

Subject: EMA reponse to [EBA Consultation on draft RTS on the requirements, templates and procedures for handling complaints under MiCAR \(EBA/CP/2023/13\)](#)

Date: 12.10.2023

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 can be found on [our website](#).

Please find below the EMA's responses to the three questions in the EBA "Consultation on draft RTS on the requirements, templates and procedures for handling complaints under MiCAR (EBA/CP/2023/13)" submitted online: <https://www.eba.europa.eu/consultation-draft-rts-requirements-templates-and-procedures-handling-complaints-under-micar-form>.

Questions and draft response:

QUESTION 1: DO YOU CONSIDER THAT THE APPROACH PROPOSED IN THE RTS STRIKES AN APPROPRIATE BALANCE BETWEEN THE VARIOUS COMPETING DEMANDS DESCRIBED? IF NOT, PLEASE SUGGEST AN ALTERNATIVE APPROACH AND THE UNDERLYING REASONING AND EVIDENCE.

We concur with the approach proposed by the EBA for the draft RTS on complaints handling by IARTs. In our view it represents the least harmful response to the dilemma caused by the divergence of ESMA's draft RTS from the joint ESA guidelines setting uniform complaint handling standards applicable across all financial sectors.

We must emphasise, however, that we would regard submission by EBA and ESMA of diverging draft RTS to the Commission as an alarming example of malfunctioning processes and of a lack of commitment to EU-wide consistent standard-setting by EU regulatory bodies established to ensure regulatory and supervisory consistency across the internal market.

We therefore urge the EBA and ESMA, here in particular ESMA, to live up to their MiCAR mandate of "close cooperation" and deliver a uniform set of complaints handling standards applicable to all regulated activities within the scope of MiCAR, and aligned as much as possible with the joint ESA guidelines on complaints handling.

We do not consider that "close cooperation" is not limited to the observation of procedural formalities, but instead should also extend to the delivery of a uniform regulatory outcome. The extension of the requirements regarding complaints handling by IARTs to third parties distributing the issued crypto assets indicates that the intent of MiCAR is to ensure as much as possible uniform complaints handling, even if the perceived deficiency of the service is related to acts or omissions of a third party. It does not appear to be the legislator's intent for

a different set of standards to apply where the third party is a CASP subject to the draft RTS as developed by ESMA.

The benefits of uniform standards applying across all financial sectors are set out comprehensively in the EBA consultation document. As the EBA highlights, significant efficiency gains and cost reduction for both competent authorities and the industry have been realised since the application of the joint ESA guidelines. More importantly, consumers benefit from the well-established complaints handling processes achieved across all financial sectors.

We believe these arguments to be compelling in particular with regard to crypto-asset markets. These markets are characterised by eco-systems combining services of participating firms to often highly integrated value chains. To the benefit of crypto-asset holders, these value chains encompass the issuing of crypto-assets, their holding and use, based upon the provision of a range of related crypto-asset services, including other related financial, in particular payment, services that are not subject to MiCAR. Application of diverging complaint handling standards to the different links of this value chain, depending upon whether provided by an IART, a CASP or some other service provider, would run counter to the interest of holders of crypto-assets. Communication to holders on why different standards for complaints handling apply, depending upon which link in the value chain a perceived deficiency relates to, will be, to say the least, difficult.

The situation becomes further compounded where an IART subject to the RTS developed by the EBA also provides other related crypto-asset services, which for complaints handling would be subject to the diverging RTS developed by ESMA. We cannot see any justification for the compliance burden caused by requiring IARTs also providing crypto-asset services to comply with two different sets of complaints handling standards. The resulting complexities will not help the swift and effective handling of complaints in the interest of the complainant. Moreover, if for a given complaint it still has to be determined whether the root cause is to be found in the issuing of the crypto-asset or in the related crypto-asset services, the applicable complaints handling standards would remain unclear, including regarding key operational and procedural issues, for instance language requirements.

In summary, we would find ending up with divergent RTS for complaints handling by IARTs vs. CASPs under that same roof of MiCAR of great concern:

- inconsistent and harmful regulatory outcome at the expense of all stakeholders including holders of crypto-assets, their issuers and providers of related crypto-asset services, and last but not least competent regulatory authorities,
- failed cooperation between EU regulatory authorities established with the very purpose of delivering EU-wide consistent regulation and supervision, and

- failure to respond to the specific character of crypto-asset markets delivering services via an ecosystem underpinned by horizontally integrated value chains combining services provided by two or more independent firms participating in the ecosystem.

QUESTION 2: DO YOU HAVE ANY COMMENTS ON THE REQUIREMENTS PROPOSED IN ARTICLES 1, 2, 3 OR 4 OF THE DRAFT RTS?

Article 4 (b) i. of the draft RTS requires IARTs to allow for submission of complaints either by electronic means or in paper form. We note that ESMA in its consultation had put forward the question (question 5): “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?” We answered: “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.” We would welcome the same approach to be taken for the EBA draft RTS.

QUESTION 3: DO YOU HAVE ANY COMMENTS ON THE REQUIREMENTS PROPOSED IN ARTICLES 5, 6 OR 7 OF THE DRAFT RTS?

The comment above regarding the mandatory paper form alternative stipulated in Article 4 (b) i. also applies to Article 6 (c) (i) a. requiring also third-party entities to allow for submission of complaints in paper form.