



## ABBL's response to ESMA Consultation paper

Draft technical standards and guidelines specifying certain requirements of the Markets in Crypto Assets Regulation (MiCA) on detection and prevention of market abuse, investor protection and operational resilience – third consultation paper

(ESMA75-453128700-1002)

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**Q1: Do you agree with ESMA's analysis on the personal scope of Article 92 of MiCA? Are there other types of entities in the crypto-asset markets that should be considered as a PPAET (e.g. miners/validators)? Do you believe that CASPs providing custody and administration of crypto-assets on behalf of clients should also be considered as PPAETs for the purpose of this RTS? Please elaborate.**

We broadly support ESMA's analysis subject to further explanations.

We would welcome explicit wording that clarify instructions related to transfer orders when settling transactions and when processing corporate actions are part of the custody service, as components of the administration activity of crypto assets to avoid any misunderstanding.

We share ESMA's analysis that CASPs providing custody and administration of crypto-assets on behalf of clients should not be considered as PPAETs to avoid duplication of monitoring activities similarly to MAR approach in the context of financial instruments. In this context, we would be in favour of extending MAR towards crypto-assets.

We would also like to get clarity that executing transactions for discharging transactions fees obligations (sometimes called "gas fees"), that are ancillary to instructions related to transfer orders when providing custody and administration of crypto-assets on behalf of clients, should not associate those entities with the PPAETs definition.

**Q2: Do you agree with the proposed elements that should constitute appropriate arrangements, systems and procedures to detect and prevent market abuse? If not, please specify the article of the draft RTS and elaborate.**

We broadly support ESMA's analysis subject to the below conditions.

When analysing paragraph 43 of the consultation document, we believe that some differentiation should be made between off-chain and on-chain execution notably in the context of algorithmic trading rationale. Off-chain execution will result in a discontinuity between execution time and



settlement time where in the case of on-chain execution, the execution time is depending on nodes verification and miners/validators (validation of a block and, therefore, the underlying transaction in that block) may take a few minutes or one hour. In the later case, we are in a structural high latency environment where off-chain transactions may be done.

We would welcome also clarification on the definition of crypto-assets that are admitted to trading, which is not addressed in this consultation document while being key for determining which crypto-assets are in scope of monitoring arrangements. It seems to us that crypto-assets are currently traded OTC without being admitted to trading on a regulated or supervised trading platform. By analogy, they look like non TOTV financial instruments (ESMA opinion ESMA70-156-117).

In this vein, it is unclear if there are already crypto-assets that are admitted to trading for the time being. However, MiCA recital 113 seems to indicate that certain crypto-assets are already to be understood as admitted to trading. This statement is not easy to understand since securities token are not in scope of the MiCA Regulation and it seems that there are not yet in the EU multilateral trading facilities in activity that are operating a trading platform for crypto-assets (to be understood, multilateral trading facilities as defined under MiFID or as DLT MTF under the EU pilot regime on DLT market infrastructures in our own view).

We are of the opinion that the definition of “admitted to trading” should be further clarified to avoid redundancy and confusion with MiFID.

Market Identifier Code (MIC) in accordance with ISO 10383 does not preclude that a crypto-asset exchange platform is a MiCA-related one (for instance, APA has MIC Code, Systematic Internalisers have MIC codes for reporting purposes).

**Q3: Do you agree with the proposed STOR template as presented in the Annex of the RTS?**

We broadly support ESMA’s analysis subject notably that part of the information to be reported may not be provided if not applicable and when known.

We are not sure the item “Account number(s) (where applicable and where known)” is correctly described. First, it is named as a securities account. In our view, it should be named as a crypto-asset account and its number is likely to be the identifier meaning the public address in the distributed ledger or in the smart contract.

**Q5: In Section II of the Annex, would the concept of ‘location’ be applicable to a distributed ledger? For instance, would the IP address of miners/validator nodes in the network be useful in a context where it can be masked through VPNs?**

In our view, the concept of “location” can be difficult to apply to a distributed ledger, unless it is clearly operated by a centralised body, whether it is a foundation or a corporation.

**Q6: Is there any other element or information relevant to crypto-asset markets that in your view should be included in the template? Please explain.**

As a general comment, we would propose to include NFTs to the crypto-assets covered by MAR to tackle insider trading on NFT marketplace, to avoid the case happened in 2023:

<https://www.justice.gov/usao-sdny/pr/former-employee-nft-marketplace-sentenced-prison-first-ever-digital-asset-insider>



**Q9: Do you think that the draft guidelines should be amended to better fit crypto-assets and the relevant crypto-asset services? In which regard? Please justify your answer.**

As a general principle, the guidelines should be more specific for crypto-assets rather than following to close the approach taken for financial assets to keep them separately, which may create additional confusion between the two.

**Q10: Do you agree with the approach followed by ESMA regarding periodic statements provided in relation to portfolio management of crypto-assets?**

In our opinion, ESMA guidelines should not be too strict in defining the content of the periodic statements. The guidelines should ensure consistency of the information presented in the report rather than being too precise on the type of content. This is in particular important considering the different nature of the crypto-assets and also in view of the difficulties on valuation of crypto-assets, traded 24/7.

**Q11: Do you agree with the approach taken by ESMA in the draft guidelines for crypto-asset service providers providing transfer services for crypto-assets on behalf of clients as regards procedures and policies, including the rights of clients? Please also state the reasons for your answer.**

We recognise the importance of having sound policies and procedures in place to safeguard the interest of clients of crypto-asset service providers, and foster the creation of a professional market.

**Q14. Do you support ESMA's interpretation of the term, 'systems' in the mandate? If not, please explain your understanding of the term (and provide examples if possible).**

We think it is important to further clarify the definition of "system" in the guidelines, to exclude situations where CASPs are held responsible for issues on a decentralised ledger it uses for the purpose of their business, but that it is not directly managed by them (i.e. by CASPs).

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