ESMA CONSULTATION PAPER ON TECHNICAL STANDARDS SPECIFYING CERTAIN REQUIREMENTS OF MARKETS IN CRYPTO ASSETS REGULATION (MiCA) – SECOND CONSULTATION PAPER

Content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment

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Q1: Do you agree with ESMA's assessment of the mandate for sustainability disclosures under MiCA? (p. 12)

No comment

Q2: In your view, what features of the consensus mechanisms are relevant to assess their sustainability impacts, and what type of information can be obtained in relation to each DLT network node? (p. 12)

No comment

Q3: Do you agree with ESMA's approach to ensure coherence, complementarity, consistency and proportionality? (p. 13)

No comment

Q4: Do you agree with ESMA's approach to mitigating challenges related to data availability and reliability? Do you support the use of estimates in case of limited data availability, for example when data is not available for the entirety of a calendar year? (p. 13)

No comment

Q5: What are your views on the feasibility and costs of accessing data required to compute the sustainability metrics included in the draft RTS? (p. 13)

No comment

Q6: Do you agree with ESMA's description on the practical approach to assessing the sustainability impacts of consensus mechanisms? If not, what alternative approach would you consider suitable to assess these impacts? (p. 15)

No comment

Q7: Do you agree with the definitions proposed in the draft RTS, in particular on incentive structure and on DLT GHG emissions? If not, what alternative wording would you consider appropriate? (p. 15)

No comment

Q8: In your view, are the proposed mandatory sustainability indicators conducive to investor awareness? If not, what additional or alternative indicators would you consider relevant? (p. 15)

No comment

Q9: Do you consider the proposed optional sustainability indicators fit for purpose? If not, what additional indicators would you consider relevant? Would you agree to making these optional sustainability indicators mandatory in the medium run? (p. 15)

No comment

Q10: Do you consider the principles for the presentation of the information, and the template for sustainability disclosures fit for purpose? If not, what improvements would you suggest? (p. 15)

No comment

Q11: In your view, are the calculation guidance for energy use and GHG emissions included in the draft European Sustainability Reporting Standards relevant for methodologies in relation to the sustainability indicators under MiCA ? If not, what alternative methodologies would you consider relevant? For the other indicators for which the calculation guidance of the ESRS was not available, do you consider that there are alternative methodologies that could be used? If so, which ones? (p. 15)
No comment

Q12: Would you consider it useful that ESMA provides further clarity and guidance on methodologies and on recommended data sources? If yes, what are your suggestions in this regard? (p. 15)
Yes, further clarity and guidance on methodologies and on recommended data sources would be very welcome. In line with ESMA's statutory mandate to update the RTS in the light of regulatory and technical developments, we would also welcome a timely review and consultation after the first application phase of the RTS to reflect the evolving market practice.

Continuity and regularity in the performance of crypto services

Q13: Is the definition for permissionless DLT in Article 1 sufficiently precise? (p. 20)
We welcome the standard definition of permissionless DLT in line with ISO – this provides consistency and allows industry wide application in a consistent manner. The question of liability remains in case CASPs are impacted by malfunction/disruption of permissionless DLT infrastructure. From our perspective, the answer to liability will evolve over time with experience gained from being involved in transactions based on permissionless DLT infrastructure.
Q14: Throughout the RTS, we refer to 'critical or important functions.' The term is borrowed from DORA and does not just capture ICT-specific systems. Does this approach make sense? (p. 20)
Yes, we see it as beneficial to refer to terms like "critical or important functions" consistently across several regulations. This implies that regulatory compliance can be achieved across several regulations, which creates synergies. It also creates common understanding and reduces misinterpretation. A clear definition on functions which are treated as "critical or important functions" could reference Article 3, point (22) of Regulation (EU) 2022/2554 (DORA) to ensure a harmonized application of the term.
Q15: Do you consider subparagraph (e) in Article 4(2) on external communications with clients in the event of a disruption involving a permissionless DLT appropriate for the mandate (i.e., does it constitute a measure that would ensure continuity of services)? (p. 22)
Yes, we value the measures described in Article 4(2) subparagraph (e) and consider them as appropriate. A disruption of a permissionless DLT should not be used to justify own failure/discontinuity of a CASP, in particular if such failure is attributable to an inappropriate business continuity framework.
Q16: Should this RTS also specify that CASPs should establish a business continuity management function (to oversee the obligations in the RTS)? In your view, does this fall within the mandate of 'measures' ensuring continuity and regularity? (p. 23)
The idea of a dedicated function for business continuity management is supported by us, consistent to other EU regulation. The business continuity management measures, including a "dedicated resource for their business continuity arrangements" ensures a resilient and robust service offering and promotes preventive measures creating standards for all CASPs. One of the main drivers for the development of the crypto assets markets is currently the retail flow with resulting requirements to CASPs. We see the aim to address the needs of such drivers proportionally and set business continuity management requirements accordingly.
Q17: Are there other organizational measures to be considered for specific CASP services? (p. 23)
Since Article 68(10)(a) of MiCA addresses continuity and regularity in the performance of the crypto-asset services, , we would not see the need to consider further requirements/measures adapted from traditional finance (i. e. MiFID) beyond those set out in the draft RTS.
Q18: Do you consider the obligation for CASPs to conduct testing of the business continuity plans in Article 4(4) via an internal audit function appropriate for the mandate? (p. 24)

We welcome this requirement as it creates trust and resilience of the implemented business continuity requirement and improves effectiveness.

Q19: In Art. 68(8), CASPs are required to take into account the scale, nature, and range of crypto asset services in their internal risk assessments. Is there support for this general principle on proportionality in Article 6? Do you support the proposed selfassessment under Article 6(2) and in the Annex of the draft RTS? (p. 24)

The proportionality principle is supported – with the emphasis that any misuse to avoid requirements by declaring "pseudo-insignificance" should be prevented. The self assessment as laid down under Article 6(2) and in the Annex of the draft RTS is also supported in its complexity as well as considering the goal to identify the scale and significance of the crypto asset business. However, several criteria are qualitative and therefore offer room for interpretation. A small clarification note is missing for the case where criteria is not applicable and how this will be treated e. g.: "(vi) how the private cryptographic keys of clients are secured under safekeeping" – not applicable to an operator of an MTS.

Offering pre- and post- trade data to the public

Q20: Do you agree with the description provided for the different types of CEX and DEX listed? (p. 28)

Agreed. Regarding transparency in general, the trading of crypto assets on a public blockchain inherently provides transparency as per chapter 5.2 para. 90 of the Consultation Paper and therefore would require appropriate transparency rules with the focus on analysis and avoidance of redundancy. However, the transparency rules and specification should account for prevention of market abuse (or any other/similar illegal actions).
Regarding the publication of information on the operating rules for trading platform, the opinion that these should be published free of charge to create greater transparency towards the market is supported.

Q21: For trading platforms: Please provide an explanation of (i) the trading systems you offer to your users, (ii) which type of orders can be entered within each of these trading systems and (iii) whether you consider these trading systems to be a CEX or a DEX (please explain why)? (p. 28)

(i)   In accordance with Annex I Table 1: "continuous auction order book trading system" and "any other trading systems. It is planned to operate an MTF using RfQ mechanism at the beginning of the service and subsequently switch to CLOB.

(ii) Market-, Limit-, Stop market-, Stop limit/market-, Trailing stop-, One-cancels-other-, Iceberg-, Immediate-or-cancel-, Fill-or-kill-, Book-or-cancel-, Closing/Opening-Auction limit/market-, Auction only limit/market, Intraday auction only-, and quotes in continuous trading and auction.

(iii) The offering of a spot market with CLOB is a CEX as defined in para. 94 of the Consultation Paper.

Q22: Do you consider the trading systems described, and the transparency obligations attached to each trading system, in Table 1 of Annex I of the draft RTS appropriate for the trading of crypto-assets? Do you offer a trading system that cannot meet the transparency requirements under the provisions in this Table? Please provide reasons for your answers. (p. 29)

Publication of "the aggregated number of orders and the crypto-assets that they represent at each price level for at least the five best bid and offer price levels" is considered appropriate and applies to our set-up.
We will not offer a trading system which cannot meet the transparency requirements under the provisions in Table 1 of Annex I of the RTS.

Q23: Regarding more specifically AMMs, do you agree with the definition included in Table 1 of Annex I of the draft RTS? What specific information other than the mathematical equation used to determine the price and the quantity of the asset in the liquidity pools would be appropriate to be published to allow a market participant to define the price of the assets offered in the liquidity pool? (p. 30)

For fair treatment and completeness, we urge to apply the same or by their nature equal transparency standards to any kind of offered markets, trading systems or CASPs where crypto assets are traded, valuing each individual characteristic of such market/service and with that the associated transparency requirement.

Q24: Do you agree with ESMA's proposals on the description of the pre-trade information to be disclosed (content of pre-trade information) under Table 2 of Annex I of the draft RTS? If not, please explain why. If yes, please clarify whether any elements should be amended, added and/or removed. (p. 30)

We welcome standard practice applicable to all market participants without exemption. Explicitly stated requirements to pre-trade information and its publication are acknowledged and agreed as proposed. No further amendments or additions to be considered at this stage – we would welcome a possibility to have additional consultations and with that the possibility for change in due course, especially after the first application phase of the RTS.

Q25: Do you agree with ESMA's proposals to require a specific format to further standardise the pre-trade information to be disclosed (format of pre-trade information)? If not, please explain why and how the pre-trade information can be harmonised. If yes, please clarify whether any elements should be amended. (p. 30)

We welcome standard practice applicable to all market participants without exemption. It would be helpful and appreciated if no format requirements for pre-trade information would be introduced. Only functional / content requirement is desired. The existence / use of RfQ models should be reflected. In particular, a way should be found to make a pre-arranged trade facility possible/attractive via similar regulation as in MiFID2. This would increase transparency for off-book transactions, create cost-efficient synergies for trading members and regulators with regard to reporting channels, and provide scalable access points for CASPS to also perform OTC transactions.

Q26: Do you agree with the proposed approach to reserve and stop orders? (p. 32)

Agreed and we welcome the standard practice applicable to all market participants without exemption. We also acknowledge the benefits of embedded order management facilities and value the orientation on the existing rules applied within MiFIR. In general, this implies that regulatory compliance can be achieved (by fulfilling requirements) to more than one regulation and create synergies. It also creates common understanding and reduces misinterpretation.

Q27: Do you agree with the proposed list of post-trade information that trading platforms in crypto assets should make public in accordance with Tables 1, 2 and 3 of Annex II of the draft RTS? Please provide reasons for your answers. (p. 33)

Agreed and we welcome the standard practice applicable to all market participants without exemption. We would note that the requirement "as close to real time as technically possible" might be subject to interpretation and hence offers room for deviation. Explicitly stated requirements to post-trade information and its publication are acknowledged and agreed as proposed. No further amendments, additions to be considered at this stage – we would welcome a possibility to have additional consultations and with that the possibility for change in due course, especially after first the application phase of the RTS.

Q28: Is the information requested in Table 2 of Annex II of the draft RTS sufficient to identify the traded contract and to compare the reports to the same / similar contracts. (p. 33)

Yes, all relevant and necessary data are specified for transaction identification and distinction of trades/contracts.

Q29: Is there any other information, specific to crypto-assets, that should be included in the tables of Annex II of the draft RTS? Please provide reasons for your answers. (p. 33)

No, the specified information is sufficient. Post-trade information and its publication are acknowledged and agreed as proposed. No further amendments, additions to be considered at this stage – we would welcome a possibility to have additional consultations and with that the possibility for change in due course, especially after the first application phase of the RTS.

Q30: Do you expect any challenges for trading platforms in crypto assets to obtain the data fields required for publication to comply with pre- and post-trade transparency requirements under Annex I and Annex II of the draft RTS? (p. 33)

No, the specified data set is/becomes available while trading and is therefore automatically available. The assumption is that the challenge will become present during the alignment on the format. For that purpose, examples, and constant communication between market operators and the recipients of the data (i. e. receiving authorities) together with sufficiently granted time for implementation/improvement will be of significant importance.

Q31: What do you consider to be the maximum possible delay falling under the definition of "as close to real-time as is technically possible" to publish post-trade information in crypto-assets? Please provide reasons for your answer. (p. 34)

We agree with the outlined information in chapter 5.2.2 on post-trade transparency (paras. 126 to 128) and consider the stated time periods for normal market function appropriate. For abnormal market function, the maximum possible delay for post-trade information would be helpful for publication, if specified, and allow a standard application to all participants without exemption.

Q32: Do you agree with ESMA's approach on the requirements to be included in the draft RTS in relation to a trading platform's operating conditions? Please provide reasons for your answer. (p. 35)
We welcome the standard practice applicable to all market participants without exemption and agree to ESMA's proposal for "trading platforms to publish the information on the operating rules for the trading platform free of charge and in a manner that is easily accessible, non-discriminatory, prominent, comprehensible, fair, clear and not misleading". We support the opinion that this information should be published free of charge to create greater transparency towards the market.

Q33: Do you consider that ESMA should include in the RTS more specific disclosure rules regarding a trading platform's operating conditions, in particular in relation to colocation and access arrangements? (p. 35)
We welcome the standard practice applicable to all market participants without exemption providing operators of platform degrees of freedom. This implies a standard ruleset without specific rules regarding operation conditions. The current proposal is sufficient however a possibility for a revisit should be offered and consistent application of all market participants ensured.

Q34: From your experience, are all crypto-assets trading platforms making their data available free of charge? If not, what specific barriers have you encountered to access the data (e.g. price, level of disaggregation). (p. 36)
No comment

Q35: Do you agree with the level of disaggregation proposed in the draft RTS? Please provide reasons for your answer. (p. 36)
No comment

Q36: In the context of large number of CASPs and possible different models of data access, what kind of measures (common messages, common APIs, others) would you consider feasible to ensure effective and efficient access to data? (p. 42)
In general, an effective but also efficient access to data is highly important for a crypto asset ecosystem. Internal management but in particular external supervision is depending on reliable and qualitative data. This issue is not only valid for CASP. Even in the developed financial markets, fragmented data is an issue. Therefore, it would be overly burdensome to set strict rules rather than a common guidance that CASPs can follow. We agree with the statement in para. 164 of the Consulation Paper that the set of characteristics should follow/be set similar set to MIFIR requirements.

Q37: Do you agree with using the DTI for uniquely identifying the crypto-assets for which the order is placed or the transaction is executed? Do you agree with using DTI for reporting the quantity and price of transactions denominated in crypto-assets? (p. 44)
We would urge to rely on existing field such as ISIN/ITIN so that DTI will remain to be a field in the white paper only or can be based on existing and used trade identifiers, but at least do not have to be included in any transaction reporting. To create new field in the trading and surrounding systems is treated/seen as creation of redundancy.

Q38: Are there relevant technical attributes describing the characteristics of the cryptoasset or of the DLT on which this is traded, other than those retrievable from the DTIF register? Please detail which ones. (p. 45)
No, parameters are agreed.

Q39: Do you agree with using the transaction hash to uniquely identify transactions that are fully or partially executed on-chain in orders and transactions records? Please clarify in your response if this would be applicable for all types of DLT, and also be relevant in cases where hybrid systems are used. (p. 45)
We agree as long as it is fulfilled that the hash has finality and integrity is not in question.

Q40: Do you agree that a separate field for the recording of "gas fees" should be included for the purpose of identifying the sequencing of orders and events affecting the order? (p. 46)

We see the advantage of this separate field, although we are not of the opinion that it is a must-have. In our opinion, it could be overly burdensome to assess this data as it might not be readily available.

Q41: Do you agree with the inclusion of the above data elements, specific for on-chain transactions, in both RTS? (p. 49)

We agree.

Q42: Are some of the proposed data elements technology-specific, and not relevant or applicable to other DLTs? (p. 49)

No comment.

Q43: Do you consider it necessary to add a different timing for the provision of identification codes for orders in the case of CASPs operating a platform which uses only on-chain trading? (p. 49)

Yes, we agree - not only the block creation but also the trade execution must be added.

Q44: Please suggest additional data elements that may be included to properly account for on-chain trading. (p. 49)

See answer to Q43.

Q45: Do you find the meaning of the defined terms clear enough? Should the scope be adjusted to encompass or exclude some market practices? Provide concrete examples. (p. 50)

Yes, it is clear enough.

Q46: Are there other aspects that should be defined, for the purposes of this RTS? (p. 50)

No.

Q47: Do you anticipate practical issues in the implementation of the proposed approach to reception and transmission of orders? (p. 50)

No comment.

Q48: What transaction information can be retrieved in cases where a CASP execute the order on a third country platform/entity? (p. 51)

We appreciate ESMA's approach outlined in para. 198. If transactions are executed on a third country platform, the same transaction information compared to EU27 trades must be retrieved in order to establish a level playing field.

Q49: Do you anticipate problems in retrieving information about the buyer/seller to the transaction? (p. 51)

In general no, although it can happen that data from certain jurisdictions cannot be retrieved. Nevertheless, this should not hinder the proposed rules.

Q50: Do you anticipate practical issues in the implementation of the methods for client identification that are used under MiFIR? (p. 52)

We see the clear necessity of solid KYC processes for CASPs, therefore we agree with the implementation of the methods for client identification that are used under MiFIR to be applied within MiCA and associated with these RTS. As always, proportionality must be applied in the operational implementation.

Q51: Do you anticipate practical issues in the implementation of the short selling flag? (p. 52)

We agree.

Q52: Do you consider that some of the proposed data elements are not applicable/relevant to trading in crypto-assets? (p. 53)
We consider the set of data as appropriate. As outlined in the proposal, we consider common formats as essential for a functioning record keeping and all associated processes.

Q53: Do you consider that additional data elements for CAPS operating a trading platform are needed to allow NCAs to properly discharge their supervisory duties? (p. 53)
No, there is no need for further data requirements for trading venues. Irrespective of that, additional data requirements might be identified at a later point in time and might be tackled in a refit process.

Q54: Do you believe that a specific definition of routed orders should be provided as it applies to orders that are routed by the trading platform for crypto-assets to other venues? Should this definition include CASPs operating a platform which uses only onchain trading? (p. 53)
In general, we welcome clear and specific definitions. From our perspective, also on-chain exchanges should be covered in order to set a level-playing-field.

Q55: Do you believe that fill-or kill strategies as referenced in MiFID II apply to trading in platforms for crypto-assets? Do they apply to partially filled orders? (p. 53)
Yes, we also see the possibility of fill-or-kill strategies, which therefore should be included.

Q56: Do you agree with using messages based on the ISO 20022 methodology for sharing information with competent authorities? (p. 54)
Yes, we promote a consistent messaging format already used by traditional finance as this supports the crypto asset adoption.

Machine readability of white papers and white papers register

Q57: Do you agree with the criteria proposed for identifying a relevant machine-readable format for the MiCA white paper and consequently with the proposal to mandate iXBRL as the machine-readable format for MiCA white papers, subject to the outcome of the study referred to in paragraph 239? (p. 62)
We find it helpful to analyse views and consider feedback as to whether the simplicity of the process of preparing a MiCA white paper in iXBRL would be desirable and usable for white paper creators if iXBRL is mandated as the required format of MiCA white papers.

Q58: If yes, do you agree that the white paper should be required to be a stand-alone document with a closed taxonomy (i.e., without extensions nor complex filing rules)? (p. 62)
No comment

Q59: If not, please elaborate your answer and propose alternative solutions that would best meet the criteria identified in section 7.3. (p. 62)
No comment

60: Are you currently preparing white paper documents in a different machinereadable format? If yes, which one? (p. 62)
No comment

Q61: How different is the white paper mandated by MiCA and further specified in this Consultation Paper from any white paper which you have drawn up or analysed prior to MiCA? Do you think that any additional information that

used to be included in white papers prior to MiCA but that is no longer allowed under the relevant provisions of MiCA for the white paper will continue to be made available to investors as marketing communication? (p. 62)

No comment

Q62: Do you agree with ESMA's estimate of the cost of preparing a white paper in iXBRL format? If not, where would you put the estimate of a preparing a white paper in iXBRL format (not considering costs of information sourcing which should be considered as base scenario)? (p. 62)

No comment

Q63: Do you agree with the proposed template for presenting the information as indicated in the Annex to this CP? We welcome your comments on the proposed fields and values/descriptions to be included in the fields - please provide specific references to the fields which you are commenting in your response and pay specific attention to the areas where additional explanatory description of the information is provided. (p. 62)

In addition to the envisaged information/fields presented in "ANNEX - Data necessary for the classification of crypto-asset white papers" white paper related information/field should be enhanced by fields providing last update date/time and version as well auditing firm's name. In 9.2.8 - ANNEX II: Table 2 - Disclosure templates for white papers for crypto-assets other than asset-referenced tokens or e-money tokens → N I.01 Date of notification, add fields for last update date/time and version; N I.09: How can this be relevant to Utility Tokens?;
Part G - Information on the rights and obligations attached to the crypto-assets – G.6 and G.7 → Both fields already listed in Part D; Part H – information on the underlying technology – H.8 and H.9→ please add "Auditing firm" ?

Q64: Are there additional data elements in the table of fields that would benefit from further explanatory descriptions to ensure that the information provided by a given issuer/offeror is understandable and comparable to the information provided by other issuer/offeror of the same type of crypto-asset? If yes, please elaborate and provide suggestions. (p. 63)

No comment

Q65: Would you deem it useful for ESMA to provide an editable template to support preparers with the compliance of the format requirements proposed in the draft ITSs? (p. 63)

Yes please, as it would be helpful.

Q66: Are there any other data elements that you would consider relevant to ensure that investors can properly compare different crypto-asset white papers and NCA can perform their classifications on the basis of harmonised information? (p. 68)

In addition to the envisaged information/fields presented in "ANNEX - Data necessary for the classification of crypto-asset white papers" white paper related information/field should be enhanced by fields providing last update date/time and version as well auditing firm's name.

Q67: Do you agree with ESMA's conclusion that an issuer, an offeror or a person seeking admission to trading of crypto-assets should always be eligible for an LEI? If not, please provide a description of the specific cases. (p. 68)

No comment

Q68: Do you agree with the proposed metadata elements, also considering the mandatory metadata expected to be mandated in the context of ESAP? (p. 68)

No comment

Q69. Do you have any feedback in particular with regards to the metadata on the "industry sector of the economic activities" and its relevance for the ESAP search function? (p. 68)

No comment

Q70: Do you agree with the listed definitions? Would you consider useful to clarify any other term used in the ITS? (p. 77)

No comment

Q71: Do you agree with the proposed requirements for publication on the website of the issuer, offeror or person seeking admission to trading? Would you consider necessary any additional requirements regarding the publication on the website? (p. 77)

No comment

Q72: In your view, is there any obstacle for the website of the relevant parties to allow for specific alerts? (p. 77)

No comment

Q73: In your view, what are the media most relied upon by the public to collect information on crypto-assets? In case you are an issuer, offeror or person seeking admission to trading, please specify/add which media you would normally use to communicate with investors and the reasons supporting your choice. (p. 77)

No comment

Q74: Should a social media or a web-based platform be media reasonably relied upon by the public, what are the risks that you see when using them to achieve dissemination of inside information in relation to crypto assets? Should the dissemination rather take place through traditional media channel? (p. 77)

No comment

Q75: Please comment the proposed means for dissemination of inside information? Please motivate your answer by indicating why the means they are/are not valuable tools for dissemination purposes. (p. 77)

No comment

Q76: Would you add any means of communications for the persons subject to the disclosure obligation to consider when disseminating inside information? Please motivate your answer. (p. 77)

No comment

Q77: Do you agree with the technical means for delaying the public disclosure of inside information as described? (p. 77)

No comment