

Spotlight on Markets – January 2024

MICA IS COMING UP AND THE BALL IS IN YOUR COURT

Check the ongoing
consultations

- Do you use social media to talk about investments and trading?
- First 2024 risk monitoring report
- New members needed for the Securities Markets Stakeholder Group
- ESMA steps up its monitoring of EU alternative investment funds

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ESMA consults on reverse solicitation and classification of crypto assets as financial instruments under MiCA

The European Securities and Markets Authority (ESMA) published two Consultations Papers on guidelines under Markets in Crypto Assets Regulation (MiCA), one on reverse solicitation and one on the classification of crypto-assets as financial instruments. ESMA invites comments from stakeholders by 29 April 2024.

Consultation paper on guidelines on reverse solicitation

In this consultation, ESMA is seeking input on proposed guidance relating to the conditions of application of the reverse solicitation exemption and the supervision practices that National Competent Authorities (NCAs) may take to prevent its circumvention.

The proposed guidance confirms ESMA's previous message that the provision of crypto-asset services by a third-country firm is limited under MiCA to cases where the client is the exclusive initiator of the service. This exemption should be understood as very narrowly framed and must be regarded as the exception. A firm cannot use it to bypass MiCA.

Consultation paper on guidelines on conditions and criteria for the classification of crypto-assets as financial instruments

In this consultation paper, ESMA is seeking input on establishing clear conditions and criteria for the qualification of crypto-assets as financial instruments. This initiative, which follows on from previous work by ESMA, is aimed at bridging the MiCA regulation and the Markets in Financial Instruments Directive II (MiFID II) and ensuring consistency across the EU.

The proposed guidelines aim at providing NCAs and market participants with structured but flexible conditions and criteria to determine whether a crypto-asset can be classified as a financial instrument.


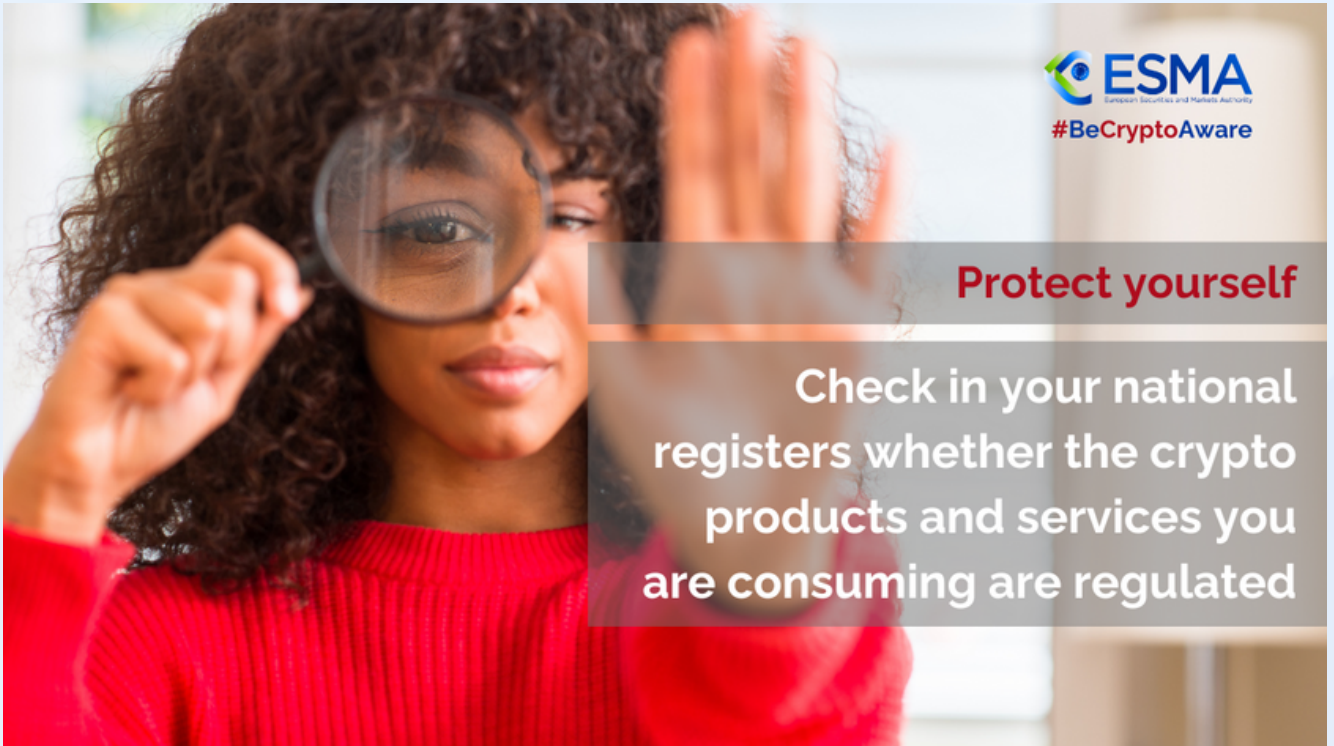
To do so, the draft strikes a balance between providing guidance and avoiding establishing a one-size-fits-all approach. Once finalised, these guidelines will provide much-needed clarity and contribute to the global standards in crypto-asset regulation.

Next steps

The consultation closes on 29 of April 2024. ESMA will consider the feedback it receives to the consultation in Q2 2024 and expects to publish a final report in Q4 2024.

Based on our experience with three rounds of consultations launched, a constructive dialogue with the industry, and a fruitful exchange with decision makers, we put together a few important reminders.





Protect yourself

Check in your national registers whether the crypto products and services you are consuming are regulated



Finfluencers may have a hidden financial incentive to promote crypto-assets

Your best interest is not on their agenda





 **ESMA**
European Securities and Markets Authority
#BeCryptoAware

Did you know that crypto-assets depend on computing power?

Thanks to MiCA, information on carbon emissions, energy use, and waste production will be published



 **ESMA**
European Securities and Markets Authority
#BeCryptoAware

How green is your coin?

MiCA will make it easier for consumers to understand the impact of their crypto on the climate

Not everything goes: requirements when posting investments recommendations on social media

The European Securities and Markets Authority (ESMA) and National Competent Authorities are raising awareness of requirements established by the Market Abuse Regulation (MAR) which apply when posting investment recommendations on social media. They are also warning about the risks of market manipulation in such publications.

When posting on social media, transparency and accuracy are key, especially when making recommendations about investments. That is why, if you are a finance influencer, a technical expert, or someone with just interest in financial investments, you need to be aware of the rules established under the MAR Framework and be able to recognise an investment recommendation.

What is an Investment Recommendation?

According to the MAR it can be any post, video, or any other type of public communications, including social media, in which a person gives advice or ideas, directly or indirectly, about buying or selling a financial instrument or on how to compose a portfolio of financial instruments.

Even if a person is using “non-technical” language, gives advice or ideas, directly or indirectly, about buying or selling a financial instrument or on how to compose a portfolio of financial instruments, it may constitute an investment recommendation.

Where are the rules set out?

In the MAR Framework, composed of Regulation No 596-2014 and the relevant Delegated and Implementing Regulations.

What are the specific requirements?

The general set of requirements require any person producing investment recommendations to:

- Include the identification of the producers of the recommendation: name, job title of all the persons involved., and the date and time of the recommendation.
- Ensure the objective presentation of investment recommendations: facts clearly distinguished from interpretations, estimates and opinions. Confirm all sources of information are reliable and, where in doubt, clearly indicate it.
- Disclose any conflicts of interest in a clear way, so investor would take notice of it. When recommendations are voiced via different social media channels, each of them must include a disclosure of interests or conflicts of interest.



The additional requirements require “professionals” and “experts” to disclose:

- A summary of any basis of valuation/methodology and the underlying assumptions used.
- The length of time of the investment and an appropriate risk warning.
- The planned frequency of updates to the recommendation.
- If the recommendation has been amended after being disclosed to the issuer.
- If they hold a net long or short position above 0.5% of the total issued share capital of the issuer.

What happens if you do not comply?

You are exposed to sanctions. National Competent Authorities can impose administrative or criminal sanctions that may vary according to the member state for certain types of infringements.

First 2024 risk monitoring report

The European Securities and Markets Authority (ESMA) publishes its first risk monitoring report of 2024, where it sets out the key risk drivers currently facing financial markets.

“At ESMA we are observing a financial system that has shown a high level of resilience. Looking ahead, markets are set to remain very sensitive and risks of market corrections continue to be high, given geopolitical and macro-financial uncertainty. In this context, maintaining trust in financial markets is of particular concern to ESMA, and key to achieving our mission to protect investors.

Retail investors increasingly get their updates through social media, and we again stress the need to be aware of the risk of receiving false or misleading information through these media. All investors should verify the reliability and the quality of the information they use in their investment decisions.

Financial stability and investors will be impacted by increased interest rates which are expected to remain higher for longer. This environment has a negative impact on credit quality and real estate valuations. Finally, greenwashing entails the risk of limiting the role finance can play in the transition to a more sustainable future.”

Verena Ross, ESMA Chair



Beyond the risk drivers, ESMA's report provides an update on structural developments and the status of key sectors of financial markets, during the second half of 2023.

Structural developments

Market-based finance: Access to capital markets for European corporates continued to be mainly through fixed income markets and securitised products in 2H23. Equity primary markets slightly picked up, but IPO activity was strained due to uncertain market conditions. Corporate bond issuance remained strong during 2H23. The corporate bond outlook will be shaped by a significant upcoming maturity wall from 2024 until 2028, with corporate debt sustainability remaining a considerable risk, especially in lower quality segments.

Sustainable finance: Following several years of uninterrupted growth, the take up of ESG investing and growth of ESG markets have levelled off in recent quarters. The ESG bond market grew at a slower pace, while gross issuance volumes declined. SFDR Article 9 funds with a sustainable investment objective faced net outflows for the first time in 4Q23, and outflows from SFDR Article 8 funds promoting environmental or social characteristics accelerated, with the use of ESG-related terms in fund names a key factor of differentiation between these funds.

Financial innovation: Crypto-asset valuations rebounded in 2023, fuelled by the hope that spot crypto ETFs would obtain approval by the US SEC, which they did in January 2024. Still, at EUR 1.5tn, total market capitalisation of crypto assets remains half of the 2021 historical peak. The use of artificial intelligence in finance is growing around a wide range of applications, even though dedicated AI-investment instruments remain limited.

Market monitoring

Securities markets: Equity valuations were moderately up in 2H23 driven by an end-of-year rally linked to expectations of 2024 interest rate decreases. Volatility remained contained, while bid-ask spreads increased, highlighting market nervousness. Fixed-income markets were lower overall towards the end of 2023, with marked declines in yields for sovereign and corporate bonds in December. Credit quality of high-yield non-financials continued to decline, particularly associated with real estate, with default rates trending upwards.

Asset management: EU fund performance and flows were volatile in 2H23. Investors preferred fixed income funds over equity funds, and MMFs specifically attracted significant inflows on higher interest rates and the inversion of the yield curve. Overall, risks stabilised but remained elevated, especially liquidity and credit risk. While funds managed the transition to higher interest rates, concerns remained regarding the valuation of real-estate fund assets in a falling market.

Consumers: Sentiment among consumers remained weak amid geopolitical uncertainty and subdued growth, despite falling inflation. At higher interest rates, consumers raised holdings of bonds, both directly and via investment funds, and average performance of retail investments improved in 3Q23. Real-estate exposures via retail AIFs are a source of risk.

Infrastructures and services: Equity-trading volumes showed a slight year-on-year decrease amid low volatility. Settlement fails remained broadly stable in 2H23, after their 1H23 fall. Cyber incidents in the financial sector globally remain elevated, even if they went down in 3Q23.

ESMA is seeking new members for its Securities Markets Stakeholder Group

The European Securities and Markets Authority (ESMA) is looking for candidates representing the interests of all types of financial markets stakeholders.

The Securities and Markets Stakeholder Group (SMSG) is an important body for ESMA. It facilitates our consultation with stakeholders by providing technical advice on ESMA's policies and activities and brings information on recent market developments to our attention.

“The outgoing SMSG has provided invaluable support to ESMA through high-quality advice, and I would like to thank all the members for their work. It is important that the stakeholder views in the SMSG are well balanced. As we prepare to renew the group I am therefore particularly inviting stakeholders who can give a strong voice to consumers, users of financial services, employees in the financial sector and small and medium-sized enterprises (SMEs) to put yourselves forward. Through your participation and advice you can contribute to shaping the future of the European capital markets.”

Verena Ross, ESMA Chair



Next steps

Interested candidates are invited to submit their applications no later than **23.59 CET on 18 March 2024**. All details for submitting the applications are provided on [ESMA's website](#).

The final decision on the composition of the SMSG is expected to be made by ESMA's Board of Supervisors in May 2024. The successful candidates will take up their roles as of 1 July 2024 for a four-year mandate.

The other European Supervisory Authorities, EBA and EIOPA, will also be launching on their websites their own (separate) calls for candidates to their stakeholder groups during the first quarter of 2024.



Online Investing: Your Voice Matters

Your perspective and experience is crucial to shaping the future of investing. We invite you to participate in our brief survey focused on your personal (not professional) experiences with online investing through the use of apps, websites and social media. The survey will be open until 26 March.

Answer the survey [here](#)



ESMA steps up its monitoring of EU alternative investment funds

The European Securities and Markets Authority (ESMA) published a report on the EU alternative investment funds (AIFs) market and an article on the risks posed by leveraged AIFs in the EU.

ESMA confirms the risks posed by real estate (RE) funds, in a context of declining volumes of transactions and falling prices in several jurisdictions.

Existing liquidity mismatches in AIFs are particularly heightened by the high share of open-ended RE funds, some of which offer daily liquidity. This vulnerability could be systemically relevant in jurisdictions where RE funds own a large share of the RE market.



Looking at the full sector and specifically at the risks posed by leveraged AIFs, ESMA finds that:

- the size of the sector declined slightly (-3%) to EUR 6.8tn in 2022 and AIFs account for 36% of the EU fund industry,
- the fall in value was mainly driven by valuation losses for funds exposed to bonds and equities amid adverse market developments in 2022,
- RE funds face multiple risks related to leverage, market footprint, valuation discrepancies and liquidity mismatches
- leverage for hedge funds remains very high, and this may pose a risk of market impact. However, most of them also dispose of large levels of cash to address potential margin calls, which limits the risk of fire sales,
- NCAs have reported risks posed by the Liability-Driven Investment (LDI) funds, which gain leveraged exposures to the UK government bond market. Risks have remained elevated, and the limits set after the severe stress experienced in September 2022 remain appropriate.

In light of these findings, ESMA reports on the measure taken by authorities to address the risks identified, and will continue to work with the NCAs to meet ESMA's financial stability objective.

Background

The two documents contribute to ESMA's financial stability objective. They are part of ESMA's monitoring framework on AIFs, including market development and key risk metrics, such as leverage and liquidity. They foster a common supervisory approach of the data reported under AIFMD between ESMA and the NCAs.

ESAs set rules for ICT, third-party risk management and incident classification

The three European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published the first set of final draft technical standards under the DORA aimed at enhancing the digital operational resilience of the EU financial sector by strengthening financial entities' Information and Communication Technology (ICT) and third-party risk management and incident reporting frameworks.

The joint final draft technical standards include:

- Regulatory Technical Standards (RTS) on ICT risk management framework and on simplified ICT risk management framework;
- RTS on criteria for the classification of ICT-related incidents;
- RTS to specify the policy on ICT services supporting critical or important functions provided by ICT third-party service providers (TPPs); and
- Implementing Technical Standards (ITS) to establish the templates for the register of information.

RTS on ICT risk management framework and on simplified ICT risk management framework

The draft RTS on ICT risk management framework identify further elements related to ICT risk management with a view to harmonise tools, methods, processes and policies. These elements are complementary to those identified in DORA. The RTS identify the key elements that financial entities subject to the simplified regime and of lower scale, risk, size and complexity would need to have in place, setting out a simplified ICT risk management framework. The RTS ensure the ICT risk management requirements are harmonised among the different financial sectors.

RTS on criteria for the classification of ICT-related incidents

These RTS specify the criteria for the classification of major ICT-related incidents, the approach for the classification of major incidents, the materiality thresholds of each classification criterion, the criteria and materiality thresholds for determining significant cyber threats, the criteria for competent authorities to assess the relevance of incidents to competent authorities in other Member States and the details of the incidents to be shared in this regard. The RTS ensure a harmonised and simple process of classifying incident reports throughout the financial sector.

RTS on ICT TPP policy

These RTS specify parts of the governance arrangements, risk management and internal control framework that financial entities should have in place regarding the use of ICT third-party service providers. They aim to ensure financial entities remain in control of their operational risks, information security and business continuity throughout the life cycle of contractual arrangements with such ICT third-party service providers.

ITS on the register of information

Finally, the ITS set out the templates to be maintained and updated by financial entities in relation to their contractual arrangements with ICT third-party service providers. The register of information will play a crucial role in the ICT third-party risk management framework of the financial entities and will be used by competent authorities and ESAs in the context of supervising financial entities' compliance with DORA and to designate critical ICT third-party service providers that will be subject to the DORA oversight regime.

Legal basis and Background

These final draft technical standards have been developed in accordance with Articles 15, 16(3), 18(3), 28(9) and 28(10) of DORA (Regulation (EU) 2022/2554). The public consultation on the draft technical standards took place from 19 June to 11 September 2023. The ESAs received more than 420 responses from market participants, including a joint response from ESAs' stakeholder groups. The public consultation feedback led to specific changes to the technical standards, including ensuring simplification and streamlining of the requirements, greater proportionality and addressing sector-specific concerns.

Next steps

The final draft technical standards have been submitted to the European Commission, who will now start working on their review with the objective to adopt these first standards in the coming months.



Impacting investing – Do SDG funds fulfil their promises?

Impact investing attracts growing interest from investors and may be prone to misleading, inaccurate or unsubstantiated claims. These claims suggest a positive contribution to the fulfilment of the United Nations Sustainable Development Goals (SDGs).

ESMA proposes and summarises a methodological approach towards identifying SDG funds and assessing the extent to which their holdings align with their claims by bringing together a unique set of different data sources. SDG funds do not significantly differ from non-SDG counterparts or ESG peers regarding their alignment with the United Nations SDGs. This raises questions as to whether funds claiming to contribute to the SDGs are actually fulfilling their promise to investors.

Read it [here](#)



ESAs recommend steps to enhance the monitoring of BigTechs' financial services activities

The European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published a Report setting out the results of a stocktake of BigTech direct financial services provision in the EU. The Report identifies the types of financial services currently carried out by BigTechs in the EU pursuant to EU licences and highlights inherent opportunities, risks, regulatory and supervisory challenges. The ESAs will continue to strengthen the monitoring of the relevance of BigTech in the EU financial services sector, including via the establishment of a new monitoring matrix.

In 2023 the ESAs, via the European Forum for Innovation Facilitators (EFIF), conducted a cross-sectoral stocktake of BigTech subsidiaries providing financial services in the European Union (EU) as a follow-up to the ESAs' 2022 response to the European Commission's Call for Advice on Digital Finance.

The stocktake showed that BigTech subsidiary companies currently licenced to provide financial services pursuant to EU law mainly provide services in the payments, e-money and insurance sectors and, in limited cases, the banking sector. However, the ESAs have yet to observe their presence in the market for securities services.

To further strengthen the cross-sectoral mapping of BigTechs' presence and relevance to the EU's financial sector, the ESAs propose to set-up a data mapping tool within the EFIF. This tool is intended to provide a framework that supervisors from the National Competent Authorities would be able to use to monitor on an ongoing and dynamic basis the BigTech companies' direct and indirect relevance to the EU financial sector.

The ESA will also continue the cross-disciplinary exchanges in the setting of the EFIF to further foster the exchange of information between EFIF members and other relevant financial and non-financial sector authorities involved in the monitoring of BigTechs' activities (e.g., data protection and consumer protection authorities).

Background

More information about the EFIF can be found [here](#).

For the purpose of this report, BigTechs are large technology companies with extensive customer networks, which include firms with core businesses in social media, internet search, software, online retail and telecoms.



Speaking appearances

by ESMA Staff in February

Date

- | | |
|---------------|--|
| 13 Feb | <u>11th Annual QED Conference on Cybersecurity</u>
- Barbara Daskala |
| 20 Feb | Regulation of AI in financial services
- Claudia Guagliano |
| 21 Feb | <u>Eurofi High Level Seminar</u>
- Verena Ross / Evert van Walsum / Klaus Loeber |
| 22 Feb | <u>Carbon content measurement for products, organisations and aggregate</u>
- Eduardo-Javier Moral-Prieto |
| 26 Feb | CMVM SupTech Workshop
- Verena Ross |
| 28 Feb | <u>Eurex Derivatives Forum 2024</u>
- Klaus Loeber |
| 29 Feb | <u>9th EU-Asia Financial Services Dialogue</u>
- Verena Ross |

Consultations



Click on the consultation

Closing date

- 29 Feb** [Consultation on Technical Advice on CSDR Penalty Mechanism](#)
- 4 Mar** [ESAs joint consultation on second batch of policy mandates under the Digital Operational Resilience Act](#)
- 8 Mar** [Consultation on draft ITS specifying certain tasks of collection bodies and certain functionalities of the European Single Access Point](#)
- 14 Mar** [Discussion Paper on MiFID II investor protection topics linked to digitalisation](#)
- 15 Mar** [Consultation on the Securitisation Disclosure Templates](#)
- 15 Mar** [Consultation on Draft Guidelines on Enforcement of Sustainability Information](#)

Hearings and Webinars

Click on the consultation

- 10 Jan** [Webinar: ESMA's and EIOPA's Annual Cost and Past Performance Report](#)
 presentations: [ESMA](#) | [EIOPA](#)
- 7 Feb** [Webinar on articles on methodology for climate risk stress testing and analysis of the financial impact of greenwashing controversies](#)
 [presentation](#)
- 15 Feb** [Workshop on Consolidated Tapes for potential applicants](#)
- 16 Feb** [ESAs open hearing on the ESAP draft implementation standards](#)
- 14 Mar** [Workshop on Consolidated Tapes for market participants](#)

Open vacancies

All open vacancies can be found on [ESMA's recruitment portal](#)

Deadline

- 29 Feb** [Supervision Officer](#)
- 31 Dec** [Seconded National Experts \(multiple profiles\)](#)
- 31 Dec** [Traineeship Notice - Support functions profile](#)
- 31 Dec** [Traineeship Notice - Data, Economics and IT profile](#)
- 31 Dec** [Traineeship Notice - Legal, Supervision and Policy](#)

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Social Media



ESMAComms



European Securities and Markets Authority (ESMA)