



GENERAL OBLIGATIONS

FOR CASPS UNDER MICA



MiCA EXCERPT

General obligations for all CASPs

Regarding the obligation to act honestly, fairly and professionally in the best interests of clients and prospective clients, including communication and website requirements

(ESMA draft regulatory technical standards are to be expected by June 2024)

- Provide clients with **information** that is **fair, clear and not misleading**, including in marketing communications;
- not to mislead** a client in relation to the **real or perceived advantages** of any crypto-assets (neither deliberately nor negligently);
- warn** clients of the **risks** associated with transactions in crypto-assets;
- provide clients with **hyperlinks** to any crypto-asset **white papers** for the crypto-assets in relation to which they are providing the services;
- make the **policies on pricing, costs and fees** publicly **available** (in a prominent place on the website);
- make **information** related to the 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 publicly available (in a prominent place on the website).

Regarding prudential requirements

At all times, have in place **prudential safeguards** equal to an amount of at least the higher of the following:

- the amount of permanent **minimum capital** requirements, depending on the type of the crypto-asset services provided;
 - **EUR 50,000,-** if authorized for execution of orders on behalf of clients; placing of crypto-assets; providing transfer services for crypto-assets on behalf of clients; reception and transmission of orders for crypto-assets on behalf of clients; providing advice on crypto-assets; and/or providing portfolio management on crypto-assets)
 - **EUR 125,000,-** if **authorized** for providing custody and administration of crypto-assets on behalf of clients; exchange of crypto-assets for funds; and/or exchange of crypto-assets for other crypto-assets.
 - **EUR 150,000,-** if **authorized** for operation of a trading platform for crypto-assets.
- one quarter of the **fixed overheads** of the preceding year, reviewed annually¹.

Have prudential safeguards in any of the following forms or a combination thereof:

- own funds**²,
- an **insurance policy**³ covering the territories of the Union where crypto-asset services are provided or a comparable guarantee.
- The insurance policy shall be disclosed to the public on the CASP's website.

Regarding governance arrangements

(ESMA draft regulatory technical standards are to be expected by June 2024)

Members of the **management** body of CASP shall:

- be of **sufficiently good repute** and possess the appropriate **knowledge, skills and experience** to perform their duties (both individually and collectively);
- not have been convicted** of offences relating to money laundering or terrorist financing (or of any other offences that would affect their good repute);
- demonstrate that they can commit **sufficient time** to effectively perform their duties.

¹ Details for the method of calculation is set out in Art. 67 sec. 2-3. of MiCa.

² Consisting of Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;

³ Details for the requirement of the insurance policy is set out in Art. 67. Sec. 5-6. of MiCa.



Shareholders and members that have **qualifying holdings** in CASP (whether direct or indirect) shall:

- be of **sufficiently good repute**;
- shall **not have been convicted** of offences relating to money laundering or terrorist financing (or of any other offences that would affect their good repute).
- Adopt **policies and procedures** that are sufficiently effective to ensure **compliance** with MiCA;
- employ **personnel** with the **knowledge, skills and expertise** necessary for the discharge of the responsibilities allocated to them (taking into account the scale, nature and range of crypto-asset services provided);
- assess and **periodically review the effectiveness** of the policy arrangements and procedures put in place to comply with obligations of all and specific services and take **appropriate measures** to address any deficiencies in that respect;
- take all reasonable steps to **ensure continuity and regularity** in the performance of services, and employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems as required by Regulation (EU) 2022/2554;
- establish a **business continuity policy**, which shall include ICT business continuity plans as well as ICT response and recovery plans (Regulation (EU) 2022/2554.);
- have in place **mechanisms, systems and procedures** as required by the **Digital Operational Resilience Act** (Regulation (EU) 2022/2554);
- have in place effective procedures and arrangements **for risk assessment**, to comply with the provisions of national law transposing MLD4 (Directive (EU) 2015/849);
- monitor and **evaluate the adequacy and effectiveness of those** mechanisms, systems and procedures and shall take appropriate measures to address any deficiencies in that respect (on a regular basis and taking into account the scale, the nature and range of crypto-asset services provided);
- have **systems and procedures** to safeguard the availability, authenticity, integrity and confidentiality of **data** pursuant to the Digital Operational Resilience Act (Regulation (EU) 2022/2554);
- arrange for **records** to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them, which has to be provided to clients upon request and shall be kept for a period of **five years** and, where requested by the competent authority before five years have elapsed, for a period of up to **seven years**.

Regarding information to competent authorities

- Notify** the competent authority of any **changes to the management body**, prior to the exercise of activities by any new members (without delay) including all necessary information which supports that the member complies with the above criteria considering them.

Regarding safekeeping of clients' crypto-assets and funds

- Make adequate arrangements to **safeguard the ownership rights of clients** and prevent the use of **clients' crypto-assets** for their own account (especially in the event of the crypto-asset service provider's insolvency);
- have adequate arrangements in place to safeguard the ownership rights of clients and prevent the use of **clients' funds** for their own account (where the business models or the crypto-asset services require holding clients' funds other than e-money tokens and except electronic money institutions, payment institutions or credit institutions);
- place funds with a credit institution or a central bank** by the end of the business day following the day on which clients' funds were received (other than e-money tokens);
- take all necessary steps to ensure that **clients' funds held** with a credit institution or a central bank are held in an **account separately identifiable** from any accounts used to hold funds belonging to CASP (funds other than e-money tokens and except electronic money institutions, payment institutions or credit institutions).

Inform clients of all of the following (in case payment services are provided):

- the **nature and terms and conditions** of those services, including references to the applicable national law and to the rights of clients;
- whether those services are provided by them **directly or by a third party**.



Regarding complaints-handling procedures

(ESMA draft regulatory technical standards are to be expected by June 2024)

- Establish and maintain effective and transparent **procedures** for the prompt, fair and consistent **handling of complaints** received from clients and shall publish descriptions of those procedures (filing of complaints: free of charge);
- inform** clients of the possibility of filing a complaint, making available to clients a **template for filing** complaints and shall keep a **record of all complaints** received and any measures taken in response thereto;
- investigate** all complaints in a timely and fair manner and **communicate** the outcome of such investigations to the clients (within a reasonable period).

Regarding identification, prevention, management and disclosure of conflicts of interest

(ESMA draft regulatory technical standards are to be expected by June 2024)

Implement and maintain effective **policies and procedures** to identify, prevent, manage and disclose **conflicts of interest** between: (taking into account the scale, the nature and range of crypto-asset services provided)

- themselves and shareholders or members;
- themselves and any person directly or indirectly linked to CASP or its shareholders or members by control;
- themselves and members of the management body;
- themselves and employees;
- themselves and clients;
- two or more clients whose mutual interests conflict.
- Disclose** to clients (in electronic format) and prospective clients the general nature and sources of conflicts of interest and the steps taken to mitigate them (in a prominent place on the website);
- Assess and **review policy** on conflicts of interest and take all appropriate measures to address any deficiencies in that respect (at least annually).

Regarding outsourcing of operational functions (if relevant)

- Take all reasonable steps to **avoid** additional **operational risk**.

Ensure at all times that the following **conditions** are met:

- outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;
- outsourcing does not alter the relationship between the crypto-asset service providers and the clients, nor the obligations of the crypto-asset service providers towards the clients;
- outsourcing does not alter the conditions for the authorisation of the crypto-asset service providers;
- third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of the supervisory functions of competent authorities, including on-site access to acquire any relevant information needed to fulfil those functions;
- crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
- crypto-asset service providers have direct access to the relevant information of the outsourced services;
- crypto-asset service providers ensure that third parties involved in the outsourcing meet the data protection standards of the Union (ensuring that the data protection standards are set out in the written agreements).
- Have a **policy on the outsourcing**, including on contingency plans and exit strategies (taking into account the scale, the nature and the range of crypto-asset services provided);
- Define in a **written agreement** their rights and obligations and those of the third parties to which they are outsourcing services or activities and CASP has to have termination right of the agreement;
- Make available** to the competent authorities and other relevant authorities all **information** necessary to enable those authorities to assess compliance of the outsourced activities (CASP and third parties as well).