

# EBA Consultation Paper: EBA Draft Regulatory Technical Standards to specify the requirements, templates and procedures for handling complaints under Article 31 of the Regulation (EU)2023/1114 on Markets in Crypto-assets, and amending Directive(EU) 2019/1937 (MiCAR)

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## Introduction

This consultation seeks feedback on proposed draft Regulatory Technical Standards (RTS) on complaints handling procedures of Issuers of Assets Referenced Tokens (IART) under Article 31 MiCAR which are required to the EBA, in close cooperation with the European Securities.

EBA points out that the subject matter of the RTS on hand relates to complaints handling procedures which is not specific to markets in crypto assets. Rather, it is decidedly unspecific as to the type of market, type of sector (banking, insurance, investments), type of product or service, type of financial institutions, and geographical location (of the financial institution and the complainant).

The EBA proposes an approach combining joint Guidelines of the three ESAs on complaints handling procedures<sup>1</sup> and a set of Technical Standards that ESMA had previously developed on complaints handling procedure under the European crowdfunding service providers for business Regulation (ECSPR) of 2020<sup>2</sup>.

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<sup>1</sup> <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/732334/312b02a6-3346-4dff-a3c4-41c987484e75/JC%202014%2043%20-%20Joint%20Committee%20-%20Final%20report%20complaints-handling%20guidelines.pdf?retry=1>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2117&from=EN>

As a result, the EBA arrived at the view that the draft RTS proposed in this CP should seize on the advantages of both option and propose a combination of them, by being drafted such that:

- the ‘established’ content of the RTS will follow the JC Guidelines given the reduced compliance costs of this approach for those entities already providing other financial services, the reduced supervisory complexity, and the results of the JC SC CPFI report of 2021, which concluded that the JC Guidelines are still fit for purpose and do not require any revision;
- however, where the RTS mandate under MiCAR requires the EBA to develop something additionally that is not covered in the JC Guidelines anyway, such as the development of templates, requiring complaints to be filed free of charge, and the requirement related to third party entities or procedure to investigate complaints and to communicate the outcome to holders of ART , then this additional content should be read across from ESMA’s Crowdfunding and emerging MiCAR RTS to bring about a desired degree of consistency.

## General comments

We welcome EBA’s approach to the mandate as we consider that having complaints handling procedures and standardized forms for it an essential piece of the architecture for provision of financial services. As such, the proposed approach of considering the current joint complaints handling guidelines seems adequate. We also agree with the additional point in the rationale to resort to the ESMA’s Crowdfunding and emerging MiCAR RTS, acknowledging the benefits listed in the CP, especially the consistency objective.

For consumers as investors in this market, it is key to have complaints handling processes which follow established rules and definitions. Moreover, it is essential to ensure that complaints handling procedures are provided free of charge, irrespective of the distributor.

## Answers to specific questions

**Question 1: Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.**

Yes.

**Question 2: Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?**

No.

**Question 3: Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?**

No.