<ESMA\_QUESTION\_MIC4\_16>

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<ESMA\_QUESTION\_MIC4\_16>

1. Do you support the inclusion of Guideline 5 on ‘cryptographic key management’? Do you consider cryptographic keys relevant as either a ‘system’ or a ‘security access protocol’? Is this guideline fit for purpose (i.e., can cryptographic keys be ‘replaced’ as implied in paragraph 29 of the draft guidelines)?

<ESMA\_QUESTION\_MIC4\_17>

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<ESMA\_QUESTION\_MIC4\_17>