

Filters applied:

Legal act = MiCA

Download date: Monday, October 6, 2025 - 13:23

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ESMA_QA_2068	09-01-2024

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ESMA_QA_2069	09-01-2024
ESMA_QA_2067	09-01-2024
ESMA_QA_2005	07-11-2023
ESMA_QA_765	11-04-2023

Submission Date

25/09/2025

ESMA_QA_2654

Status: Question Published

Additional Information

Level 1 Regulation

MiCA

Topic

White paper

Additional Legal Reference

143(2)

Subject Matter

Offerors and CASPs' responsibilities with regards to white papers for Title II tokens admitted to trading prior to 30 December 2024

Question

What are the respective responsibilities of offerors, persons seeking admission to trading, operators of trading platforms and other CASPs mentioned in Article 66(3) of MiCA with regard to white papers for crypto-assets other than ARTs and EMTs that were admitted to trading prior to 30 December 2024?

ESMA_QA_2579

Submission Date

20/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto assets

Subject Matter

Shared order book model

Question

Under the Markets in Crypto-Assets Regulation (MiCA), is it permissible for an EU trading platform for crypto-assets that is operated by a crypto-asset service provider (CASP) authorised under MiCA to pool its order book with that of one or more non-

EU trading platforms operated by an entity or entities that are not authorised as CASPs under MiCA?

ESMA Answer

20-06-2025

Original language

No, this model would be in breach of the authorization requirements under Article 59 of MiCA and would constitute the unauthorized provision of the crypto-asset service of operation of a trading platform for crypto-assets in the Union by the unauthorized entities whose platform(s) share the order book with the EU-authorized CASP.

Reference is made to the model where two or more crypto-asset platforms merge their individual order books into a single, unified order book from which orders are matched. This model involves - as operators of said shared order book - one or more entities that are not authorised as CASPs under MiCA.

ESMA understand that this integrated model enables buy and sell orders from different platforms to be combined into one aggregated order book so that multiple trading platforms (including non-EU ones) can access the same liquidity pool, allowing orders from clients across different platforms to be matched.

According to Article 3(18) of MiCA, the service of operation of a trading platform for crypto-assets means '*the management of one or more multilateral systems, which*

bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets'. In the view of ESMA, the management of an order book is one of the fundamental parts of the management of multilateral systems bringing together or facilitating the bringing together of multiple third-party purchasing or selling interests in crypto-assets.

On this basis, ESMA is of the view that it should be regarded as falling within the scope of the crypto-asset service defined in Article 3(1)(18) of MiCA. Hence, the service should be regarded as being carried out by each entity operating the different order books that are being shared.

It ensues that, in accordance with Article 59 of MiCA, any person managing said order book should be authorised to do so under Article 63 of MiCA (or should have notified its intention to operate a trading platform for crypto-assets in accordance with Article 60 of MiCA).

Thus, in ESMA's view, Articles 59, 60 and 63 of MiCA prohibit an order book managed with entities that are not authorised as crypto-asset service providers (CASPs) under MiCA.

This Q&A does not assess whether other types of shared order books would fully comply with all provisions of MiCA.

ESMA_QA_2552

Submission Date

28/05/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

White paper

Additional Legal Reference

Article 5(2) of MiCA

Subject Matter

Application of Title II requirements to CASPs operating a trading platform for crypto-assets

Question

Article 5(2) of MiCA states that “when a crypto-asset is admitted to trading on the initiative of a trading platform and a crypto-asset white paper has not been published in accordance with Article 9 in the cases required by this Regulation [emphasis added], the operator of that trading platform for crypto-assets shall comply with the requirements set out in paragraph 1 of this Article”.

In turn, Article 9 requires offerors and persons seeking admission to trading of crypto-assets other than ARTs or EMTs to publish their crypto-asset white papers and any marketing materials.

However, recital 22 of MiCA states that “Where crypto-assets have no identifiable issuer, they should not fall within the scope of Title II, III or IV of this Regulation”.

Does the expression “in the cases required by this Regulation” mean that Article 5(2) exempts operators of trading platforms from the requirements of Article 5 for crypto-assets without an identifiable issuer?

ESMA_QA_2551

Submission Date

28/05/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 3(1)(22) of MiCA

Subject Matter

Overlap between offers of crypto-assets and placing

Question

Can persons who are authorized in writing by the issuer to offer crypto-assets to the public conduct this activity on a commercial basis, continuously, repeatedly, and possibly for different issuers (whether concurrently or consecutively) without having a MiCA CASP license for the crypto-asset service 'placing of crypto-assets'?

ESMA_QA_2550

Submission Date

28/05/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 75 of MiCA

Subject Matter

Payouts in fiat currency by CASPs in the context of exchange services

Question

Should the business model whereby a crypto-asset service provider (CASP) provides exchange services but only ever allows clients to collect their balance in fiat currency be allowed?

ESMA_QA_2486

Submission Date

18/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Interests earned from client funds deposited at credit institutions

Question

Does MiCA permit crypto-asset service providers (CASPs) to earn interest on client funds deposited in a savings account at a credit institution?

ESMA_QA_2463

Submission Date

12/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Autotrading

Question

Do “copy trading services” (also referred as “auto trading services”) related to crypto-assets fall within the scope of portfolio management or any other crypto-asset services as listed in Article 3(1)(16) of MiCA?

ESMA Answer

07-04-2025

Original language

Since “auto trading services” or “copy trading services” are not defined by MiCA, it is important to determine and qualify the crypto-asset service(s) being provided by the crypto-asset service provider (CASP) in question. Such qualification is of importance to determine which authorisation the CASP should obtain as well as other relevant MiCA requirements that are applicable.

ESMA already considered the issue of “copy trading services” (and their variations) in an extensive manner in relation to financial instruments¹ under the MiFID II² framework. Extensive guidance is thus available in relation to copy trading services in relation to financial instruments here:

- MiFID Questions and Answers, Investor Protection & Intermediaries, 2012, Question 9: Article 4(1)(9) of MiFID - Automatic execution of trade signals: <https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-382.pdf> (page 15)
- Supervisory Briefing on supervisory expectations in relation to firms offering copy trading services, 2023: https://www.esma.europa.eu/sites/default/files/2023-03/ESMA35-42-1428_Supervisory_Briefing_on_Copy_Trading.pdf

The definitions and scope of the investment services of “investment advice”³ and “portfolio management”⁴ under MiFID II and of the crypto-asset services of “providing advice on crypto-assets”⁵ and “providing portfolio management of crypto-assets”⁶ under MiCA are similar and should be interpreted in a consistent way.

ESMA considers that the guidance provided under MiFID II in the Q&A and the supervisory briefing referenced above applies, *mutatis mutandis*, to copy trading services under MiCA but regarding only the qualification of what type of crypto-asset service(s) are provided. Therefore, Q&A9 (in its entirety) and sub-sections 2.1 and 2.2 of the supervisory briefing would be relevant. Relying on this guidance, CASPs should assess, on a case-by-case basis, what type of crypto-asset service(s) is(are) triggered when providing copy trading services in relation to crypto-assets according to different models.

ESMA_QA_2578

Submission Date

20/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 75(7)

Subject Matter

Commingling clients' crypto-assets with crypto-assets from other entities of the group when acting as custodian

Question

Some crypto-asset service providers (CASPs) providing custody and administration of crypto-assets on behalf of clients (as defined in Article 3(1)(17) of MiCA) have sister companies that may provide certain services to the CASP's clients, for instance, liquidity or offer lending services. These sister companies may be using the CASP as their custodian and the CASP will hold their crypto-assets within the same wallet(s) to custody other clients' crypto-assets.

Under MiCA, is a CASP providing custody and administration of crypto-assets on behalf of clients allowed to hold clients' crypto-assets within the same wallets as crypto-assets belonging to entities of the same group?

ESMA Answer

17-06-2025

Original language

According to Article 75(7) of MiCA, CASPs are required to ensure that, on the distributed ledger, clients' crypto-assets are held separately from their own crypto-assets. In practice, this means that the wallet addresses used for holding clients' crypto-assets should be different from the wallet addresses used for holding proprietary crypto-assets.

Whilst crypto-assets belonging to other entities belonging to the same group should not be regarded as "own crypto-assets" of the CASP for the purpose of Article 75(7) of MiCA, the fact that a CASP-custodian commingles its clients' crypto-assets with crypto-assets belonging to entities of the same group introduces conflicts of interest and potential risks for clients.

For instance, due to information asymmetry, the sister company may gain an advantage over other clients by becoming aware of circumstances or incidents that would prompt it to withdraw its crypto-assets from the CASP's custody. Such circumstances may include, for example, a potential shortfall in crypto-assets or the imminent insolvency of the CASP. As many CASPs use omnibus wallets, a significant withdrawal by a sister company can negatively impact other clients.

In accordance with Article 72 of MiCA, CASPs shall implement and maintain effective policies and procedures, taking into account the scale, the nature and range of crypto-asset services provided, to identify, prevent, manage and disclose conflicts of interest. In addition, Article 4(1) of Commission Delegated Regulation (EU) .../... of 27 February 2025 supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers and the div and methodology for the content of disclosures on conflicts of interest provides that “the conflict of interest policies and procedures shall be set out in writing and shall take into account: (a) [...]; (b) where the crypto-asset service provider is a member of a group, any circumstances which may give rise to a conflict of interest due to the structure and business activities of other entities within the group”.

This obligation applies to cases described above where a CASP-custodian holds crypto-assets that belong to entities of the same group (as defined in Article 2, point (11), of Directive

2013/34/EU of the European Parliament and of the Council¹). The CASP-custodian should, for instance, avoid commingling clients' crypto-assets with crypto-assets held on behalf of entities of the same group. However, this would not be in itself sufficient and the CASP-custodian should take all measures to ensure “that the risks of damage to the interests of the crypto-asset provider or its clients will be prevented or appropriately mitigated” (Article 4(7) of the Commission Delegated Regulation on conflicts of interest of CASPs). If the CASP-custodian is not able to do so, it should refrain from providing the service to its sister entities.

ESMA_QA_2608

Submission Date

20/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Pre-funding clients' orders with clients' crypto-assets

Question

Does the Markets in Crypto-Assets Regulation (MiCA) allow crypto-asset service providers (CASPs) to use clients' crypto-assets for pre-funding client orders?

ESMA Answer

09-07-2025

Original language

Pre-funding client transactions using clients' crypto-assets qualifies as the sub-custody of client's crypto-assets. As such, CASPs pre-funding clients' transactions with clients' crypto-assets must adhere to the requirements outlined in Articles 70 (Safekeeping of clients' crypto-assets and funds) and 75 (Providing custody and administration of crypto-assets on behalf of clients) of MiCA. In accordance with Article 75(9) of MiCA, the pre-funding of clients' transactions using clients' crypto-assets may thus only be done where the third party holding the clients' crypto-assets is a CASP authorised in accordance with Article 59 of MiCA and clients have been informed accordingly. Consequently, the pre-funding of client transactions using client's crypto-assets is only permissible under MiCA where the third-party holding the client's crypto-assets is authorised to provide the crypto-asset service of custody and administration of crypto-assets on behalf of clients in accordance with MiCA.

Where clients' crypto-assets are sent to a third party for the settlement of a transaction that has already been executed for the specific purpose of settling a specific order, this should not be seen as sub-custody.

ESMA_QA_2607

Submission Date

04/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Mining

Subject Matter

Staking on own account

Question

Does the Markets in Crypto-Assets Regulation (MiCA) permit the staking of clients' crypto-assets by crypto-asset service providers (CASPs) for their own account?

ESMA Answer

09-07-2025

Original language

Article 70(1) of MiCA provides that CASPs that “hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to (...) prevent the use of clients’ crypto-assets for their own account”.

CASPs are thus expected to refrain from using clients’ crypto-assets for their own account. Consequently, MiCA does not allow the staking of clients’ crypto-assets by CASPs for their own account, even in cases where the client has explicitly provided consent. In line with the European Commission Q&A 2067 available on ESMA’s website, CASPs and clients may mutually agree on the terms under which staking-as-a-service is provided by the CASP, provided that the profits from staking do not solely benefit the CASP₁.

In addition, and by virtue of their regulated status, CASPs providing staking-as-a-service to their clients should act in the best interests of their clients. When providing crypto-asset services, CASPs must act in accordance with the requirements of Article 66(1) of MiCA and ensure that they are acting honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients. In addition, they must comply with their obligations under Article 66(2) of MiCA and ensure that all information, including marketing communications, addressed to clients or prospective clients is fair, clear and not misleading. Therefore, ESMA recommends that CASP clearly communicate about the costs ultimately borne by clients using the CASP as intermediary to stake their crypto-assets. Accordingly, CASPs should be transparent about any fees or commissions

taken by the CASP itself as well as those charged by third parties involved in the provision of the service.

1 As clarified in European Commission Q&A 2067, staking-as-a-service is when the benefits of staking are shared between the CASP and the client: “staking services (also referred to as staking-as-a-service) are provided to clients for a consideration by intermediaries that undertake to stake the clients’ crypto assets on their behalf. The staking service provider will collect the yield or obtain the validator privileges allowing them to earn block rewards. This yield or these block rewards are then distributed between the service provider as consideration for their service (staking the assets on the client’s behalf, exercising validator obligations and collecting the block rewards, etc.), and the staking service provider’s clients, who are the ultimate owners of the crypto assets that are staked”.

ESMA_QA_2414

Submission Date

25/01/2025

Status: Question Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Art.78

Subject Matter

MiCAR CASP - Best Possible Outcome for the Client

Question

There is a practice in the crypto-asset industry when dealing with client orders which involves the following scenario:

- i) a crypto-asset service provider (CASP) providing the service of execution of orders (CASP-broker) receives client orders;
- ii) this CASP-broker systematically executes the orders received on behalf of the clients with another entity of the group as counterparty (the "group entity B") instead of executing such orders on the group's trading platform for crypto-assets;
- iii) group entity B then immediately places an offsetting order to hedge its exposure on the group's trading platform for crypto-assets.

In this scenario, the price offered to the client by group entity B (through the CASP-broker) is in excess of the top of book price achievable on the order book of the trading platform for crypto-assets to reflect a "guaranteed price" offered to the customer for a limited period, for example 30 - 60 seconds. Group entity B then enters an order on the group's trading platform on the same side as the customer order would have been had it been executed directly on the group's trading platform.

However, the price is not really guaranteed: if during the execution of group entity B's order on the group's trading platform, the price moves in favour of the client order, group entity B trades at that more favourable price but fills the client's order at the agreed "guaranteed price". But, if during the execution of group entity B's order, the price moves against the client order, the client's order will be filled by group entity B only if the price movement doesn't exceed the spread applied by group entity B when quoting the "guaranteed price". Otherwise the order of the client will be cancelled.

In such scenarios, the client pays:

- (i) to the CASP-broker: a fully disclosed commission for the "execution of their order", and
- (ii) to group entity B: a spread which is priced in to the "guaranteed price" quoted by group entity B.

Is this scenario compliant with MiCA?

ESMA_QA_2404

Submission Date

17/01/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Stablecoin

Subject Matter

Scope of public offering

Question

Regarding ARTs or EMTs under MiCAR, what services provided in or into the EU constitute an offering to the public, a seeking admission to trading or a placing of an ART or EMT?

ESMA Answer

17-01-2025

Original language

Answer provided by the European Commission

Since the application of Titles III and IV of MiCA on 30 June 2024, any issuer of an asset-referenced token (ART) or e-money token (EMT) offered to public or admitted to trading in the Union will have to be authorised in the EU in accordance with Article 16(1) and Article 48(1), subject to the transitional provisions relating to ARTs referred to in Article 143(4) and (5) of MiCA.

While the first sub-paragraph of Article 16(1) and Article 48(1) prohibits offering to public or seeking admission to trading unless the offeror or person seeking admission to trading is an authorised issuer complying with MiCA, the same applies to offering to public or seeking admission to trading by persons other than the issuer under the second subparagraphs of Article 16(1) and Article 48(1). Other persons than the issuer may offer to public or seek admission to trading of an ART or EMT, if the following conditions are met:

- the issuer of the ART or EMT is authorised in the EU in accordance with Article 16(1) or Article 48(1), respectively;
- the person must obtain a written consent from the issuer.

It follows from both first and second sub-paragraphs of Article 16(1) and 48(1) that offering to public or seeking admission to trading of ARTs or EMTs is only possible if the issuer of such tokens is authorised under MiCA.

Providing certain crypto-asset services amounts to an offering to public or seeking admission to trading. In particular, operators of trading platforms for crypto-assets that list ARTs or EMTs for which the issuer has not been authorised under MiCA are to be considered as persons seeking admission to trading on the own initiative of the operator under Articles 16(1) or Article 48(1).

Other crypto-asset services could also constitute an offering to the public, which requires a case-by-case assessment. For instance, providers of crypto-asset services engaged in exchange services, reception and transmission of orders or execution services could be regarded as making an offer where they promote or advertise, as part of these services, an ART or EMT.

Provision of crypto-asset services with respect to ARTs and EMTs that amounts to offering to public or admission to trading in non-compliance with Titles III and IV has been prohibited since 30 June 2024. This is the case also if the ARTs or EMTs had been first offered to public or admitted to trading before the application of Titles III and IV and continue to be offered to public or admitted to trading.

Disclaimer: The answer clarifies provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2397

Submission Date

10/01/2025

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

article 60 paragraph 5 MICA

Subject Matter

Registered AIFM and MICA

Question

Does article 60 paragraph 5 MiCA apply to registered (sometimes referred to as sub-threshold) Alternative Investment Fund Managers referred to in Article 3(2) AIFMD (Directive 2011/61/EU) ?

ESMA Answer

07-04-2025

Original language

Article 60(5) provides that “A UCITS management company or an alternative investment fund manager may provide crypto-asset services equivalent to the management of portfolios of investment and non-core services for which it is **authorised** [emphasis added] under Directive 2009/65/EC or Directive 2011/61/EU if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.”

Alternative investment fund managers referred to in Article 3(2) of the AIFMD are exempt from authorisation under the AIFMD – they are instead simply registered. As such they may not provide crypto-asset services on the basis of a notification under Article 60(5) of MiCA.

ESMA_QA_2349

Submission Date

26/11/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 67 / Paragraph 3

Subject Matter

Calculation of fixed overheads

Question

In Article 67, Paragraph 1, crypto asset providers shall at all time have prudential safeguards as the highest of the following;

- the amount of permanent minimum capital requirements indicated in Annex IV
- one quarter of the fixed overheads of the preceding year, reviewed annually

In Paragraph 3, the method to calculate the prudential requirement of one quarter of the fixed overheads of the preceding year, reviewed annually is stated as;

"Crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders or members."

When defining "total expenses" in the quoted sentence from Paragraph 3, does it in fact mean the total costs (fixed and variable overheads) after distribution of profits in the income statement for the preceding year, or is it meant to be the total fixed overheads after distribution of profits?

ESMA_QA_2342

Submission Date

25/11/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Possibility of natural persons and trusts / trustees to be authorised as CASPs

Question

Can natural persons (self-employed individuals) and trusts/trustees be considered as „other undertakings“ for the purpose of authorisation as a CASP?

ESMA Answer

12-12-2024

Original language

Natural persons and trusts/trustees cannot be considered as “other undertakings” for the purpose of authorisation as a CASP.?

ESMA_QA_2344

Submission Date

15/11/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Audit / certification of CASP financial statements

Question

Are CASPs required to get their financial statements audited on an annual basis in order to calculate their own fund requirements?

ESMA Answer

12-12-2024

Original language

Yes, CASPs should get their financial statements audited by an independent auditor on an annual basis. The exception to this is where the validation of financial statements by a specific national supervisor is allowed for in the national law of a CASP's home Member State.

ESMA_QA_2343

Submission Date

15/11/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Minimum capital requirements for CASPs

Question

What are the minimum capital requirements applicable to CASPs providing (i) only crypto-asset services listed under either Class 2 or Class 3, or (ii) providing crypto-asset services listed under Class 1 and Class 3 of Annex 4 of MiCA?

ESMA Answer

12-12-2024

Original language

The minimum capital requirement applicable to a CASP should be the one applicable to whichever of its services requires the higher minimum capital requirement.

In particular:

The minimum capital requirements applicable to a CASP authorised to provide only one or several crypto-asset services belonging to the same Annex 4 “Class” of crypto-asset service – should be:

- If the crypto-asset service(s) is/are listed in Class 2 of Annex 4, EUR 125 000;
- If the crypto-asset service(s) is/are listed in Class 3 of Annex 4, EUR 150 000.

The minimum capital requirement applicable to a CASP authorised to provide both Class 1 and Class 3 services should be EUR 150 000.

ESMA_QA_2653

Submission Date

08/11/2024

Status: Question Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 3

Subject Matter

How to distinguish between different execution services

Question

How should the crypto-asset services of 'exchange of crypto assets for funds' or 'exchange of crypto assets for other crypto assets' (Article 3(1)(16c and d respectively) of MiCA), 'execution of orders for crypto-assets on behalf of clients' (Article 3(1)(16e), and 'reception and transmission of orders for crypto-assets on behalf of clients' (Article 3(1)(16g)) be distinguished from one another?

ESMA_QA_2320

Submission Date

01/11/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 75 MiCA

Subject Matter

Clarification on Withdrawal Requirements under Article 75 of MiCA for CASPs

Question

I seek clarification regarding the obligations of Crypto-Asset Service Providers (CASPs) under Article 75 of the Markets in Crypto-Assets Regulation (MiCA) concerning the ability for customers to withdraw specific crypto assets. Specifically, does Article 75 require CASPs to enable customers to withdraw every cryptocurrency offered for trading on the platform? For example, if a cryptocurrency exchange allows customers to trade Dogecoin but faces technical limitations in facilitating direct Dogecoin withdrawals, would it suffice to offer a conversion option, allowing customers to exchange Dogecoin for Bitcoin, Ethereum, or fiat currency, which they can then withdraw?

ESMA_QA_2295

Submission Date

02/10/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Status of entities providing crypto-asset services as part of the grandfathering regime

Question

Are Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024 and which are authorised to continue to

do so under the law of a Member State in accordance with Article 143 of MiCA, considered to be crypto-asset service providers under the terms of MICA during the transitional period until they are authorised?

ESMA Answer

02-10-2024

Original language

No. Crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024 can continue to do so until the end of the applicable transition period (and not later than 1 July 2026), or until they are granted an authorisation, in accordance with MiCA.

Crypto-asset service providers authorised to perform their activities during the transitional period are not authorised within the meaning of this Article 3(1)(15) of MICA and therefore do not constitute “crypto-asset service providers” under the terms of MICA. The requirements of MiCA are therefore not applicable to them until they are granted an authorisation pursuant to Article 63.

As a consequence of the foregoing, when, under MiCA, an authorised crypto-asset service provider is subject to requirements in relation to another entity providing crypto-asset services’ compliance with requirements for crypto-asset service providers, the authorised crypto-asset service provider may consider that these requirements are deemed to be complied with by an entity providing crypto-asset services under the transitional regime until such entity ceases to benefit from the applicable transitional period.

An entity providing crypto-asset services under the transitional regime may therefore continue to provide its services to an authorised crypto-asset services provider, until the end of the applicable transitional period. Inversely, an authorised crypto-asset services provider can have recourse to such entity under the transitional regime until the end of the applicable transitional period, including in the context of Article 75(9) of MiCA.

In the absence of a transitional period under Regulation (EU) 2023/1113, this clarification should not be read as exempting any entities providing crypto-asset services from fulfilling their obligations under that Regulation.

As a reminder, please see [Q&A 2086](#) in relation to the provision of cross-border services during the transitional period.

ESMA_QA_2293

Submission Date

30/09/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Proprietary trading under MICA

Question

Do firms dealing on own account with regards to crypto-assets require a CASP license?

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission

According to Article 3(1)(15) of MiCA, a legal person or other undertaking is defined as a CASP if its occupation or business is the provision of one or more crypto-asset services to clients and if its acts on a professional basis.

Dealing on own account is defined under Article 4(6) MiFID as trading against proprietary capital resulting in the conclusion of transactions in or more financial investments. Similarly, for crypto-assets, dealing on own account is the trading against capital resulting in the conclusion of transactions in one or more crypto-assets.

Dealing on own account generally does not involve a client relationship as the service provider is not acting on behalf of its clients but its own name, e.g., proprietary trading on crypto-asset trading platforms. In those cases, a CASP license is not required.

In respect to proprietary trading on crypto-asset trading platforms, MiCA explicitly prohibits CASPs operating a trading platform from dealing on their own account on the same platform (Article 76(5)). However, in some cases, proprietary trading activities using proprietary capital may consist in the execution of crypto-assets services that involve a client relationship. This concerns in particular the services of exchange of crypto-assets for funds defined in Article 3(19) MiCA and the services of exchange of crypto-assets for other crypto-assets defined in Article 3(20) MiCA, which cover the conclusion of purchase or sale contracts concerning crypto-assets

with clients for other crypto-assets or funds by using proprietary capital. Therefore firms engaging in these activities (crypto-asset exchange services) must obtain a CASP license.

In this respect, recital 87 clarifies that “the exchange of crypto-assets for funds or other crypto-assets when made by the issuer or offeror should not be a crypto-asset service”.

Also, if the firm is engaged in market making on a trading platform, no client relationship is implied and a CASP authorisation or notification is not applicable.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2290

Submission Date

26/09/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 75.4 MiCA

Subject Matter

Custody agreements in the exercise of rights attached to crypto-assets

Question

Would the ‘terms of service’ or any type of non-negotiated standard user agreement between a client and a crypto-asset service provider (CASP) providing custody services constitute a ‘valid agreement’ that ‘expressly provides otherwise’ per the clause in the second subparagraph of Article 75(4) of MiCA?

If so, can this agreement stipulate that a CASP providing custody services may be unable to facilitate the exercise of client rights with respect to a crypto-asset in the event of any modifications to those rights?

ESMA Answer

17-06-2025

Original language

No. The principle expressed in the first subparagraph of Article 75(4) is that CASPs providing custody and administration of crypto-assets on behalf of clients shall facilitate the exercise of the rights attached to the crypto-assets and that any event likely to create or modify the rights of a client shall immediately be recorded in the client’s register of positions.

In addition, where there are changes to the underlying distributed ledger technology or any other event likely to create or modify a client’s rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client’s positions at the time of the occurrence of that change or event, except in cases where, “a valid agreement signed with the crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients pursuant to paragraph 1 prior to that change or event expressly provides otherwise”. Thus, CASPs may derogate to that principle only where:

i) there are changes to the underlying distributed ledger technology or another event likely to create or modify a client's right; and

ii) the CASP has obtained from the client prior express and signed consent to the derogation.

Terms of service or any type of non-negotiated standard user agreement between the client and the CASP providing custody services would not be sufficient to demonstrate the express consent to the derogation by the client. Otherwise it would have been listed in Article 75(1) as one of the terms required in the custody agreement (if the CASP is intending to use the extension). It is clear that CASPs providing custody and administration of crypto-assets on behalf of clients should ensure that it is sufficiently clear that the client has consented in an explicit and affirmative way to the specific provision of the terms of service or other standard agreement that is derogating from Article 75(4) of MiCA. To this end, CASPs may, for instance, obtain the client's express acknowledgement of the derogation by requesting that they agree to a specific clause via a pop-up box when accepting the terms of service.

ESMA_QA_2221

Submission Date

21/06/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Entities who have not applied for, or whose application for authorisation as CASPs has been refused by the end of the transition period

Question

What happens to an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 that has not applied for authorisation as a

CASP, or whose application for authorisation as a CASP has been refused by the end of the transition period?

ESMA Answer

04-07-2024

Original language

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has not been authorised as a CASP by the end of the transition period applicable in the relevant Member State, it must cease providing crypto-asset services. Where such entities do not seek a MiCA authorisation, they should consider at an early stage how they will wind down their operations in a manner that avoids negative impact on their clients in accordance, if relevant, with applicable laws.

ESMA_QA_2220

Submission Date

21/06/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

143(3)

Subject Matter

Entities not authorised as CASPs by the end of the transition period

Question

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has applied for but has not been granted or refused authorisation by the end of the transition period, can this entity continue providing services until it is granted or refused authorisation?

ESMA Answer

04-07-2024

Original language

Article 143(3) of MiCA provides that “crypto-asset service providers that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorisation pursuant to Article 63, whichever is sooner. Member States may decide not to apply the transitional regime for crypto-asset service providers provided for in the first subparagraph or to reduce its duration where they consider that their national regulatory framework applicable before 30 December 2024 is less strict than this Regulation.”

Where an entity providing crypto-asset services in accordance with applicable law before 30 December 2024 has not been authorised as a CASP by the end of the transition period applicable in the relevant Member State, they must cease providing crypto-asset services until they are granted authorisation as a CASP under MiCA.

An entity providing crypto-asset services in accordance with applicable law before 30 December 2024 and wishing to continue providing services under MiCA should therefore apply for authorisation as a CASP as early as possible in order to ensure NCAs have the time to assess their applications without disrupting their services.

ESMA_QA_2181

Submission Date

14/05/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 77

Subject Matter

Publication of information by CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets

Question

Where should a CASP exchanging crypto-assets for funds or other crypto-assets publish the “firm price or method of determining the price of the crypto-assets” as required by Article 77(2) of MiCA?

Where should they publish the “information about the transactions concluded by them, such as transaction volumes and prices”, as required by Article 77(4) of MiCA?

ESMA Answer

17-05-2024

Original language

CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets should publish the information required under paragraphs 2 and 4 of Article 77 in a publicly available location (e.g. on their website) that is accessible to all without registration.

The quotations published under Article 77(2) of MiCA should include all elements allowing a party to anticipate with certainty the price at which an exchange would be made.

The information published under Article 77(4) on executed transactions should remain available for a sufficient period of time. The information would typically be expected to be available until midnight of the following business day.

CASPs are strongly encouraged to align as much as possible with the format prescribed in the Commission Delegated Regulations on pre-trade and post-trade

transparency and record keeping once these Regulations are finalised and made available.

Submission Date

22/03/2024

ESMA_QA_2143

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

Tied agents under MiCA

Question

May crypto-asset service providers (CASPs) designate persons or entities to provide crypto-asset services on their behalf as agents (similarly to the tied agent regime under MiFID II), where such person or entity is not an authorised CASP?

ESMA Answer

12-09-2024

Original language

Answer provided by the European Commission

Article 59 of MiCA stipulates that a person shall not provide crypto-asset services, within the EU, unless that person is either authorised as CASP, or a certain financial entity fulfilling the notification criteria according to Article 60 of MiCA. There is no provision in MiCA that would allow a CASP to designate agents (third parties) for the purposes of receiving orders from clients or potential clients and transmitting them or providing advice in respect of crypto-assets and services offered by that CASP. MiCA therefore, does not provide a regulatory framework for agents acting on behalf of CASPs. Consequently, a CASP cannot designate agents in order to provide crypto-asset services on behalf of the CASP concerned. If a CASP appoints an agent, the agent needs to be a CASP itself.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of

the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2125

Submission Date

08/03/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 60

Subject Matter

CASPs providing services based on an Article 60 notification

Question

Can financial entities covered by Article 60(2) to (6) of MiCA apply for an authorization under Article 62 MiCA to provide the crypto-asset services that are not regarded as equivalent for that type of financial entity in accordance with Article 60(2) to (6)?

ESMA Answer

12-09-2024

Original language

Answer provided by the European Commission

Yes, the financial entities covered by Article 60(2) to (6) of MiCA may, in addition to the crypto-asset services they can provide if they follow the notification procedure under Article 60 of MiCA, also apply to be authorised to provide other crypto-asset services unless they are not authorised to provide these services under their respective sectorial financial legislation (e.g., Article 6(2) and (3) UCITS Directive, Article 6(2) and (3) AIFMD). This will mean applying for a crypto-asset service provider (CASP) authorisation under Article 62 of MiCA for any of the additional crypto-asset services that are not covered by the equivalence of Article 60.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot preclude the position that the European Commission might take before the Union and

national courts.

ESMA_QA_2089

Submission Date

29/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 60

Subject Matter

Notifications under Article 60 MiCA

Question

To which NCA should the notification foreseen under Article 60 of MiCA be submitted?

ESMA Answer

29-01-2024

Original language

Article 60 notifications should be provided to the MiCA competent authority, namely the competent authority in charge of authorising crypto-asset service providers under Article 62. The notification may in addition be provided to the authority that authorised them under the relevant other EU financial legislation.

ESMA_QA_2088

Submission Date

29/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 60

Subject Matter

Provision of crypto-asset services by credit institutions

Question

What crypto-asset services can a credit institution provide under the notification procedure set out in Article 60 of MiCA?

ESMA Answer

29-01-2024

Original language

A credit institution can provide any crypto-asset services on the basis of an Article 60 notification.

A credit institution however needs to submit a notification to its competent authority, including all the information listed in Article 60(7) (e.g. a program of operations, internal control mechanisms, procedures for segregation, custody, AML and ICT). In practice, if a credit institution holds no license for a type of service (e.g. custody), it may have difficulties to provide the information required in relation to this service.

Also note that recital 78 states that “the notification procedure for credit institutions intending to provide crypto-asset services under MiCA should be without prejudice to the provisions of national law transposing Directive 2013/36/EU (CRD) that set out procedures for the authorisation of credit institutions to provide the services listed in Annex I to that Directive.”

National implementation of CRD differs across Member States, with some banking licenses granted being more general and others more narrow – any notification under Article 60 will have to be in line with national rules transposing CRD.

ESMA_QA_2087

Submission Date

29/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 80

Subject Matter

Prohibition of monetary and non-monetary benefits under MiCA

Question

Does the prohibition set out under Article 80(2) to receive "remuneration, discount or non-monetary benefit in return for routing orders received from clients" apply to the crypto-asset services of receiving and transmitting orders on behalf of clients as well as the execution of orders on behalf of clients?

ESMA Answer

29-01-2024

Original language

Yes.

Article 80(2) provides that “crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not receive any remuneration, discount or non-monetary benefit in return for routing orders received from clients [...] to another crypto-asset service provider”, meaning that it is prohibited to receive payments or benefits when providing the service of receiving and transmitting orders for crypto-assets on behalf of clients.

In addition, Article 80(2) provides that “crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not receive any remuneration, discount or non-monetary benefit in return for routing orders received from clients to a particular trading platform for crypto-assets...” meaning that it is prohibited to receive payments or benefits when providing the service of executing orders for crypto-assets on behalf of clients.

ESMA_QA_2086

Submission Date

29/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 143

Subject Matter

Passporting rights for entities benefiting from grandfathering

Question

1) Are entities benefiting from grandfathering eligible to passport their crypto services to other Member States?

2) Can an entity grandfathered to provide crypto services in one Member State provide cross-border activities in another Member State that has elected not to allow grandfathering (i.e., shortened or opted out of the transitional period)?

ESMA Answer

29-01-2024

Original language

1) No. Grandfathered entities do not benefit from an EU passport (unless they were to acquire a MiCA license starting from 2025 and therefore cease being a 'grandfathered' entity). Cross-border activities by an entity benefiting from grandfathering may occur only if the entity complies with relevant legislation applicable in both the home and host Member States. The provision of crypto-asset services during the transitional period should in any case always comply with the applicable national laws in the Member State where the services are provided.

Indeed, the Anti-Money Laundering framework (AMLD5) does not offer a harmonised passporting regime, but certain Member States might allow in their national law the provision of crypto services from an entity established in another Member State.

Therefore, during the transitional period of MiCA, the only possibility to offer cross-border services (beyond MiCA authorisation of course) would be in the scenario in which the national regimes of the home and host Member States (i.e., the Member

State where the service is provided) allows.

2) No. Entities benefiting from grand-fathering will be forbidden from conducting cross-border activities in Member States where the grandfathering clause is not (or no longer) applicable.

For those entities offering crypto services who did not provide such services (or exist as a legal entity) under any applicable laws before 30 December 2024, they will not benefit from grandfathering. To provide services in the transitional period (and after), they must acquire a MiCA authorisation.

ESMA_QA_2085

Submission Date

29/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 143

Subject Matter

New CASPs established before (and after) 30 December 2024

Question

Does Article 143 allow for new CASPs established between MiCA's entry into force (June 2022) and 30 December 2024 to continue providing crypto-asset services (under national applicable law) until 1 July 2026 (assuming the MS allows the full duration of the grandfathering period)?

ESMA Answer

29-01-2024

Original language

Yes. Article 143(3) of MiCA allows entities providing crypto services to benefit from grandfathering if they provided their services in accordance with applicable national law before 30 December 2024. There is no effective 'date of initiation' related to entry into force or other temporal constraint (i.e., if the entity providing crypto services began offering services in 2014, it would still be eligible for grandfathering).

For those entities offering crypto services who did not provide such services (or exist as a legal entity) under any applicable laws before 30 December 2024, they will not benefit from grandfathering. To provide services in the transitional period (and after), they must acquire a MiCA authorisation.

ESMA_QA_2071

Submission Date

09/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 3(1), point (26), Article 82(2)

Subject Matter

Crypto-asset transfers as component of another crypto-asset service or as a separate crypto-asset transfer service

Question

Recital 93 of MiCA states that “[...] Many crypto-asset service providers also offer some kind of transfer service for crypto-assets as part of, for example, the service of providing custody and administration of crypto-assets on behalf of clients, exchange of crypto-assets for funds or other crypto-assets, or execution of orders for crypto-assets on behalf of clients [...].”

Does Recital 93 of MiCA imply that a crypto-asset transfer offered as part of a crypto-asset service (such as custody and administration or execution of orders on behalf of clients) is to be regarded as a component of such a crypto-asset service and should therefore not be subject to the authorisation requirements under Article 59 of MiCA? Or would such a transfer of crypto-asset still qualify as the separate service of crypto-asset transfer, as defined under Article 3(1), point (26), of MiCA, and be subject to authorisation requirements?

What criteria should be taken into account to determine whether the crypto-asset transfer is a separate service or not?

Please confirm that, if a transfer of crypto-assets is part of a crypto-asset service such as custody and administration or execution of orders on behalf of clients and thus does not constitute the separate service of transfer of crypto-assets, the requirements in Article 82 MiCA apply anyway (including the ESMA guidelines issued according to the mandate in Article 82(2)).

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

A crypto-asset service of providing transfer services as defined in Article 3(1), point (26), is a self-standing crypto-asset service referred to in Article 3(1), point (16)(j), along with other crypto-asset services. It follows from the definition of a crypto-asset service provider in Article 3(1), point (15), and Article 59 that a crypto-asset service provider may provide transfer services only if it is allowed to do so in accordance with Article 59.

Therefore, if the provision of a service falls under the definition of providing transfer services, despite being regarded as part of another crypto-asset service, it is subject to Article 59 on authorisation and Article 82 on providing transfer services, including the guidelines developed under Article 82(2).

Disclaimer:

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ESMA_QA_2070

Submission Date

09/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 143(6)

Subject Matter

Simplified authorisation procedures

Question

Can entities which were authorised under national law to provide crypto asset services according to a registration regime under the EU AML/CFT framework on 30 December 2024 benefit from the simplified authorisation procedure set out under Article 143(6) MiCA?

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

Article 143(6) MiCA provides for the option for Member States to apply, for a limited period of time of 18 months, a simplified procedure for applications for an authorisation submitted by crypto asset service providers.

This simplified procedure is applicable upon certain conditions that need to be fulfilled:

- The entity was authorised to provide crypto asset services under national law before 30 December 2024.
- Chapters 2 and 3 of Title V are complied with before granting any authorisation.

Article 143(6) MiCA provides for a simplified regime according to which information that was submitted by the entity in order to obtain authorisation under national law does not need to be submitted again as part of the authorisation process set out in Article 63 MiCA.

By specifying that Chapters 2 and 3 of Title V should be complied with, Article 143(6) MiCA ensures that all information requested under Title V is transmitted to national competent authorities. However, information required under Title V that was already submitted as part of the national authorisation procedure applicable until 30 December 2024, should not be submitted again.

The simplified procedure will therefore differ from one Member State to another, based on what information was requested as part of their authorisation regime applicable until 30 December 2024. However, Article 143(6) does not provide for the possibility to put in place a simplified procedure for applications where the crypto-asset service providers were not authorised but merely registered at national level.

Under the AML/CFT framework, Virtual Asset Service Providers (VASPs) are registered, rather than authorised as prescribed under Article 143(6) MiCA. Therefore, registration under the AML/CFT framework should not be considered sufficient to benefit from the aforementioned simplified procedure.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2068

Submission Date

09/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 143(3)

Subject Matter

Grandfathering clause and applicable AML laws

Question

Can entities providing crypto asset services registered under national arrangements that transpose the AML/CFT framework into national law benefit from the grandfathering clause set out under Article 143(3) MiCA?

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

Yes, entities that provided crypto asset services in accordance with applicable law before 30 December 2024 may benefit from the grandfathering clause to continue providing those services in the Member State in which they are registered until they are granted or refused authorisation pursuant to Article 63 MiCA.

Article 143(3) MiCA refers to crypto-asset service providers that provided their services “in accordance with applicable law” before 30 December 2024. Therefore, any national arrangements put in place for the provision of crypto-asset services before entry into application of MiCA, should be covered.

The entities authorised under national law before 30 December 2024 do not benefit from a passporting regime under MiCA but can provide crypto-asset services within the jurisdiction they are registered in.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2069

Submission Date

09/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Articles 60 and 143

Subject Matter

Interaction between Article 60 notifications and the CASP transitional phase

Question

Can financial entities referred to in Article 60 MiCA which provided crypto-asset services according to applicable law before 30 December 2024 rely on the transitional provision of Article 143(3) MiCA even if they are not required to seek an authorisation under Article 63 MiCA?

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

Yes. Article 143(3) MiCA provides that all crypto asset service providers that provided their services in accordance with applicable law before 30 December 2024 may benefit from the transitional period introduced in that provision. As financial entities referred to in Article 60 MiCA may have provided crypto asset services in accordance with applicable law before 30 December 2024, they may also benefit from the transitional provision.

If financial entities referred to in Article 60 MiCA wish to continue providing crypto asset services, they must notify the information referred to in Article 60(7) MiCA to the competent authority of their home Member States as required by that Article.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities.

The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2067

Submission Date

09/01/2024

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Mining

Subject Matter

Treatment of staking services in MiCA

Question

Does MiCA prohibit staking-related services or are staking activities exempt from the application of MiCA?

ESMA Answer

20-06-2024

Original language

Answer provided by the European Commission

In its narrow meaning, staking is the process of immobilising crypto-assets to support the operations of proof-of-stake and proof-of-stake-like blockchain consensus mechanisms in exchange for the granting of validator privileges that can generate block rewards. MiCA does not contain provisions specific to staking. It does not therefore prohibit staking, and staking as such is not subject to specific requirements or licensing.

As opposed to staking, where crypto asset holders engage themselves directly on a proprietary basis with the distributed ledger protocol to stake their assets to obtain validator privileges and eventually collect associated block rewards, or where they commit their assets to a liquidity pool in return for a yield, staking services (also referred to as staking-as-a-service) are provided to clients for a consideration by intermediaries that undertake to stake the clients' crypto assets on their behalf. The staking service provider will collect the yield or obtain the validator privileges allowing them to earn block rewards. This yield or these block rewards are then distributed between the service provider as consideration for their service (staking the assets on the client's behalf, exercising validator obligations and collecting the block rewards, etc.), and the staking service provider's clients, who are the ultimate owners of the crypto assets that are staked.

In the provision of staking services the crypto assets, or the private keys giving access to them, are held by the staking service provider in custody. Thus, the provision of staking services is ancillary to custody services which are fully covered

under MiCA. The provision of staking services therefore requires that the crypto asset staking service provider is authorised under MiCA to provide custody and administration of crypto-assets on behalf of clients, as set out in Article 75 MiCA. In offering and providing the staking services, the service provider must meet at all times the requirements set out in MiCA incumbent on entities authorised for the provision of custody and administration of crypto-assets on behalf of clients (in particular Articles 59, 62, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75 MiCA including but not limited to concluding agreements that specify duties and responsibilities, segregating customer assets from the service provider's estate, minimising the risk of loss, liability for loss of crypto assets, etc.).

In particular, it follows from these obligations that, where staking services are provided in combination with the provision of custody, crypto-asset service providers (CASPs) should ensure that the assets held on behalf of clients can be returned to the clients in accordance with the custody agreement. CASPs should also remain liable to their clients for any loss of crypto-assets attributable to them, pursuant to Article 75(8) MiCA. Losses of crypto-assets stemming from the provision of staking services provided to the client, and from the underlying staking activity itself, should be deemed as attributable to the CASP.

Where staking services are provided in combination with any other crypto-asset services governed by MiCA, CASPs should obtain an explicit consent from the clients to stake their crypto-assets, as it may have an impact on their clients' ability to access them.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2005

Submission Date

07/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto assets

Additional Legal Reference

Articles 2 and 143 of MiCA

Subject Matter

Crypto-asset services of a DLT MI

Question

Is a DLT MI (digital ledger technology market infrastructure) operator allowed to provide MiCA crypto-asset services such as operating a trading platform and custody services for e-money tokens without an additional MiCA licence?

ESMA Answer

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Following entry into application of Regulation (EU) 2023/1114, persons wishing to provide crypto-assets services will have to obtain an authorisation under that regulation. However, as a derogation to that general rule, certain financial entities referred to in Article 60 of Regulation (EU) 2023/1114 may provide specified crypto-asset services without an additional MICA licence where they notify their intention to do so to their home NCA and follow the procedure set out in Article 60 of Regulation (EU) 2023/1114. This includes investment firms and central securities depositories, which are eligible participants in the DLTPR. In the period until the entry into application of Regulation (EU) 2023/1114, a DLT MI will have to comply with national rules on the provision of crypto-asset services, where such services are regulated at national level. Furthermore, in accordance with Article 143(3) of that regulation, a DLT MI may be able to continue to provide crypto-asset services in accordance with national rules until 18 months after the date of application of the regulation or until it is granted or refused an authorisation pursuant to Article 63 of the regulation, whichever is sooner. However, Member States may also decide not

to apply this transitional regime for crypto-asset service providers, or reduce its duration, in accordance with the second subparagraph of Article 143(3) referred above, in which case MICA shall start applying in accordance with that decision.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_765

Submission Date

11/04/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Subject Matter

MiCA Services

Question

Is a DLT MI operator allowed to provide MiCA crypto-asset services such as operating a trading platform and custody services for e-money tokens without an additional MiCA licence?

No hay parametros en la URL.