Electronic Money Association
1000 Brussels
68, square Marie-Louise
Belgium
Telephone: +44 (0) 20 8399 2066
Facsimile: +44 (0) 870 762 5063
www.e-ma.org

Herman Ciappara
Head of Fintech Supervision
MFSA
Triq l-Imdina, Zone 1, Central Business District, Birkirkara,
Malta, CBD 1010

29 September 2023

Dear Herman

Re: Consultation on Changes to Chapter 3 of the Virtual Financial Assets Rulebook

We welcome the opportunity to provide input on the MFSA's Consultation on Changes to Chapter 3 of the Virtual Financial Assets Rulebook ("CP").

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.

We would be grateful for your consideration of our comments on the 3 questions put forward in the CP.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response:

1. **Do you agree with the proposed changes?**

We agree with the changes proposed in the CP. As an intermediate step towards full application of MiCAR the proposed changes will further strengthen the current Maltese regulatory framework for crypto-assets and related services as covered by MiCAR. We would expect these changes to allow the national regulatory framework to be considered as strict as MiCAR and, hence, to retain, in accordance with Article 143 (3) second sentence MiCAR, the full transitional period until 1 July 2026 as provided for in Article 143 (1) MiCAR and not exercise the discretion provided in Article 143 (3) first sentence to reduce the transitional period.

Regarding the upcoming next steps of regulatory reform to align the national VFA regime for the full application of MiCAR we would urge the Maltese authorities to allow in accordance with Article 146 (6) MiCAR for already authorised VFA service providers a simplified procedure for applications for authorisation submitted between 30 December 2024 and 1 July 2026. The current national regime as strengthened by the proposed changes and the well-established regulatory relationships with current Licence Holders amply justify a simplified process.

2. **Do you see other areas of alignment?**

Yes. There are areas of the current regime that are stricter than the incoming MiCAR regime and hence will be superseded once MiCAR directly applies. The VFA Agent Requirement and the IT Auditor Requirement are examples of elements of the current regime, which, we believe, are not consistent with MiCAR. Both will likely have to be abolished or replaced by an approach based upon the outsourcing of verifications or investigations by the MFSA to auditors or experts as provided for under Article 94 (1) (x) MiCAR.

However, at this stage a swift strengthening of the VFA Rulebook appears to us to be preferable to a more comprehensive and time-consuming review and alignment of the current regime to the incoming MiCAR.

3. **Do you agree with the proposed transitionary measures?**

No. We understand the MFSA's wish to move swiftly to the full application of the regime as strengthened by the proposed changes. However, we urge the MFSA to reconsider the proposed transitionary period of just three months and delay full application of the new requirements (pertaining to (i) the orderly wind-down plan; (ii) service-specific requirements and (iii) whitepaper disclosure requirements) by at least an additional three months. Compliance with these requirements, including, as needed, the development and implementation of related policies and procedures will take time and require a significant effort by firms. Moreover, wind-down planning such as to ensure an orderly that is solvent wind-down may also require the build-up of additional financial resources. In our experience hasty implementation and change management under considerable time pressure delivers sub-optimal results not least in terms of the targeted mitigation of potential consumer harm. Better regulatory outcomes can be achieved with an extended transitional period combined with a strong regulatory dialogue accompanying the implementation phase up to the full application of the new requirements.

As EMA we stand ready to contribute to that dialogue and would much welcome an exchange on this and subsequent steps of regulatory reform towards full application of MiCAR at your earliest convenience.