



ONLINE SUBMISSION TO: <https://www.esma.europa.eu/>

To whom it may concern,

Re: ESMA Second Consultation Paper on Technical Standards specifying certain requirements of Markets in Crypto Assets Regulation (MiCA)

About GBBC Digital Finance (GDF)

GDF is the leading global members association advocating and accelerating the adoption of best practices for crypto and digital assets. GDF's mission is to promote and facilitate greater adoption of market standards for digital assets through the development of best practices and governance standards by convening industry, policymakers, and regulators.

The input to this response has been curated through a series of member discussions and roundtables, and GDF is grateful to its members who have taken part.

As always, GDF remains at your disposal for any further questions or clarifications you may have, and we would welcome a meeting with you to further discuss these matters in more detail with our members.

Yours faithfully,

Lavan Thasarathakumar - Director of Government and Regulatory Affairs - GDF
Elise Soucie - Director of Policy & Regulation - GDF



Response to the Consultation Report: Executive Summary

The GDF MiCA Working Group was convened to analyse European Securities and Markets Authority's proposed Technical Standards specifying certain requirements of Markets in Crypto Assets Regulation (MiCA). Please note that as this response was developed in collaboration with GDF members that portions of our response may be similar or verbatim to individual member responses.

Overall GDF is supportive of the recommendations made in the ESMA Second Consultation Report (referred to henceforth as the Consultation), and of ESMA's intent of providing much needed clarity to the market. We appreciate the agility and speed with which ESMA has aimed to develop Technical Standards for the market, and believe the report is an important step towards building a comprehensive EU global framework for digital assets. As such, the response to this consultation report looks to provide suggestions of areas where further precision and clarity may be needed for effective implementation of the Technical Standards.

GDF has worked with our members to provide a constructive assessment of how to overcome challenges in implementing the Technical Standards. Through this process the Working Group identified key areas that may require further drafting consideration or additional guidance for purposes of clarity, proportionality, and effective implementation. The four core areas identified are:

- 1. Greater clarity on sustainability indicators and sustainability disclosure obligations;**
- 2. Additional guidance on technical implementation for post trade requirements;**
- 3. A more precise scope for insider information; and**
- 4. Further consideration of the interplay of MiCA and other regulatory frameworks such as MiFID/MiFIR and DORA**

Greater clarity on sustainability indicators and sustainability disclosure obligations

GDF is committed to supporting the transition to a sustainable economy and strongly supports the further development of sustainable finance guidance and standards in the EU. The key areas our response sets out for further consideration are:

- 1. Scope and structure:** Scope 3 GHG emissions as set out in the consultation appears to relate solely to emissions that occur in the value chain of network nodes. In contrast, the inclusion of Scope 1 and Scope 2 as mandatory indicators in Table 1 could be interpreted that miners / validators must be included in scope of MiCA as they would be the only entities responsible directly for these emissions. As ESMA has set out throughout the MiCA process, the focus of the regulatory framework is not on miners and validators, but CASPs. Given that, we believe it would be more appropriate for entities to repost Scope 3 as indicators, as only the organisation directly responsible for the emissions can report these as Scope 1 or 2. Furthermore we would highlight the significant work undertaken to establish how Scope 3 emissions in relation to electricity consumption of CASPs can reasonably be measured, apportioned, reported, and managed. This is further discussed in our response to Q1, Q3, Q5, Q6, Q9, Q10 and Q11.
- 2. Proportionality & Alignment with CSRD, SFDR, and ESRS E1:** We have highlighted throughout our response several key areas where clarity is needed in order to align the ESMA proposals with the existing frameworks set out above. For instance, as further



discussed in our response the reporting threshold suggested by the current proposals does not align to the CSRD's high threshold for applicability. We would encourage ESMA to seek greater alignment and proportionality where appropriate.

3. **Inclusion of positive metrics and renewable reporting:** In addition to the point on alignment above, on crucial area where alignment is needed is on renewable reporting and positive metrics. We would encourage ESMA to include this in the reporting mandate as it is relevant information for investors and market participants that would contribute to building a more complete and holistic picture of the ecosystem. Additionally, the inclusion of material positive and negative actual and potential impacts is crucial as it allows for qualitative and quantitative risks and opportunities to be described and provided. This would also be aligned to CSRD and ESRS E1.
4. **Data requirements:** In support of the first point mentioned above, we believe that the data requirements could be made more workable by removing the Scope 1 and 2 requirements and having CASPs report Scope 3 instead. If ESMA still wishes to collect data on total network, and have CASPS determine their share, rather than breaking down into Scope 1 and 2 a 'total network CO2' figure may be more appropriate. This is further expanded upon in our response to Q4.
5. **Audit:** We would encourage ESMA to provide additional guidance and clarity around audit expectations and methodologies as well as encourage standards in this space to help with consistency in approach and reporting. This is further expanded upon in our response to Q5.

Additional guidance on technical implementation for post-trade requirements

GDF is broadly supportive of the overall requirements but, our key comments relating to post-trade requirements relate to block trades. Other jurisdictional frameworks (for example the Commodity Futures Trading Commission in the US) have systems which allow for delays depending on the type or size of a product. We would recommend ESMA consider including allowances for delays in instances such as block trades, as if there is no delay on a block, this can have an adverse impact on both the pricing and those trading.

A more precise scope for insider information

The key areas our response sets out on inside information relate to the scope of the definition. As set out under the MiCA definition, 'inside information' is quite a broad term. We believe too large a definition would be largely incompatible with the crypto-asset market and may be relevant only to a limited group of crypto-assets – likely stablecoins only. Given the evolving nature of cryptoassets, we would encourage ESMA to be outcomes-focused, rather than relying on existing definitions or practices.

Further consideration of the interplay of MiCA and other regulatory frameworks such as MiFID/MiFIR and DORA

GDF also provided comments on the interplay between MiCA and MiFID / MiFIR as well as the interplay between MiCA and operational resilience. We would encourage ESMA to consider how MiCA requirements will sit alongside MiFID, and how it may impact CASPs who are also subject to MiFID requirements. We also believe that it is important that ESMA highlights the obligations throughout and ensures there are no requirements under MiCA duplicating or contradicting those in DORA.



Response to the Consultation Report: Questions for Public Consultation

Please note that given our focus areas set out in the executive summary that we have not responded to each question in the ESMA consultation. Instead, we have provided feedback in input on the specific questions and chapters that are relevant to the key areas. Where we have not provided further feedback, we are supportive of the Technical Standard proposals that have been set out.

Chapter 3 - Content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment

Q1. Do you agree with ESMA's assessment of the mandate for sustainability disclosures under MiCA?

GDF is committed to supporting the transition to a sustainable economy and strongly supports the further development of sustainable finance guidance and standards in the EU. The financial services industry, including CASPs, will play a crucial role in underpinning the transition to net zero greenhouse gas emissions. Notably, the sector can allocate capital and provide long-term investment in ways that are consistent with achieving the EU's key climate objectives. We therefore understand the concerns raised by ESMA on energy consumption in crypto-asset markets. GDF is supportive of the sustainability disclosure requirements as an integral part of ESMA's mandate for disclosures under MiCA.

Notwithstanding the above, we would reiterate from our Executive Summary the 5 key areas our response sets out for further consideration on ESMA's mandate for sustainability disclosures:

1. **Scope and structure:** Scope 3 GHG emissions as set out in the consultation appears to relate solely to emissions that occur in the value chain of network nodes. In contrast, the inclusion of Scope 1 and Scope 2 as mandatory indicators in Table 1 could be interpreted that miners / validators must be included in scope of MiCA as they would be the only entities responsible directly for these emissions. As ESMA has set out throughout the MiCA process, the focus of the regulatory framework is not on miners and validators, but CASPs. Given that, we believe it would be more appropriate for entities to repost Scope 3 as indicators, as only the organisation directly responsible for the emissions can report these as Scope 1 or 2. Furthermore we would highlight the significant work undertaken to establish how Scope 3 emissions in relation to electricity consumption of CASPs can reasonably be measured, apportioned, reported, and managed. This is further discussed in our response to Q1, Q3, Q5, Q6, Q9, Q10 and Q11.
2. **Proportionality & Alignment with CSRD, SFDR, and ESRS E1:** We have highlighted throughout our response several key areas where clarity is needed in order to align the ESMA proposals with the existing frameworks set out above. For instance, as further discussed in our response the reporting threshold suggested by the current proposals does not align to the CSRD's high threshold for applicability. We would encourage ESMA to seek greater alignment and proportionality where appropriate.
3. **Inclusion of positive metrics and renewable reporting:** In addition to the point on alignment above, on crucial area where alignment is needed is on renewable reporting and positive metrics. We would encourage ESMA to include this in the reporting mandate as it is relevant information for investors and market participants that would contribute to building a more complete and holistic picture of the ecosystem. Additionally, the inclusion of material positive and negative actual and potential impacts is crucial as it allows for qualitative and quantitative risks and opportunities to be described and provided. This would also be aligned to CSRD and ESRS E1.
4. **Data requirements:** In support of the first point mentioned above, we believe that the data requirements could be made more workable by removing the Scope 1 and 2 requirements



and having CASPs report Scope 3 instead. If ESMA still wishes to collect data on total network for broader context, and have CASPS determine their share, rather than breaking down into Scope 1 and 2 a ‘total network CO2’ figure may be more appropriate. This is further expanded upon in our response to Q4.

5. **Audit:** We would encourage ESMA to provide additional guidance and clarity around audit expectations and methodologies as well as encourage standards in this space to help with consistency in approach and reporting. This is further expanded upon in our response to Q5.

Q2: In your view, what features of the consensus mechanisms are relevant to assess their sustainability impacts, and what type of information can be obtained in relation to each DLT network node?

As set out by ESMA, there are currently challenges with identifying reliable indicators and granular data on the environmental impact of crypto-assets. As such, GDF believes that it is crucial that no restrictions should be placed on various methods of consensus mechanism. It is true that certain crypto-assets are based on a technology that entails a high energy consumption and, therefore, deserves dedicated attention to assess how these processes can most appropriately be designed to move towards carbon neutrality.

Yet proposals to entirely restrict certain types of technology are not future-proof and could limit important opportunities for innovation in the EU, while potentially creating new points of transition risk as we move towards more sustainable and digital financial services.

Additionally, GDF would like to highlight the potential risk that such an approach would raise with regard to AML/ CFT controls. By prohibiting services for these types of crypto-assets, this could negatively impact the “G” in the ESG. A good governance includes strong and robust control frameworks. Banning or disincentivising service providers from participating in certain crypto-asset networks or forcing investors to use non-EU based service providers could lead to unintended consequences. The outcome of the standards should not prohibit crypto exchanges listing tokens independent of its protocol. Indeed, if EU based entities are prohibited to deal with PoW-reliant crypto-assets, clients and consumers are likely to look towards non-EU providers (outside of the MiCA framework). This not only could ultimately put consumers and clients at greater risk of loss, and more exposed to cybersecurity risks, but it also limits the EU’s ability to adequately fight money laundering and terrorism financing, by displacing the activity instead of regulating it.

In light of this GDF would thus encourage ESMA to look at treating crypto-assets as they treat other asset classes under the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR) as proposed in the consultation. This will also support MiCA in being appropriate, proportionate, and technology neutral.

Overall, GDF would note that Proof-of-Work (POW), Proof-of-Stake (POS) and Proof-of-Authority (POA) are the main consensus mechanisms currently being used in the market and we would encourage ESMA to use the characteristics and features of these consensus mechanisms to guide the RTS process as that is directly relevant to the mandate at Articles 6(12), 19(11), 51(15) and 66(5) and e.g. recital 7.

With regards to the ESMA consultation on the features of consensus mechanisms that are relevant we would highlight the following two key areas for consideration:

1. **Categorisation by consensus mechanism:** as the mining of some cryptocurrencies such as Bitcoin requires specialist equipment, whereas others can simply be validated using a standard laptop, we strongly encourage differentiation by consensus mechanism and a proportionate approach. For example, in Proof of Work (PoW) consensus mechanisms,



detailed information on the hardware is required for accurate reporting. In a fully decentralised system with free access, such as Bitcoin, geographical distribution (as granular as possible) is required to determine grid energy mix. Other consensus mechanisms may have a capped number of validators which makes it much easier to pinpoint location.

- **Recommendation:** In light of the above GDF recommends adjustment to Table 1 so that all consensus mechanisms are not treated the same. In some instances, the Table 1 metrics might not actually provide meaningful information for a given mechanism. We also recommend adjusting Table 1 to add a ‘de minimis’ threshold point at which requirements apply. This will be important in order to more accurately track the environmental impact of blockchain and mitigate the risk of an overload of information obscuring the most relevant factors for market participants and investors to consider.
2. **Transaction based metrics are unsuited to Bitcoin and PoW:** - The discussion paper places a heavy emphasis on a per transaction model, which we consider particularly unsuited for PoW blockchains such as Bitcoin. As respected sustainability sources have pointed out in the past (CCAF, [p.83](#)), energy consumption is not causally linked with transaction volume: the bulk of miner incentivisation comes not from transaction fees but from block rewards. Whether a block is empty or full, the energy cost of producing it will be the same and, were transaction throughput hypothetically to increase by an accepted alteration to protocol rules, this would not fundamentally alter the energy required for the network to function. Further, what constitutes a ‘transaction’ may be difficult to determine, given that a single on-chain Bitcoin transaction may conceal hundreds of ‘bundled’ off chain transactions from an exchange or Layer 2 solution. This belies the crux of the point: Bitcoin’s energy consumption is not for transaction validation per se, but rather the ‘security budget’ that allows for consensus in a highly adversarial context. This is tied to miner proof of work, and not transaction processing.
- **Recommendation:** GDF would recommend that ESMA move away from implementing a transaction-based lens as it will likely not provide the appropriate information required by investors. Instead, we would propose that ESMA implement consensus mechanism specific considerations. This is directly linked to Recital 7 in MiCA relating to environmental disclosures which states “ESMA should take into account the various types of consensus mechanisms used for the validation of transactions in crypto-assets, their characteristics and the differences between them.”

Q3: Do you agree with ESMA’s approach to ensure coherence, complementarity, consistency and proportionality?

GDF is supportive of ESMA’s overall approach. We would be supportive of ESMA further sharing their process to ensure coherence and complementarity and would welcome the opportunity to discuss further following the closure of the consultation process. We support ESMA’s proposal to align with CSRD and SFDR. GDF members are supportive in particular of the proposals around proportionality. Given the challenges outline with the rapid evolution of the sector and the difficulty of obtaining reliable data, we support in particular ESMA’s proposal that indicators are only made mandatory when they can be considered the most conducive to investor awareness as well as the proposal that entities subject to disclosure requirements benefit from a best effort clause in case of limited data availability.

In addition to the above, we would note two points in particular where we believe ESMA could consider further expanding the RTSs proposals:



1. We would note that Article 66 of the MiCA mandate, specifically calls out the consideration of use of renewable energy: “When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, **renewable energy** and natural resources, the production of waste and greenhouse gas emissions.” The Level 2 RTSs do not currently include reporting for renewable energy in the MiCA mandate. We would encourage ESMA to include this in the reporting mandate as it is crucial information for investors and market participants that would contribute to building a more complete and holistic picture of the ecosystem.
2. Further to the above point, we would encourage ESMA to focus on both the ‘adverse’ and the ‘positive’ impacts that the digital finance ecosystem may have on climate change. The European Sustainability Reporting Standards E1 (ESRS E1) have a broad and non-emotive scope which sets out a focus on, “how the undertaking affects climate change, in terms of **material positive and negative** actual and potential impacts.” GDF is supportive of ESMA also taking such an approach as it allows for risks and opportunities to be described qualitatively as well as quantitative information to be provided. Furthermore, the wording of CSRD also allows disclosing companies the opportunity to state what choices they have made to reduce energy consumption (or procure renewables). We would strongly encourage ESMA to also implement such opportunities in their reporting standards to provide broader context and align with broader EU sustainability requirements.

Finally, we would also note that practical challenges still remain to be resolved such as how industry peers (e.g., CASPs) and white paper issuers collaborate in practice. We would encourage ESMA to consider these challenges amongst others as the RTS process progresses.

Q4: Do you agree with ESMA’s approach to mitigating challenges related to data availability and reliability? Do you support the use of estimates in case of limited data availability, for example when data is not available for the entirety of a calendar year?

Yes, GDF is supportive of ESMA’s overall approach and welcomes that they acknowledge the challenge around reliable and available data. We appreciate the allowance for a best effort clause but propose that further clarity and guidance will be needed from authorities on what constitutes ‘best efforts’. Best efforts and estimates are subjective concepts and GDF would encourage ESMA and its supervisors to bear this in mind as public and private sector will need to continue to collaborate to achieve the regulatory outcomes desired. Supervisors should also champion consistency, which we would recommend include acknowledging best practice in appropriate data sources.

We agree with ESMA that it is crucial to mitigate some of the data challenges, and believe it is very important that there is consistency in data - and that there is some mechanism in place to achieve this. This could be done for example through a facility to draw on approved, audited material from trusted providers, or an industry agreed standard. The ESMA mandate could for example encourage new tools and data sources to arise that will assist preparers and users of the required information by encouraging additional attention to the data requirements and data quality themselves.

Furthermore, as MiCA is implemented the models and assumptions underlying the data utilised by reporting entities will be key for the users of the reported metrics to make sense of them and appropriately use them in valuation and other contexts. As with financial reporting, analysts need a deep and broad understanding of whether a given number is an estimate or an observed value, and ultimately how each of the metrics can be assessed for quality.



We also agree with ESMA's proposal that the use of third parties to validate disclosure data would be beneficial. Yet, this does raise additional challenges which may need to be mitigated through additional guidance or further public/private sector collaboration. We would encourage ESMA to provide additional guidance and clarity around audit expectations and methodologies as well as encourage standards in this space to help with consistency in approach and reporting. This is further expanded upon in our response to Q5 as well.

Additionally, as set out in our response to the previous question, we would strongly recommend a de minimis threshold. This would mitigate the risk mentioned previously of data being reported that is not relevant or significant.

GDF also believes that some of the data concerns could be mitigated by focusing on the entity rather than the network. For an entity to report on the whole sector (and the entirety of the blockchain), rather than apportion to one's own company may not be feasible and could further widen the issue of poor data. In the event that it was feasible, this would still be inadvisable as it would lead to duplication of the indicators reported across CASPs (and further poor data). To overcome this challenge, we would recommend instead to have a top-level metric from the network, then each CASP could report at an entity level, and on the portion of the network that they have relation to.

Q5: What are your views on the feasibility and costs of accessing data required to compute the sustainability metrics included in the draft RTS?

First, when assessing the feasibility of the costs for the information and disclosure obligations, GDF supports a balanced and appropriate view when setting the obligations. For example, it would be undesirable to mandate a comparatively small improvement to environmental standards if it would mean a comparatively larger compromise of data integrity and cybersecurity. Furthermore, we would also encourage a technology neutral viewpoint as set out in Recital 6 of MiCA as well as set out in our response to the previous questions. GDF also supports forbearance and a degree of simplicity until such times as the industry has identified solutions to the data challenges that are acceptable and appropriate.

In consideration of feasibility and costs we would encourage ESMA to consider two different types of cost:

1. Costs borne by the reporting entity (CASP) in order to retrieve or purchase data from a reliable source or tool; and
2. Costs borne by the data provider who is gathering and providing the data to the reporting entities.

We would also encourage ESMA to undertake a cost-benefit analysis exercise prior to implementation.

With respect to these two types of costs, clarity is still needed as to how the data will be made available. For example, the data stipulated in Tables 1 & 2 may have a market develop around it where various market players provide this data. Clarity will be needed from ESMA on what methodologies and assumptions are acceptable from providers, as differing methodologies could result in widely different figures. An alternative to the market model is a 'golden source' that all CASPs could use to report. Yet who controls the source would need to be determined as well as cost (or no cost) for access. If a cost model is implemented either for the 'golden source' or market model, we would also encourage ESMA to consider the impact to SMEs and what consideration may be needed for smaller CASPs as the reporting threshold is significantly smaller than for CSRD.

With regards to the tables set out by ESMA we believe that it will be extremely difficult to differentiate between Scope 1 and 2 emissions for the purposes of aggregating carbon emissions for an entire



network. Instead, we would recommend total carbon emissions as a more appropriate and accurate measure. We also note that the inclusion of ‘Scope 2 - purchased’ without specifying whether this is market-based, or location-based, or both, is not in line with GHG Protocol disclosures.

Furthermore, as set out in response to previous questions we would strongly encourage ESMA to also include renewable energy metrics within the tables as this would be in line with both ESRS E1 and CSRD. Energy use reduction targets should also include renewable targets.

Finally, Scope 3 GHG emissions as set out in the consultation appears to relate solely to emissions that occur in the value chain of network nodes. However, we would highlight the significant work undertaken to establish how Scope 3 emissions in relation to electricity consumption of CASPs can reasonably be measured, apportioned, reported, and managed. For example, the CCRI / Southpole methodology provides a mechanism for doing this. Given that, as well as the challenges set out above relating to Scope 1 or Scope 2, we believe it would be more appropriate for entities to repost Scope 3 as indicators, as only the organisation directly responsible for the emissions (which in this case would be the entire network) can report these as Scope 1 or 2.

Q6: Do you agree with ESMA’s description on the practical approach to assessing the sustainability impacts of consensus mechanisms? If not, what alternative approach would you consider suitable to assess these impacts?

GDF would first note that the inclusion of Scope 1 and Scope 2 as mandatory indicators in Table 1 could be interpreted that miners / validators must be included in scope of MiCA as they would be the only entities responsible directly for these emissions. As ESMA has set out throughout the MiCA process, the focus of the regulatory framework is not on miners and validators, but CASPs. Given that, we believe it would be more appropriate for entities to repost Scope 3 as indicators, as only the organisation directly responsible for the emissions can report these as Scope 1 or 2.

Furthermore, to mandate that CASPs report Scope 1 or 2 would be inaccurate and would place responsibility for a wider blockchain on a single market participant. This would not be appropriate as the CASP would either have to rely on estimates (which would be inaccurate) or would hypothetically need to observe all miners and validators on the entirety of the blockchain (which may not be feasible). In the event that it was feasible, this would still be unadvisable as it would lead to duplication of the indicators reported across CASPs.

As such, we advise ESMA to remove the reporting requirement for Scope 1 and 2 and instead use Scope 3 as a mandatory indicator (as also discussed in response to the previous question) which GDF believes would be more in line with CSRD and SFDR.

This is a pattern that we saw in the negotiation of the level 1 text and the liability of CASPs for any incident that takes place on the blockchain. GDF urges ESMA to be careful not to broaden the scope of requirements for CASPs too far so as to render disclosures inaccurate or impossible for firms to comply with. Whilst it is important to have these measures in place, as discussed on the inclusion of sustainability measures in the level 1 text, it is imperative that there needs to be ecosystem wide change and not just requirements on the cryptoasset industry or else there will be gaps. As such, GDF urges that any approaches fit neatly with and only comes into effect after horizontal legislation is in place. We would also encourage ESMA and supervisors to consider supporting industry in agreeing information sources in the short-term that allows the market time to transition to realistic and sustainable solutions that support MiCA’s overall sustainability requirements in the longer term.



In addition to the above, we believe further clarity is also required on point 46 specifically, which notes, “the certainty provided in the draft RTS should enhance the availability of sustainability data in relation to crypto-assets ahead of the application of MiCA requirements by end 2024.” GDF agrees that certainty is required and are supportive of ESMA’s intent, yet in order for this to be achieved we believe that further information will be required, ahead of the final RTSs, which mitigates some of the risks and challenges that we have set out in response to previous questions. GDF remains supportive of ESMA and would be happy to have an ongoing dialogue to work towards further clarity in support of this aim.

Q7: Do you agree with the definitions proposed in the draft RTS, in particular on incentive structure and on DLT GHG emissions? If not, what alternative wording would you consider appropriate?

GDF is supportive of ESMA’s approach to the definitions. With regards to incentive structure, we would propose the following revisions:

Original text from the consultation: *(a) ‘incentive structure’ means the set of incentives and penalties that a consensus mechanism uses to economically incentivise distributed ledger technology (DLT) network nodes to co-operate in applying the rules and procedures of the consensus mechanism for the purposes of validating transactions.*

Proposed revision: *(a) ‘incentive structure’ means the set of incentives and penalties that a consensus mechanism uses to economically incentivise distributed ledger technology (DLT) network nodes to co-operate in rules and procedures of the consensus mechanism to achieve common agreement’.*

This amendment is proposed in line with our response to Q2. above that notes why transaction-based metrics are unsuited to Bitcoin and PoW.

Furthermore, on a global level GDF would encourage ESMA to engage with stakeholders internationally to ensure a degree of international coordination and consistency when developing definitions and solutions.

Q8: In your view, are the proposed mandatory sustainability indicators conducive to investor awareness? If not, what additional or alternative indicators would you consider relevant?

As set out above under Q6, to mandate that CASPs report Scope 1 or 2 would be inaccurate and would place responsibility for a wider blockchain on a single market participant. This would not be conducive to investor awareness and could have adverse impacts on the reliability of sustainability disclosures as well as other knock-on effects for the investors. As such we would recommend using Scope 3 as a mandatory indicator instead.

Furthermore, all indicators (both mandatory and optional) should be included in order to differentiate and incentivise CASPs to take positive action. This is another opportunity to include renewable metrics and could also include other measures such as publicising industry guidance, quantifying CASPS network share of energy consumption, or using market instruments to compensate for consumption and sharing such indicators with the market and investors.

Finally, the identification of the sustainability mandatory indicators is only part of the solution. We would encourage ESMA to also consider guidance on how information gathered should be presented to investors in such a way that is fair, clear, and not misleading, including by reference to non-industry benchmarks.



Q9: Do you consider the proposed optional sustainability indicators fit for purpose? If not, what additional indicators would you consider relevant? Would you agree to making these optional sustainability indicators mandatory in the medium run?

GDF is broadly supportive of proportionate and appropriate sustainability indicators. Yet we would reiterate our views set out under Q3, Q5, and Q6, and also suggest the following optional sustainability indicators in line with those recommendations:

- Renewable energy;
- Electricity consumption / GHG emissions apportioned to CASP (i.e., for their use of the cryptoasset network, or other appropriate apportionment - see CCRI / Southpole methodology);
- Indicators that may show progress (positive or negative) over time, which would serve investors (e.g., positive actions taken by CASP and / or cryptoasset network, targets for energy / GHG emissions reduction etc).

Beyond this, we would not recommend additional mandatory indicators until such times as ESMA has carried out a post-implementation review of the initial policy proposals.

Q10: Do you consider the principles for the presentation of the information, and the template for sustainability disclosures fit for purpose? If not, what improvements would you suggest?

We would reiterate our response above to Q3, Q5, Q6, and Q9 and note that the principles should be broadly aligned to the entities being regulated by MiCA (e.g., CASPs). To include other entities which are not subject to MiCA may lead to confusion as well as lack of feasibility of the effectiveness for enforcing and applying the principles. We also recommend that the disclosure framework supports CASPs in providing appropriate and additional context as set out in response to the previous questions.

Furthermore, consistency in approaches are still in progress and we would note that each Table column has a level of subjectivity within it meaning each firm gathering and submitting the data may approach it differently. We would encourage ESMA to work with the industry during the implementation period and GDF remains supportive and willing to facilitate public/private sector dialogue.

Q11: In your view, are the calculation guidance for energy use and GHG emissions included in the draft European Sustainability Reporting Standards relevant for methodologies in relation to the sustainability indicators under MiCA? If not, what alternative methodologies would you consider relevant? For the other indicators for which the calculation guidance of the ESRS was not available, do you consider that there are alternative methodologies that could be used? If so, which ones?

We would reiterate our views set out under Q3, Q5, Q6, Q9, and Q10 and also suggest the following calculation methodologies:

- Methodologies and standards for reporting should be developed as part of the RTSs as well as clear guidelines/methodologies for auditing and auditors.
- ESMA should consider the various methodologies currently in use within the market to measure and apportion electricity consumption / GHG emissions in relation to cryptoassets. Some of these are specific to a given cryptoasset, and others can be applied more widely. ESMA could build on this existing market practice within the RTSs.
- We would note that the methodology which has gained most traction and appears to be most aligned to the GHG Protocol and ESRS E1 is the CCRI / Southpole methodology. While this may not be applicable in all cases, we would encourage ESMA to use this as a starting point for developing further guidance.

Q12: Would you consider it useful that ESMA provides further clarity and guidance on methodologies and on recommended data sources? If yes, what are your suggestions in this regard?



We would reiterate our views set out under Q3, Q5, Q6, Q9, Q10 and Q11 and believe that further analysis on this issue is needed from ESMA. While significant work has been undertaken in recent years by forums such as the Crypto Climate Accord, World Economic Forum and Global Digital Finance, clear guidance, standards, and other frameworks are still required as guidance developed within financial services, does not yet map across to other sectors and standard setters which will be necessary in order to establish clear global methodologies and trusted data sources. As this exercise may ultimately have relevance to other countries and sectors outside of ESMA's remit we would also encourage greater collaboration with relevant stakeholders internationally. GDF is committed to continuing to support ESMA and work with them to develop the MiCA sustainability requirements that will be appropriate and effective in meeting the EU's ESG objectives.

Chapter 5 - Offering pre- and post- trade data to the public

Q31: What do you consider to be the maximum possible delay falling under the definition of “as close to real-time as is technically possible” to publish post-trade information in crypto-assets? Please provide reasons for your answer.

GDF is broadly supportive of the overall requirements but would note that there does not seem to be any accommodation for block trades in the ESMA consultation. Other jurisdictional frameworks (for example the Commodity Futures Trading Commission in the US) have systems which allow for delays depending on the type or size of a product. We would recommend ESMA consider including allowances for delays in instances such as block trades, as if there is no delay on a block, this can have an adverse impact on both the pricing and those trading.

Chapter 8 - Offering pre- and post- trade data to the public

Q70: Do you agree with the listed definitions? Would you consider useful to clarify any other term used in the ITS?

GDF is broadly supportive of the listed definitions, but we would note that ‘inside information’ (in Chapter 8, paragraph 266), as set out under the MiCA definition is quite a broad term. The definition is not limited to tasks but also includes information not otherwise made available to the public relating to one or more crypto-assets. If such information was made widely available to the public, this could potentially have significant ramifications and unintended consequences especially in retail markets.

We believe too large a definition would be largely incompatible with the crypto-asset market and may be relevant only to a limited group of crypto-assets – likely stablecoins only. As with commodities markets, inside information in the context of cryptoassets is likely to be different from inside information related to securities where there is always an issuer. If one considers the diverse types of crypto-asset that exist and the high retail participation in the crypto-assets market more broadly, this may require a more nuanced approach to ‘inside information’. For example, communication channels from regulators on rules and prohibitions may need to be different from those for professional markets. Given the evolving nature of cryptoassets, we would encourage ESMA to be outcomes-focused, rather than relying on existing definitions or practices.

Q75: Please comment the proposed means for dissemination of inside information? Please motivate your answer by indicating why the means they are/are not valuable tools for dissemination purposes.
Please see our above response to Q70.

Q76: Would you add any means of communications for the persons subject to the disclosure obligation to consider when disseminating inside information? Please motivate your answer.
Please see our above response to Q70.



Q77: Do you agree with the technical means for delaying the public disclosure of inside information as described?

Please see our above response to Q70.

Additional considerations on the interplay of MiCA and other regulatory frameworks such as MiFID/MiFIR and DORA

Comments on the interplay between MiCA and MiFID / MiFIR: GDF is supportive of ESMA's development of MiCA that built on the EU's existing financial services legislation (MiFID and MiFIR). However, we would note that there are certain areas where there are novel risks in crypto-asset markets and, as a result, do not necessarily follow the MiFID obligations straight on. In particular, we would highlight the requirement to put in place a dedicated business continuity function within the organisation of CASPs. This is not something that is required under MiFID at the moment, but ESMA's view, given the novel risks, is that this function is required. We would encourage ESMA to consider how this requirement will sit alongside MiFID, and how it may impact CASPs who are also subject to MiFID requirements.

GDF would also note the winding down requirements within MiCA. We would encourage ESMA to include guidance on maintaining consistency of implementation across EU jurisdictions. For digital finance entities who will likely operate across multiple EU countries, we would recommend a common standard or principle when this RTS is implemented. This could help to ensure that each jurisdiction within the EU takes into consideration the common principles when continuity tests are being applied. Furthermore, we would also note that having a common standard would significantly reduce the administrative burden and regulatory cost for the industry, especially for small and medium enterprises (SMEs) which comprise a significant portion of the EU's financial services industry.

GDF also urges the acceleration of work regarding Security Tokens. Where MiCA is not an isolated regime and is part of existing EU financial services legislation, analysis still needs to be conducted on what existing EU financial services legislation applies. As such, firms will need greater guidance on what is deemed a security token so that they can apply / disapply this before determining whether they should be conducting their MiCA analysis.

Comments on the interplay between MiCA and operational resilience: GDF would highlight the significant interplay between the requirements in MiCA and the requirements DORA, with the acknowledgement that CASP is an extremely broad term. In the same way that different activities whilst applying MiCA have specialised additional requirements, the same may be required activities under DORA. It is important that ESMA highlights the obligations throughout and ensures there are no requirements under MiCA duplicating or contradicting those in DORA.

It has also been noted by members that it will be a real challenge for some of the smaller CASPs to work to meet the compliance requirements which require them to move from one infrastructure onto another, as it effectively asks the CASPs to have the same standard of contracts with, for example, Google that larger banks do. This may discourage innovation in start-ups. This mandated requirement on SMEs could run the risk of consolidation, which would reduce competition. To mitigate this risk, we would encourage further analysis on the practicality of moving across infrastructures as this is new even for the established financial services industry.