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Status: Answer Published

Additional Information

Level 1 Regulation

MiCA

Topic

Crypto-Asset Service Provider (CASP)

Additional Legal Reference

Article 75(7)

Subject Matter

Commingling clients' crypto-assets with crypto-assets from other entities of the group when acting as custodian

Question

Some crypto-asset service providers (CASPs) providing custody and administration of crypto-assets on behalf of clients (as defined in Article 3(1)(17) of MiCA) have sister companies that may provide certain services to the CASP's clients, for instance, liquidity or offer lending services. These sister companies may be using the CASP as their custodian and the CASP will hold their crypto-assets within the same wallet(s) to custody other clients' crypto-assets.

Under MiCA, is a CASP providing custody and administration of crypto-assets on behalf of clients allowed to hold clients' crypto-assets within the same wallets as crypto-assets belonging to entities of the same group?

ESMA Answer

17-06-2025

Original language

According to Article 75(7) of MiCA, CASPs are required to ensure that, on the distributed ledger, clients' crypto-assets are held separately from their own crypto-assets. In practice, this means that the wallet addresses used for holding clients' crypto-assets should be different from the wallet addresses used for holding proprietary crypto-assets.

Whilst crypto-assets belonging to other entities belonging to the same group should not be regarded as "own crypto-assets" of the CASP for the purpose of Article 75(7) of MiCA, the fact that a CASP-custodian commingles its clients' crypto-assets with crypto-assets belonging to entities of the same group introduces conflicts of interest and potential risks for clients.

For instance, due to information asymmetry, the sister company may gain an advantage over other clients by becoming aware of circumstances or incidents that would prompt it to withdraw its crypto-assets from the CASP's custody. Such circumstances may include, for example, a potential shortfall in crypto-assets or the imminent insolvency of the CASP. As many CASPs use omnibus wallets, a significant withdrawal by a sister company can negatively impact other clients.

In accordance with Article 72 of MiCA, CASPs shall implement and maintain effective policies and procedures, taking into account the scale, the nature and range of crypto-asset services provided, to identify, prevent, manage and disclose conflicts of interest. In addition, Article 4(1) of Commission Delegated Regulation (EU) .../... of 27 February 2025 supplementing

Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers and the div and methodology for the content of disclosures on conflicts of interest provides that “the conflict of interest policies and procedures shall be set out in writing and shall take into account: (a) [...]; (b) where the crypto-asset service provider is a member of a group, any circumstances which may give rise to a conflict of interest due to the structure and business activities of other entities within the group”.

This obligation applies to cases described above where a CASP-custodian holds crypto-assets that belong to entities of the same group (as defined in Article 2, point (11), of Directive

2013/34/EU of the European Parliament and of the Council¹). The CASP-custodian should, for instance, avoid commingling clients' crypto-assets with crypto-assets held on behalf of entities of the same group. However, this would not be in itself sufficient and the CASP-custodian should take all measures to ensure “that the risks of damage to the interests of the crypto-asset provider or its clients will be prevented or appropriately mitigated” (Article 4(7) of the Commission Delegated Regulation on conflicts of interest of CASPs). If the CASP-custodian is not able to do so, it should refrain from providing the service to its sister entities.