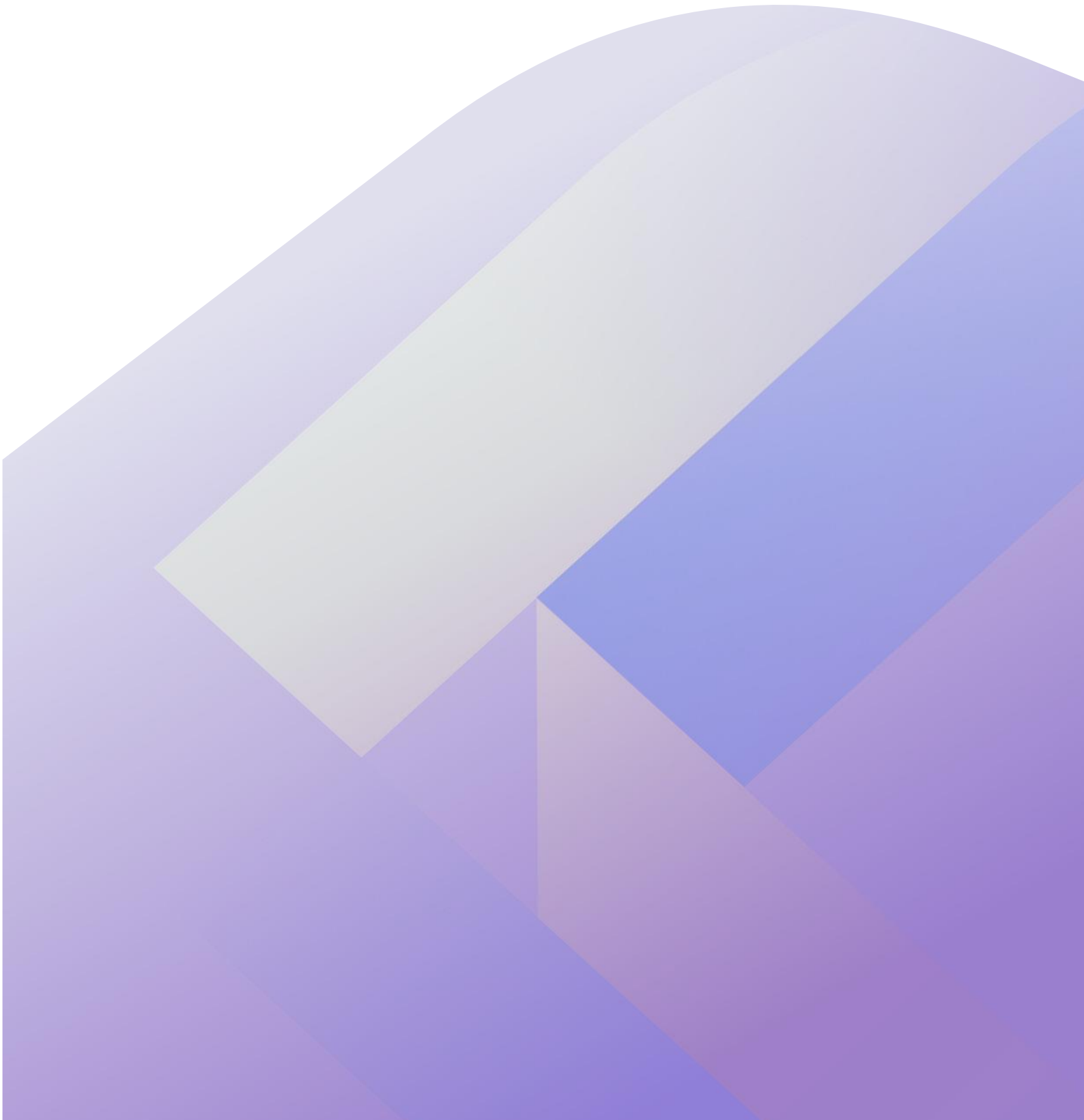


Reply form

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 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 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 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	ABI – Italian Banking Association
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Italy

2 Introduction

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

<ESMA_QUESTION_MICA_0>

ABI welcomes the work done by ESMA in drafting the Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS), which are designed to bring much-needed legal certainty to the Markets in Crypto-assets Regulation (MiCAR), and the possibility of providing contributions throughout a public consultation. ABI believes that the diligent work conducted by the authority in formulating these standards is crucial for the development of a robust regulatory framework for the crypto-assets market in the European Union.

Since the emergence of crypto-assets, there have never been any rules, other than those on anti-money laundering, in relation to the provision of services related to such instruments. The absence of a common legislative framework on this issue has exposed crypto-asset holders to risks of various kinds, undermining the credibility of this sector, hampering its development, and contributing to the loss of opportunities in terms of innovative digital services. This absence also fuels regulatory fragmentation that would distort competition in the single market, leading to regulatory arbitrage.

The adoption of MiCAR represents a significant step forward in addressing the challenges posed by the rapidly evolving crypto-assets market while ensuring the protection of investors and the stability of financial markets. Through MiCAR text and delegated acts, the European Union seeks to adapt to the dynamic technological advancements by laying the initial framework for creating a regulated market for crypto-assets.

Generally speaking, we would like to highlight the following key points:

- Enhancing legal certainty: the RTS and ITS developed by ESMA contribute significantly to enhancing legal certainty within the crypto-assets market. Clarity in regulatory

standards is crucial to ensure that market participants can confidently navigate the regulatory landscape and make informed decisions.

- **Level playing field:** the standards are designed to create a level playing field for all market operators. By providing clear rules and requirements, the RTS and ITS ensure that both existing market participants and new entrants are subject to the same regulatory framework, fostering fair competition and innovation.
- **Investor protection:** the standards demonstrate a commitment to safeguarding the interests of investors. By establishing robust rules for the issuance, crypto-assets service offering as well as for complaints-handling procedure and for conflict of interest, the standards help mitigate risks and enhance investor protection within the crypto-assets market.
- **Operational efficiency:** the standards provide clarity on operational aspects, such as reporting requirements and transparency obligations. This helps market operators streamline their compliance processes, reducing operational friction while ensuring regulatory compliance.

ABI believes that the continued collaboration between European authorities and all the stakeholders involved will lead to a regulatory framework that not only addresses current challenges but also adapts to the dynamic nature of the market, also considering the difficulties in regulating certain type of crypto-asset, currently out of the regulatory perimeter of MiCAR.

Lastly, as we do believe that the RTS/ITS developed by ESMA significantly contribute to the creation of fair conditions for all market operators within the crypto-assets ecosystem, we also recognize the imperative need for an equivalent level of regulatory clarity between crypto-assets and traditional financial instruments. The crypto-assets market, while characterized by its unique attributes, continues to evolve, and intersect with traditional financial instruments. In this regard, it is fundamental that regulatory guidelines clarify when a crypto-asset can be considered a financial instrument within the meaning of the MiFID so that regulatory arbitrage conditions cannot be created.

<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>

As a premise, given that MiCAR aligns crypto-related services with those defined within MiFID, we welcome the regulatory provision that assumes the appropriateness for offering crypto services for all entities already authorized to provide services under MiFID and, more broadly,

under the pertinent regulations. In this sense, we consider it correct to provide for a notification rather than an authorisation process for already authorised financial entities.

With reference to RTS 9.2.1, Art. 1(1)(d), it is not clear what is meant by "other planned unregulated activities" reference and therefore we would ask for its deletion.

According to Article 60 of MiCAR, the notification to the authority must be sent 40 days before the services are offered to the public. Now the RTS require a schedule of operations over a 3-year time horizon in the notification. It is crucial to clarify whether the 3-year time horizon can be considered valid for the purpose of notification of a service that has not yet been offered, but which one intends to offer.

Article 1.1 (c), RTS do not provide any clarification on the so called "cold wallet" option and related notification requirements. Among the list of crypto-asset services that the notifying entity intends to provide, should the notifying entity provide any information concerning the cold wallet option (e.g., timing for the planned activity, settings, and procedures)?

<ESMA_QUESTION_MICA_0>

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.:

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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.

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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.

<ESMA_QUESTION_MICA_0>

We are in favour of these proposals, as they are heading in the right direction to create more certainty for customers and a level playing field between CASPs with regard to complaint handling. However, we propose the following changes:

9.2.5 RTS on complaints handling by crypto-asset service providers, Art. 1.7: we would ask to delete such provision because it could lead to some ambiguity. Alternatively, more clarification is needed on what should be considered as “admissible”. Also, what is meant exactly by “conditions for the admissibility” e.g., specific forms or methods for submitting the complaint and/or an initial value judgment on the admissibility of the complaint?

9.2.5 RTS, Art. 5(3): we would request the amendment of the sentence "Crypto-asset service providers shall keep the complainant duly informed about any additional steps taken to handle the complaint", as a requirement that we consider burdensome in the face of no particular benefit to the complaining customer. We suggest keeping the complainant duly informed about the relevant steps taken to handle the complaint.

<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>

We do not consider it appropriate to provide for the possibility of sending complaints via an obsolete means such as the post, especially given the digital nature of the services in question. Such a possibility would result in an unnecessary burden on CASPs and would introduce significant delays and inefficiencies into the complaint resolution process, including potential lost. Should this possibility be retained, we would ask for details of the terms and conditions for retaining the mail as well as to mitigate potential drawbacks and ensure a fair and effective complaint resolution process for all parties involved.

<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>

We believe that all circumstances, relationships, or affiliations are already covered.

<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>

Regarding conflicts of interest in the crypto-assets sector, it's crucial to highlight that this field exhibits distinct characteristics warranting a tailored regulatory approach. Specifically, certain services within the crypto-asset realm present heightened potential for conflicts. More

precisely, within the realm of crypto-assets, certain service offerings can lead to more pronounced potential conflicts. Let's take, for instance, a trading platform that both lists certain financial instruments and holds positions in those instruments. In light of this, it is advisable to pinpoint concrete scenarios beyond the general ones outlined in Articles 2 and 3, which may arise when providing specific crypto-asset services and significantly impact consumer protection.

The mapping of case studies could also facilitate the identification of those cases that need more attention as well as those that could benefit from an alignment with MiFID's conflict of interest provisions. Precisely with reference to the latter, in accordance with current legislation (e.g., MiFID, Commission Delegated Regulation (EU) 2017/565), the bank already publishes potential conflict of interest situations/policies 'in summary form'. Similar to what is already in place, where the services offered do not entail a greater degree of attention, we could also request for the MiCAR L2 scope the publication in summary form of potential conflict of interest situations and the policy adopted to manage such conflicts. This is subject to the necessary adjustments to capture the peculiarities of crypto assets (first and foremost the underlying technology aspect) compared to traditional assets. This could be done at a later stage through specific guidelines issued by ESMA.

In addition, in line with the existing regulation, we would ask to clarify if the disclosure to clients of the conflicts of interest should be considered as a measure of last resort (ref. art. 34.4 Commission Delegated Regulation (EU) 2017/565).

Moreover, it is important to clarify whether the conflict-of-interest disclosure obligation should apply to the bank that provides the crypto-asset service and not also to the external provider that the bank can use for the provision of the service.

In fact, banks typically conduct these assessments with a primary concern for potential conflicts that could detrimentally affect the interests of their clients. In the context of MiCAR (Level 2), it appears that there may be a shift in perspective, suggesting an evaluation of situations that could potentially harm the interests of the service provider.

If a bank utilises an external provider, it should be clarified whether the disclosure regarding conflicts of interest pertains to the bank (with reference to the external provider) or to the external provider as the service provider. Furthermore, if this obligation falls on the bank, any conflicts and interests should be understood as conflicts/interests between the bank and the external provider in the classical sense (e.g., ownership, company representatives, etc.) and always with the perspective of client protection in mind.

<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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.

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(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?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

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

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>