

Reply form

on the first Consultation Paper for MiCA implementation



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1 . 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 **20 September 2023**.

All contributions should be submitted online at www.esma.europa.eu under the heading '*Your input - Consultations*'.

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 this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_MICA_0>. 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 responses, save the reply form according to the following convention: ESMA_CP1_MiCA _nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_MiCA _ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be

submitted online at www.esma.europa.eu under the heading '*Your input - Consultations*'.

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 publicly 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 under the heading '[Data protection](#)'.

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.

1 General information about respondent

Name of the company / organisation	Electronic Money Association
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Europe

2 Introduction

Q0: Please make your introductory comments below, if any:

<ESMA_QUESTION_MICA_0>

We welcome the opportunity to provide input on ESMA's first Consultation Paper for MiCA implementation.

The EMA represents payments, crypto-asset and FinTech firms, engaging in the provision of innovative payment services, including the issuance of e-money, stable coins (including e-money tokens as covered by the EU's MiCAR), open banking payment services, and crypto-asset-related services. A full list of our members is provided in the appendix to this document.

The EMA was established some 20 years ago and has a wealth of experience in regulatory policy relating to payments, electronic money and more recently crypto-assets.

We would be grateful for your consideration of our comments, which are set out below.

<ESMA_QUESTION_MICA_0>

3 Questions

Q1: Do you think that anything is missing from the draft RTS and ITS on the notification by certain financial entities to provide crypto-asset services referred to in Articles 60(13) and 60(14) of MiCA?

<ESMA_QUESTION_MICA_0>

No. Given the restricted scope of the grandfathering for EMIs under Article 60 (4), which applies exclusively to custody, administration and transfer services with regard to e-money tokens issued by that same EMI, we would expect minimal additional information to be required.

<ESMA_QUESTION_MICA_0>

Q2: Do you agree with the list of information to be provided with an application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.:

<ESMA_QUESTION_MICA_0>

Yes. Applications for authorisation should be processed by regulators in a fully consistent and proportionate manner for all firms and activities in the financial sector. The authorisation requirements and the scrutiny and screening of applicants should be applied commensurate with the risks the firm and the activity represent for their clients and for the integrity of the market.

That said, we welcome the introduction of authorisation and ongoing supervision of CASPs by MiCAR and encourage regulators to implement this Regulation, including its authorisation requirement, in such a way as to provide a strong and effective regulatory regime for crypto-assets. The objective of introducing with MiCAR a regulatory framework that assists the rapidly emerging and maturing crypto-asset markets and the enormous innovative potential they offer, can only be achieved if it is implemented in supervisory practices including authorisation procedures with adequate rigor across all EU/EEA jurisdictions.

<ESMA_QUESTION_MICA_0>

Q3: Do you agree with ESMA's proposals on standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.

<ESMA_QUESTION_MICA_0>

Yes. As set out earlier in this response, in order to achieve the ultimate objective of MiCAR it is necessary to extend current regulatory standards and supervisory practices in the financial sector to crypto-asset markets. Consistency across all financial sectors including with regard to the issuance of crypto-assets and the provision of crypto-asset services is a key prerequisite and should also be pursued by common technical and procedural standards.

<ESMA_QUESTION_MICA_0>

Q4: Do you agree with ESMA's proposals to specify the requirements, templates and procedures for the handling of client complaints by crypto-asset service providers? Please also state the reasons for your answer.

<ESMA_QUESTION_MICA_0>

No. We support the EBA approach of aligning as much as possible its draft RTS on complaint handling by IARTs under Article 31 (5) (see EBA/CP/2023/13 of 12 July 2023) to the guidelines on the subject developed jointly with ESMA including:

- Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, JC 2014 43, 13 June 2014;
- Final report on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under PSD2 and/or the MCD, JC 2018 35, 31 July 2018;
- Joint Committee Report on the assessment of the application of the Guidelines on complaints-handling, JC 2021 24, 18 February 2021.

The benefits of uniform complaint handling standards and guidelines applicable across all financial sectors and extensively and successfully tested over many years are set out eloquently in the EBA's CP (see EBA/CP/2023/13 para 6 to 9). In our view, proposing draft RTS on complaint handling by CASPs that diverge from both the EBA approach and from the joint EBA and ESMA guidelines on that same subject does not respond to the ESMA mandate under Article 71 (5) and the explicit request to develop standards "in close cooperation with the EBA". Complaint handling in crypto-asset markets should be subject to the same regulatory standards across the full, often highly integrated value chain from the issuing of crypto-assets through to the provision of any related crypto-asset services and including other related financial services not subject to MiCAR.

Regarding the discrepancies between the different standards we would highlight in particular the additional language requirements under Article 1 (4) of the draft RTS, also specifically addressed in the EBA CP. In line with the key characteristics of the product, crypto-asset services are typically provided cross-border using English as the "lingua franca", and effectively the native language of all crypto-asset market participants. The requirement to provide "the description of the complaints handling procedure and the standard template ... in at least one of the official languages of the home Member State and each (!) host Member State" represents a potentially significant market entry hurdle for many of the smaller EU/EEA jurisdictions. This effectively undermines the benefit and purpose of EU passporting rights, whilst at the same time offering little added value or improved customer protection for retail, let alone, wholesale investors.

<ESMA_QUESTION_MICA_0>

Q5: Do you think that it is useful to keep the possibility for clients of CASPs to file their complaints by post, in addition to electronic means?

<ESMA_QUESTION_MICA_0>

No. Crypto-asset services are, due to the nature of the product, provided by electronic means. We cannot see any need for keeping the possibility for clients to file complaints by post.

<ESMA_QUESTION_MICA_0>

Q6: Do you think that other types of specific circumstances, relationships or affiliations should be covered by Articles 1 and 2 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?

<ESMA_QUESTION_MICA_0>

No. In particular, we believe consistency with the approach under MiFID is critical not least to avoid regulatory arbitrage, which could occur where potentially limited changes of the design of crypto-asset products could give rise to their qualification as financial instruments.

<ESMA_QUESTION_MICA_0>

Q7: Do you think that other types of specific prevention or mitigation measures should be highlighted in the minimum requirements of Article 3 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?

<ESMA_QUESTION_MICA_0>

No. Here again consistency with the approach under MiCA is crucial.

<ESMA_QUESTION_MICA_0>

Q8: Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?

<ESMA_QUESTION_MICA_0>

Yes.

<ESMA_QUESTION_MICA_0>

Q9: Do you agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion?

<ESMA_QUESTION_MICA_0>

Yes. We believe the proposed approach to be proportionate. Also in this regard consistency across all financial sectors is crucial. Standards set for CASPs in level 2 RTS should not diverge from standards applicable elsewhere. Competent authorities will retain discretion to require additional information if deemed necessary and proportionate.

<ESMA_QUESTION_MICA_0>

Q10: Do you consider the list of information under Article 8 complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem?

<ESMA_QUESTION_MICA_0>

Yes.

<ESMA_QUESTION_MICA_0>

Q11: Do you agree with the identified cases where reduced information requirements apply and with the related requirements and safeguards?

<ESMA_QUESTION_MICA_0>

Yes. The reduced information requirements reflect what under the principle of proportionality should apply anyhow. Competent authorities will retain discretion to require additional information if proportionate and deemed necessary.

<ESMA_QUESTION_MICA_0>

Q12: In which EU jurisdiction(s) do you plan to be authorised to provide CASP services? In which EU jurisdiction(s) do you plan to provide CASP services under cross-border provision of crypto-asset services as specified in Article 65 of Regulation (EU) 2023/1114?

<ESMA_QUESTION_MICA_0>

Questions 12 to 16 are addressed to individual firms and cannot be answered by us.

<ESMA_QUESTION_MICA_0>

Q13: What crypto asset services as listed in point 16 of Article 3(1) of Regulation (EU) 2023/1114 do you plan to offer (e.g. reception/transmission of orders; execution of orders on behalf of clients; operation of a trading platform etc.)? In addition, please provide some high-level explanation of the business model, including, what type of trading systems do you plan to use.

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

Q14: If you are planning to operate a trading platform:

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

(a) How many white papers do you estimate to publish on you platform?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- (b) **What turnover, in terms of crypto-assets trading volume, do you expect to attract on your platform according to your business forecasts for the upcoming years?**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- (c) **Do you plan to undertake transactions on the basis of an on-chain ledger or an off-chain one?**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- i. In case of the former, which type of DLT are you planning to use (e.g. Ethereum, Corda, Stellar etc.)? Do you plan to store transaction data on-chain or off-chain or a mix of the two?**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- ii. If the latter, how would you link on-chain and off-chain transaction data?**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- Q15: If you are planning to execute/place orders on behalf of clients:**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

- (a) **How many white papers do you estimate to offer to your clients for execution/order placement?**

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

(b) What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

(c) Do you plan to undertake transactions on the basis of an on-chain ledger or an off-chain one?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

i. In case of the former, is transaction data stored on-chain or off-chain or a mixed of the two?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

ii: If the latter, how do you link on-chain and off-chain transaction data?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

Q16: If you are planning to receive and transmit orders:

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

(a) How many white papers do you estimate to offer to your clients for order transmission?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

(b) What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(c) Which are the main platforms/brokers you are intending to transmit orders to?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(d) In which jurisdictions are these platforms/brokers based?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(e) How do you plan to keep track of the transmitted orders?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>