
Blockchain for Europe Response to ESMA's consultation on technical requirements of the Markets in Crypto Assets Regulation

Second Consultation Package

Regulatory Technical Standards on content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment

Blockchain for Europe (BC4EU) and its members welcome the opportunity to provide feedback on the ESMA Consultation on Regulatory Technical Standards on the content, methodologies and presentation of sustainability indicators for crypto-assets as part of the Markets in Crypto-Assets Regulation (MiCA).

BC4EU is a brussels-based trade association representing blockchain industry players at the EU level. Our members present various voices of the wider blockchain native industry, ranging from crypto-assets exchanges through blockchain analytics tools providers to developers of decentralised protocols.

In our response, we focused on stressing the need for ensuring that sustainability indicators remain fit for purpose, collecting from providers the most important and reliable data that is clear, transparent and easily comparable both for the competent authorities and for potential investors.

We hope to build on this input in subsequent discussions with ESMA and the National Competent Authorities, as European authorities mature their work of assessing appropriate and proportionate approaches to sustainability indicators for crypto-assets.

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

BC4EU broadly agrees with ESMA's overall assessment of the mandate delineated by MICA for the development of sustainability disclosures for crypto-assets. We believe that the blockchain industry requires a transparent and harmonised methodology that will be clear to both industry players and regulators. Such methodology needs to be based on a thorough understanding of the functioning of crypto-assets and their underlying technology.

Having said that, we believe that there should be more clarity in terms of what is in scope of ESMA's mandate. In particular there should be more cohesion between the scope described in Article 3(3) and the wording used in the text or the data which is sought, as currently they do not seem aligned.

We understand that the suggested methodology concentrates on the energy consumption for transaction validation. In this regard, we would like to stress that, while much of the public attention is concentrated on the energy consumption of the Bitcoin network, which uses a 'Proof-of-Work' consensus mechanism, the vast majority of crypto-assets in the ecosystem are based on other less energy consuming mechanisms, such as proof-of-stake mechanism.

At the same time, BC4EU would like to stress that it is still unclear to us whether it makes sense for the methodology to concentrate also on the energy used to ensure the integrity of information stored on the ledger as suggested by ESMA. Understanding the challenge behind collecting information on the environmental impact of such complex and new phenomena as crypto-assets and blockchains, we believe that the methodology should concentrate on providing a clear request to the industry that would allow for a collection of comparable and useful information. In that, the methodology should concentrate on making sure that the sustainability disclosures provide a clear, simple and easy to understand overview of the environmental impact of the main features of a crypto-asset' design, without causing unnecessary cost-burdens on the provider.

Last but not least, as prescribed by MiCA's recital 7, we believe that ESMA should take into account the various types of consensus mechanism used for the validation of transactions in crypto-assets. At the same time, it should focus on the substance and not the underlying technology as stipulated by recital 6 of MiCA. Taking both recitals into consideration we would like to highlight the importance of clarifying and accurately defining the mandate of ESMA in this regard, in order to avoid inadvertently bringing into scope miners and validators, which would go against recital 6.

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?

BC4EU agrees with ESMA that consensus mechanisms play a central role in the evaluation of the overall impact of a crypto-asset. At the same time, we would like to strongly stress the importance of taking also in consideration the positive impact that a given DLT network can have on the environment in this final assessment. This could include the wider ESG impact a blockchain network could generate through its application or a lower resource utilisation that can contribute to a generally more sustainable system. It is crucial that these positive externalities are also considered in the assessment of the overall environmental impact of a given network. Focusing only on the negative externalities (e.g., energy and resources consumption) would only provide a partial picture of the overall "environmental impact" of blockchain technology.

As already mentioned in our answer to question 1, consensus mechanisms used by crypto-assets may differ significantly, also in terms of their sustainability impact. For this reason, we believe that instead of imposing a complex, time and resource consuming disclosure obligations on the crypto-assets issuers, ESMA should focus on collecting the most fundamental, simple and easy to compare information that would allow for a clear assessment of a sustainable impact of a specific crypto-asset, and which in exchange would facilitate the understanding of it by end-users.

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

BC4EU strongly agrees with the importance of ensuring coherence, complementarity, consistency and proportionality in the development of any legislative and non-legislative measure.

In order to ensure that RTS are indeed respecting these principles it will be key to develop objective criteria and metrics to allow accurate comparisons between different DLT networks and their underlying consensus mechanisms.

In addition, it will be crucial to ensure this comparison can hold also when assessing the environmental impact of entities and processes in the blockchain sector vis-a-vis those in other economic sectors.

Furthermore, we would like to stress the importance of keeping in mind the practical challenges that remain to be resolved such as how industry peers (e.g. CASPs and white paper issuers) are meant to collaborate in practice to ensure the crypto-assets' compliance with the disclosure requirements.

Last but not least, it needs to be stressed that traditional financial industries are currently in the process of developing taxonomies and disclosures regimes to ensure progress towards net-zero. The crypto-asset industry should be treated consistently with other energy-consuming sectors.

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?

BC4EU would like to stress that the collection of relevant data by providers will be a major challenge, considering the scarce availability and reliability of existing data on these aspects. Being aware of that, we would suggest considering a more lenient approach, that would not only allow for using estimates in case of limited data availability, but which could go even beyond that and provide more flexibility to providers, at least in the transitional period until data becomes available and reliable. Otherwise, the process for providers, especially smaller ones, to be able to provide accurate numbers of all the criteria requested by the RTS could be very costly.

We understand that best efforts and estimates are subjective concepts. This should be recognised by supervisors as the industry works to achieve the regulatory outcomes desired. In this regard, supervisors should take a special role in ensuring consistency, including by acknowledging good data sources.

In addition, it is worth mentioning that particular challenges could be experienced by issuers of tokens on so-called 'Layer 2' networks when asked to collect data about the underlying layer 1 blockchain on which the L2 network is based.

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

We strongly believe that due to the novelty of the topic of sustainability metrics for crypto-assets, both for the industry and the ESMA, as well as the lack of identified solutions by the industry that would be acceptable, there should be a degree of forbearance for the reporting parties.

At the same time, we would like to stress that the feasibility and cost can vary widely depending on the specific metrics, industry, and regulatory context. Sustainability reporting and disclosure requirements constantly evolve, which is why stakeholders often work towards finding practical and cost-effective solutions to ensure compliance. For this reason, it is essential to maintain a degree of collaboration, tolerance and flexibility among companies' regulatory entities, to address challenges related to data availability and computation.

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?

BC4EU supports ESMA's effort to create a harmonised approach to assessing the sustainability impacts of consensus mechanisms. We are aware of the importance of measuring the sustainability impact of consensus mechanisms and blockchain technology, despite it being still in the very early state of development. Having said that, the requirements imposed on the providers need to be weighted against the benefits resulting from its analysis.

In this regard, in our view the disclosure table on page 94 of the Consultation Report is very detailed and onerous, which raises concerns about the reliability of proposed data types, due to the lack of standardised data sets across jurisdictions. Instead, we suggest introducing a less complex metrics of measurement that offers a greater degree flexibility, for several arguments:

- **It will help to ensure a greater degree of comparability of data:** the more complex and detailed the disclosure table, the higher the risk that similar data from two different companies may be provided in two varying fields. This creates a risk that the data will not be reliable, or create unnecessary difficulty in comparing and analysing the results.
- **It will mitigate the risk of stifling innovation:** As already mentioned in our answer to question 4, complex reporting obligation is associated with a significant cost for companies.
- **It will ensure the data is understandable for individuals:** a simpler, more comparable and reliable data is also better fit for its purpose - ensuring that individuals such as investors in crypto-assets are appropriately informed about the sustainable impact of underlying consensus mechanisms.

In addition, it is worth mentioning that, in some cases, the obligation for providing the information will rely on the CASPs, which in the case of the currently proposed complex and detailed metric, may make the task even more challenging, time consuming and costly.

Furthermore, we suggest not including any requirements that rely on accurate geolocation of nodes via IP addresses. DLT nodes used to calculate GHG emissions can be hidden behind a VPN, misrepresenting their geographic location.

For the above reasons, recognising the complexity of proposed data sets, we suggest a phased approach starting with easily reportable or standardised data sets as a foundation for the future.

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?

As a representative of the industry, Blockchain for Europe would like to encourage ESMA to engage with stakeholders internationally to ensure a degree of international coordination and consistency when developing definitions and solutions. Considering the novelty of crypto-assets and the early stage of development of blockchain technology we would like to stress the importance of first setting a harmonised and simple requirements for providers, that would facilitate the reporting and collection of data, before increasing a degree of complexity and focusing on collecting more detailed information.

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?

Given the cross-border nature of crypto-assets and blockchain technology, the collaboration at global level we mentioned in our answer to Q7 is essential for setting up harmonised standards allowing for an effective data collection and developing a reliable sustainable impact analysis.

At the same time, we would like to advocate for a simplification of the current list of mandatory indicators conducive to investor protection to only those that are essential for the general assessment and understanding of the sustainable impacts. A shorter and less complex list of mandatory indicators would strengthen the transparency around the collected data. Furthermore, it would facilitate the data collecting and analysis and benchmarking process, presenting a clearer for potential investors into specific crypto-assets. The ultimate success of collected information depends on the overall presentation of the data, including appropriate benchmarking to non-industry players which needs to be easily understood by users.

The level of complexity needed for the industry to gather the data and comply with the requirements needs to be balanced with the value derived from the information enclosed in those indicators.

Last but not least, we believe that indicators that do not constitute more complex or difficult to collect information and which would not be considered as essential should be left as optional.

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?

As broadly explained in our answer to questions 6 and 8, we strongly encourage ESMA to broaden the list of optional sustainability indicators, at the cost of shortening the list of mandatory indicators. The overall objective behind this data collection exercise should be to ensure that whatever info is gathered it is clear and useful for the analysis.

Fully aware of the importance of this exercise and its difficulty, as well as lack of previous experience in measuring the sustainability of crypto-assets and blockchains, we encourage ESMA to take a cautious approach, and focus on collecting essential information for the understanding of environmental impacts, while leaving the rest of indicators as purely optional.

Most importantly, we suggest keeping this clearly marked as "Optional" as opposed to "Additional", in order to give enough time to the industry to implement the mandatory measure proposed by the regulation.

Last but not least, along with the development of ESMA's experience and industry standards, such a list of mandatory indicators could in future be expanded, deriving from the optional indicators. Having said that, we would not wish to see further mandatory indicators before ESMA has carried out a post implementation review of the initial policy proposal.

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?

As already stressed in our answer to Question 9 and previous questions, we strongly advocate for shortening the list of mandatory while leaving the rest of indicators as purely optional. As it currently stands, the disclosure table on page 94 of the Consultation document entails multiple columns, each presenting a level of subjectivity that is likely to produce variable outcomes, posing a question of whether such collected data will be useful. In addition, there is a risk that some of the information provided by companies may arrive in different tables or places causing confusion and making the information unusable.

It is for this reason we would like to stress the importance of ensuring the data collection takes place as simply as possible, benchmarking clear indicators that are essential for the

understanding of a protocol. At the same time it should remain sufficiently flexible in order to take into account different diverse approaches to submitting data.

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 believe that the methodology implemented by ESMA should be foremost clear and understandable by the industry. As explained by our answer to the previous questions, a complex and very detailed requirement imposed on the industry, that lacks experience in this topic, may result in confusing the companies, and result in collecting information that is not usable or fit for purpose.

The calculation guidance of the ESRS is still a relatively new concept, and its application to traditional firms under the Corporate Sustainability Reporting Directive (CSRD) is not yet completely clear. These challenges may be more pronounced in the crypto industry as the crypto industry tends to operate and use technology differently to more traditional financial services entities. Having said that, it cannot be precluded that in the future the ESRS could be aligned with the sustainability indicators specified in MiCA, and considered for assessing the environmental impact of crypto-assets and related activities.

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?

BC4EU considers that a good quality source of data is crucial for the ultimate success of outcomes of the data analysis. It is also the reason why we believe that ESMA should prioritise gathering a short list of the most essential sustainability indicators rather than require an extensive and complex group of indicators that may not be easily achievable for providers, risking their poor quality.

In our view, achieving a balance between offering specific guidance and allowing flexibility is crucial. In this regard, we would like to emphasise the importance of regular updates and consultations with stakeholders to ensure the guidance remains relevant in a rapidly changing industry. Additionally, we advocate for providing clarity on methodologies recommending data sources and more guidance on the level of granularity of data, particularity for the mandatory disclosures, asserting that such guidance can be beneficial for entities adhering to regulatory requirements.

Last but not least, we would like to strongly encourage a greater collaboration with all relevant stakeholders both at the European and international level.