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JOINT AUTHORISATION / SUPERVISION OF KEY CASPs BY ESMA

Presented to : EUROPEAN SECURITIES AND MARKETS AUTHORITY &
THE EUROPEAN COMMISSION

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Re: Regulation (EU) 2023/1114 on Markets in Crypto-Assets (“MiCA”) – Possible Implementation of a Joint Authorisation Procedure.

1. Introduction

We have been informed that the European Securities and Markets Authority (“ESMA”) has been tabled with proposals from other Competent Authorities (namely AMF Consob and FMA) on creating a joint authorisation or direct supervision model for Key Crypto-Asset Service Providers (“CASPs”) under MiCA.¹ This joint authorisation or direct supervision requirement would be imposed on applications for authorisation or licence holders of ‘key’ CASPs. From the information provided to us, we have been informed that this classification of key CASPs is based on the CASP having more than 100,000 clients within the European Union (“EU”), or forming part of a group.

We further make reference to the Press Release made by the Italian Commissione Nazionale per le Società e la Borsa (“Consob”), the French Autorité des Marchés Financiers (“Amf”) and the Austrian Finanzmarktaufsichtsbehörde (“Fma”) on September 15, 2025 in relation to proposals regarding the direct supervision by ESMA of significant CASPs.

We are concerned by this development since we believe this is in breach of MiCA and other EU law, as will be established in the arguments presented hereunder.

2. The Authorisation Process under MiCA

Under MiCA, it is clear that the intention of the legislator is to delegate the power to authorise CASPs to the National Competent Authorities (“NCAs”) of respective member states. This notion is emphasised within the text of Recital 76 thereof:

Given the relatively small scale to date of crypto-asset service providers, the power to authorise and supervise such service providers should be conferred upon national competent authorities. Authorisation as a crypto-asset service provider should be granted, refused or withdrawn by the competent authority of the Member State where the entity has its registered office. Where an authorisation is granted, it should indicate

¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L 150/40.

the crypto-asset services for which the crypto-asset service provider is authorised and should be valid for the entire Union.²

The intention of the legislator to empower NCAs to provide such authorisation is further demonstrated in Article 62(1) and Article 63(9) of MiCA:

Legal persons or other undertakings that intend to provide crypto-asset services shall submit their application for an authorisation as a crypto-asset service provider to the competent authority of their home Member State.³

Competent authorities shall, within 40 working days from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. Competent authorities shall notify the applicant of their decision within five working days of the date of that decision. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.⁴

As a result of the above, and as will be further demonstrated below, we do not believe that the wording of MiCA leaves any room for interpretation with regard to the NCAs' sole ability to grant or refuse authorisation.

3. The Powers of ESMA under EU Law

Under Regulation (EU) 1095/2010 establishing a European Supervisory Authority⁵ (the “**ESMA Regulation**”), ESMA is tasked with acting ‘with a view to improving the function of the internal market’,⁶ and is established to have temporary intervention powers as per Recital 12 of the ESMA Regulation:

² *ibid*, Recital 76.

³ *ibid*, Article 62(1).

⁴ *ibid*, Article 63(9).

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC [2010] OJ L 331/84

⁶ *ibid*, Recital 11.

The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation.⁷

In relation to the latter recital, this is further established in Article 9(5) of the ESMA Regulation:

The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union **in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2)** or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.⁸

Considering that it would be hard to imagine circumstances under which an application for authorisation as a CASP or supervision of such CASP would be considered an emergency circumstance, the remit for ESMA's actions would be limited to the specific cases and conditions established under MiCA.

It is also noted that ESMA has the power to draft and adopt regulatory technical standards,⁹ as well as implementing technical standards.¹⁰ With regard to the regulatory technical standards, Article 10(1) of the ESMA Regulation is clear that the power to adopt such standards should be limited to 'areas specifically set out in the legislative acts', which is further emphasised below:

⁷ *ibid*, Recital 12.

⁸ *ibid*, Article 9(5), emphasis added.

⁹ *ibid*, Article 10.

¹⁰ *ibid*, Article 15.

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.¹¹

Similar limitations are set on the development of implementing technical standards in Article 15(1) of the same Regulation:

Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts.¹²

Regardless, ESMA is obliged to submit any adopted standards to the Commission for endorsement. These points will be discussed further below in relation to the imposition of more onerous obligations through the adoption of such standards.

4. The Powers of ESMA under MiCA

Apart from the provisions in each respective article of MiCA, the remit of ESMA's abilities to draft regulatory technical standards (as delegated by the Commission) with regard to the authorisation of CASPs are clearly delimited in Recital 110:

[...] the requirements, templates and procedures for handling complaints of holders of asset-referenced tokens and of clients of crypto-asset service providers; [...] the information that an application for the authorisation of crypto-asset service provider contains; the content, methodologies and presentation of information that the crypto-assets service provider makes publicly available and that is related to principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services; measures ensuring continuity and regularity in the performance of the crypto-asset services and the records to be kept of all crypto-asset services, orders and transactions that they undertake; the requirements for the policies to identify, prevent, manage and disclose conflicts of interest of crypto-asset service providers and the details and methodology for the content of that disclosure; the manner in which transparency data of the operator of a trading platform is to be offered and the content and format of order book records regarding the trading platform; [...] the appropriate

¹¹ ibid, Article 10(1).

¹² ibid, Article 15(1).

arrangements, systems and procedures for monitoring and detecting market abuse; the notification template for reporting suspicions of market abuse and coordination procedures between the relevant competent authorities for the detection of market abuse; the information to be exchanged between the competent authorities; a template document for cooperation arrangements between the competent authorities of Member States and supervisory authorities of third countries; [...]¹³

Further, in relation to the implementing technical standards in relation to the authorisation of CASPs ESMA's remit is specifically established in Article 62(6):

ESMA, in close cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider.¹⁴

With regard to ESMA's temporary intervention powers, these are also clearly defined within Article 103 of MiCA, with Article 103(2) stating that such temporary intervention measures may only be taken if all of the following conditions are fulfilled:

- (a) the proposed prohibition or restriction addresses a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union;
- (b) the regulatory requirements under Union law that are applicable to the relevant crypto-assets and crypto-asset services do not address the threat at issue
- (c) a relevant competent authority has not taken action to address the threat at issue or the actions that have been taken do not adequately address that threat.¹⁵

Article 103(3) of MiCA further obliges ESMA to ensure that the measure taken does not 'have a detrimental effect on the efficiency of markets in crypto-assets [...] that is disproportionate to the benefits of the measure'.¹⁶

¹³ ibid 1, Recital 110.

¹⁴ ibid, Article 62(6).

¹⁵ ibid, Article 103(2).

¹⁶ ibid, Article 103(3).

5. Delegation of Powers under the TFEU

For emphasis, it would be pertinent to note the clear intention of the Articles allowing for the delegation of powers under the Treaty on the Functioning of the European Union (“TFEU”).¹⁷ Article 290 thereof establishes the following:

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.¹⁸

As such, it is argued that the power of authorisation for a CASP is clearly an essential element of MiCA, and amendments thereto may only be made through legislative acts.

6. Argumentation Against Joint Authorisation or ESMA Authorisation

An intention to implement any form of joint authorisation procedure is intrinsically flawed, and legally unsound. This will be argued on three fronts, firstly, the arbitrary classification of so-called key CASPs, secondly, on the basis that ESMA has no remit to implement such a procedure, and finally, on the detrimental impact of such a procedure.

With regard to the denomination of key CASPs, this classification is in no way provided for within MiCA. With this being said, MiCA does provide for the identification of significant CASPs under Article 85(1) which states:

A crypto-asset service provider shall be deemed significant if it has in the Union at least 15 million active users, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year.¹⁹

Regardless, MiCA does not establish a different authorisation procedure for significant CASPs, but merely further supervisory requirements. As such, ESMA’s arbitrary classification has no legal basis.

In relation to the power of authorisation of CASPs, this is clearly provided solely to NCAs. MiCA clearly delimits the powers of ESMA as specified above. While ESMA may adopt

¹⁷ Consolidated Version of the Treaty on the Functioning of the European Union [2007] OJ C 326/47.

¹⁸ *ibid*, Article 290.

¹⁹ *ibid* 1, Article 85(1).

standards with regard to the information required and forms for the authorisation of CASPs, in the establishment of a joint authorisation, ESMA would clearly be acting *ultra vires*, and breaching its explicitly defined objectives. This also applies to the proposals put forward by Consob, Amf, and Fma.

Finally, the implementation of a joint authorisation procedure would have clear detrimental effects on the European market in crypto-assets. This would add another barrier for entry for larger players, while also needlessly delaying the process for authorisation. It would also be incomprehensible as to how such joint authorisation would be possible in relation to the 40 working day deadline stipulated in Article 63(9) of MiCA, when considering the addition of stakeholders other than the NCAs.

As established in the Recitals of MiCA, it is clear that the legislator's intention was to protect retail holders and the integrity of the market, while ensuring to support innovation and fair competition, while also maintaining competitiveness on international financial and technological markets.²⁰ Establishing unnecessary burdens during the authorisation process would go directly against these aims.

7. The Proposals made by Consob, Amf, and Fma

The Press Release made by Consob, Amf, and Fma on September 15, 2025,²¹ and the related proposals,²² advocates for the 'Centralized [sic] supervision of major crypto-asset service providers in Europe',²³ and specifically granting 'ESMA powers of approval,

²⁰ *ibid*, Recital 6.

²¹ Commissione Nazionale per le Società e la Borsa (Consob), Autorité des Marchés Financiers (Amf), Finanzmarktaufsichtsbehörde (Fma), *The French, Austrian and Italian markets authorities call for a stronger European framework for crypto-asset markets*, September 15, 2025 <https://www.consob.it/documents/d/asset-library-1912910/pr_consob_amf_fma_20250915>

²² Commissione Nazionale per le Società e la Borsa (Consob), Autorité des Marchés Financiers (Amf), Finanzmarktaufsichtsbehörde (Fma), *European Crypto-Assets Markets' Framework: Proposals from the French, the Austrian and the Italian Financial Market Authorities*, September 15, 2025 <https://www.consob.it/documents/d/asset-library-1912910/consob_amf_fma_position_paper_mica_20250915>

²³ *ibid*, p. 1.

supervision and direct sanction over these players.²⁴ These proposals are in relation to significant CASPs as defined by MiCA.

Recital 116 of MiCA states:

ESMA should be mandated to make use of its powers in relation to significant crypto-asset service providers, it is necessary to ensure that [...] ESMA [is] able to exercise all of their powers and tasks in order to fulfil their objectives of protecting the public interest by contributing to the short-, medium- and long-term stability and effectiveness of the financial system for the Union economy, its citizens and businesses [...] ²⁵

Further, Article 85(3) of MiCA states the following:

Without prejudice to the responsibilities of competent authorities under this Regulation, the competent authorities of the home Member States shall provide ESMA's Board of Supervisors with annual updates on the following supervisory developments in relation to significant crypto-asset service providers [...] ²⁶

It is clear that the regulator did not intend to prejudice the responsibilities of NCAs, and that the supervisory powers are given to NCAs. The proposal to provide ESMA powers of approval is against the spirit of MiCA, as argued above, and further below.

Further, the proposal to provide ESMA with direct supervisory powers is in direct conflict with the will of the regulator, which clearly meant for the NCAs to have supervisory authority, while reporting to ESMA. The amendment of any of these powers has to be reflected in a legislative change, and as of yet, has no standing.

8. Concluding Remarks

While we believe that MiCA is the best way forward for the crypto-assets market in the EU, we are concerned about such proposals being tabled as they would introduce unforeseen and unnecessary burdens on CASPs and seem to be politically motivated.

Such developments would not only slows down the authorisation process, but also simultaneously makes the EU a less desirable jurisdiction for large market players.

²⁴ *ibid*, p. 3.

²⁵ *ibid* 1, Recital 116.

²⁶ *ibid*, Article 85(3), emphasis added.

National competent authorities (NCAs) are far better positioned to work closely with emerging crypto projects, understand their specific use cases, and respond to the unique regulatory needs that arise at local level. Unlike traditional financial institutions, crypto projects are highly diverse — covering much more than just exchanges or custodians. They often involve tokenisation, decentralised energy markets, digital identity, Web3 infrastructure, and other disruptive technologies.

A centralised or joint authorisation process led by ESMA risks enforcing a one-size-fits-all model that may not be suitable for such varied and fast-evolving business models. Retaining the authorisation process at the national level helps preserve flexibility, encourages innovation, and ensures practical regulatory engagement — all of which are aligned with MiCA's broader objectives.

We believe that NCAs should be allowed to maintain full control over the authorisation process while working under the supervision of ESMA, which has significant supervisory and auditory powers, as established in MiCA. As established above, the implementation of a joint authorisation process is based on an arbitrary classification, has no legal basis, and will be of detriment to the EU market as a whole.

Further, it is argued that NCAs should also be allowed to maintain full control over the supervision of CASPs, regardless of their size, as is established in MiCA. The direct supervision of significant CASPs by ESMA is against the letter of the law as it currently stands, and would require a legislative amendment to this effect in order to be feasible.

After all the hard work done over the past years by EU institutions, agencies, and stakeholders alike, it would be a shame to see it go to waste with the establishment of unnecessary and confining procedures, which are completely opposite to the intentions of the legislator, and the needs of the industry.

All affected persons in the industry (Regulators, Advisors, Applicants and License Holders) are already struggling to transition and acclimatise to MICAR. Further regulatory developments such as the EBA opinion on the interplay between PSD2 and MICAR requiring most CASPs to also obtain a PSD2 license by March 2026 have also created additional complexities, regulatory burdens and compliance costs to the already difficult landscape.

Authorising or supervising large CASPs in the cryptocurrency industry should not be treated any differently to authorising and supervising large players in all other industries.

Most Member States are still transitioning to MICAR and working towards the final deadline of 30th June 2026 to receive full compliance and authorisation. Throwing such spanners into the works will be detrimental for the industry who depend on the key players for existence.

Joint authorisation, direct supervision or centralisation is not the way forward in this fragile nascent stage of the regulation. It is imperative that the higher EU institutions uphold the principle of subsidiary and continue strive to achieve harmonisation goals and supervisory convergence through collaborative led practices such as knowledge sharing, efficient convergence tools and peer reviews.

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