

# 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](http://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](http://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](http://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	Deutsche Börse Group
Activity	Credit institutions, CSDs, investment firms, market operators, e-money institutions, UCITS management companies, AIFs
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Germany

## 2 Introduction

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

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## 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?**

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**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.:**

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**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.**

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**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.**

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**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?**

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**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?**

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**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?**

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**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?**

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**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?**

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**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?**

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

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**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>  
DBDX/Crypto Finance Germany (CFD) will seek authorisation to provide CASP services (according to the “simplified procedure”, if applicable) in their home Member State Germany and intend to use the passporting regime set out in Article 65 MiCA to provide CASP services on a cross-border basis in other Member States. These other Member States will initially encompass certain key client jurisdictions (e.g. France, Ireland, Italy, Netherlands and Spain) and will be expanded according to market demand.

In this context, we would like to bring an important timing aspect to your attention:

The MiCA passporting regime in Article 65 MiCA applies to “crypto-asset service providers”, i.e. entities that are allowed to provide crypto-asset services in accordance with Article 59 MiCA (Article 3 no. 1 para. 15 MiCA). This means either (i) entities authorized as a CASP in accordance with Article 63 MiCA (Article 59 no. 1 lit. a MiCA) or (ii) certain financial entities that have undergone a notification procedure in accordance with Article 60 MiCA (Article 59 no. 1 lit. b MiCA).

We therefore understand that making use of the passporting regime presupposes a completed authorisation or notification under MiCA. Consequently, while service providers already authorized under national law (like DBDX/CFD) may make use of the transitional regime (Article 143 No. 3 MiCA) to continue providing services in their home jurisdiction, they are not eligible for passporting until they have obtained CASP status (according to the “simplified procedure”, if applicable) under MiCA.

DBDX/CFD would ideally want to make use of the MiCA passporting regime as soon as it starts to apply. Since this presupposes an existing CASP status, a respective application for authorisation as a CASP would have to be filed well in advance of the date of application of MiCA and be decided upon with effective date 30 December 2024 or in due course thereafter. However, we note that Article 143 para. 6 MiCA on the simplified procedure refers to “applications for an authorisation that are submitted between 30 December 2024 and 1 July 2026”, which indicates 30 December 2024 as the earliest point in time for the submission of an application for authorisation.

We would hence appreciate guidance from ESMA on whether the MiCA passporting regime could potentially also apply to service providers that are still in the transitional regime and/or if applications for CASP authorisation may be submitted already before the date of application of MiCA in order to make use of the passporting regime at an early point in time.

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**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.**

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DBDX intends to operate a multilateral trading facility (“MTF”) for crypto assets. CFD will provide crypto custody services (i.e., custody, administration and safeguarding of crypto assets) to trading participants of DBDX and perform the settlement of transactions concluded at DBDX. The initial scope of tradable instruments is limited to crypto currencies, but may expand over time according to market demand.

In this context, the qualification of certain crypto assets as either crypto assets under MiCA or (MiFiD) financial instruments is of particular importance for DBDX/CFD as it determines the scope of required authorisations (i.e. under MiCA, MiFID, or both frameworks).

We note that ESMA intends to address the qualification of certain crypto assets as financial instruments as part of the third MiCA consultation package scheduled for Q1 2024. Given the above implications and considering the timelines to obtain the respective authorisations, we would welcome (indicative) guidance on this question rather sooner than later.

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

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

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**(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?**

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

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**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?**

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

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

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

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

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

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

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

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

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

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

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

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

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



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