



Verena Ross
Chair of the European Securities and Markets Authority

John Berrigan
Director General of the Directorate-General for Financial Stability,
Financial Services and Capital Markets Union

Brussels, 4 November 2024

Subject: Authorisation Process for Crypto Asset Service Providers

Dear Ms Verena Ross,
Dear Mr John Berrigan,

On behalf of the blockchain industry we would like to raise our concerns regarding the delayed adoption of the regulatory technical standards (RTS) for the information to be included in an application for authorisation as a crypto-asset service provider (CASPs) under Article 62(5) of the Markets in Crypto Assets Regulation (MiCA) (RTS on authorisation).

Our members are preparing for the application of the new rules under MiCA, ensuring they can provide services in a compliant manner while maintaining high levels of consumer protection and benefiting from the passporting regime—one of MiCA's key achievements. However, delays in the adoption of the RTS on authorization have created legal and regulatory uncertainty about whether the application process will start on time. This uncertainty is affecting the ability to secure a licence in a timely fashion before MiCA takes effect on 30 December.

Given that ESMA submitted revised RTS on authorisation on the 16th of October, and the European Commission endorsed the new RTS on authorisation only on the 31st of October, national competent authorities (NCAs) and applicant CASPs will have less than two months to publish final authorisation requirements, open the application process, submit and review the applications before MiCA takes effect. Given the amount of documents and information to be submitted based on the current draft of the RTS on authorisation, this timeline seems impractical given the level of complexity associated with this process and the number of CASPs and NCA's involved. Under such time pressure it will be very difficult for the responsible NCA to manage the CASP application properly which is crucial for launching effective supervision based upon a well-established regulatory relationship.

The 18-month grandfathering period offers minimal support, as it allows Member States the discretion to not apply, or shorten, their grandfathering periods for applicant CASPs. This national discretion afforded to Member States is resulting in widely diverging grandfathering periods ranging from 5 (e.g. Lithuania) up to 18 months (e.g. Cyprus, Denmark, France, Greece, Poland) impacting CASP compliance programs, particularly where passporting, a key feature of the EU regulatory regime, may be concerned. In some cases, this NCA inconsistency has stopped registrations under the national VASP regimes (e.g. Cyprus, France, Malta, Ireland).

For instance, an application thoroughly processed in Poland would not necessarily prevent service disruptions in Lithuania by the end of May 2025, as Lithuania's grandfathering period would only



last for 5 months. Similarly, an application submitted in Lithuania in December would not ensure the continuation of operations in France.

In the event of reasonably foreseeable delays in the processing a MiCA licences by 30 December, CASPs, consumers and investors will face real regulatory and legal risks and uncertainty while the applications are still being processed. This may lead to service disruptions, affecting markets and consumers, to help avoid non-compliance with local requirements in certain Member States. This could potentially prevent clients from accessing their assets or performing transactions, causing serious customer detriment and negative financial consequences across all EU Member States. Moreover, the reputational damage may well affect the entire EU/EEA crypto-asset market, which MiCA is intended to help by creating a regulatory framework aimed at the protection of customers in a fully harmonised fashion across all EU/EEA jurisdictions.

To mitigate such risks, the only option for CASPs would be to start the authorisation process in all Member States ahead of MiCA's application, which is commercially and operationally unfeasible, especially for smaller cross-border CASPs. This option is already impractical, as some Member States have already stopped accepting applications under the pre-MiCA national regimes. The absence of a harmonised approach to authorisations and transitional measures also raises level playing field issues for the nascent industry within the single market, which is undesirable for competition.

Additionally, ESMA is still expected to finalise its third and final package of technical standards and guidelines for CASPs in December, which will also need to be adopted in time by the Commission. This would also require supervisory flexibility with respect to industry timeline for compliance with these rules particularly as some RTS e.g. those with data reporting requirements require in-house systems to be built and industry interoperability to be agreed for data sharing. At the same time, certain Member States have yet to designate the relevant NCA under MiCA, potentially leading to further delays.

Given the concern expressed above, we would like to ask ESMA to consider measures to mitigate the obvious operational, regulatory and legal risks being faced by industry and NCAs such as issuing a 'no action' letter under Article 9a of the Regulation No 1095/2010 until the end of June 2025. Such a letter would help to reduce uncertainty for companies seeking CASP licences during this period and help to clarify the regulatory position for the NCAs. This would also encourage a greater focus on coordination among NCAs and prevent NCAs from initiating individual enforcement actions against CASPs whilst ongoing applications under MiCA across Member States are being considered ESMA could also encourage NCAs to offer longer and more harmonised transitional periods to reduce the risk that applications will still be incomplete by the end of the existing grandfathering periods.

We thank you for considering our observations and request, and we remain at your disposal to elaborate further on our views.

With kind regards,

Blockchain for Europe Association Initiative (BC4EU)
Electronic Money Crypto (EMA)
European Initiative (EUCI)
International Association for Trusted Blockchain Applications (INATBA)