

Guidelines

On supervisory practices for competent authorities to prevent and detect market abuse under the Markets in Crypto Assets Regulation (MiCA)

Table of Contents

1. Scope.....	2
2. Legislative references, abbreviations, and definitions.....	3
2.1. Legislative references	3
2.2. Abbreviations	3
2.3. Definitions	3
3. Purpose.....	5
Compliance and reporting obligations	6
3.1. Status of the guidelines.....	6
3.2. Reporting requirements	6
4. Guidelines on supervisory practices for competent authorities to prevent and detect market abuse.....	7
4.1. Proportionality in the application of the Guidelines (Guideline 1)	7
4.2. General approach to prevent and detect market abuse under MiCA (Guideline 2) ..	7
4.3. Integration of existing supervisory practices (Guideline 3)	8
4.4. Common supervisory culture to ensure market integrity under MiCA (Guideline 4) ..	8
4.5. Adequacy of resources (Guideline 5).....	9
4.6. Open dialogue with stakeholders about market integrity risks (Guideline 6)	9
4.7. Initiatives to promote market integrity among market participants (Guideline 7) ..	10
4.8. Monitoring and surveillance by NCAs (Guideline 8)	11
4.9. Supervision of PPAETs' arrangements, systems and procedures to prevent and detect market abuse (Guideline 9).....	11
4.10. Reaction to a STOR (Guideline 10).....	11
4.11. ESMA coordination (Guideline 11).....	12
4.12. Third-country obstacles to the effective exercise of NCAs' supervisory functions for the detection of cross-border market abuse (Guideline 12)	12

1. Scope

1 Who?

These guidelines apply to competent authorities, as defined in Article 3(1)(35) of MiCA.

2 What?

These guidelines apply in relation to Article 92(3) of MiCA.

3 When?

These guidelines apply from three months from the date of their publication on ESMA's website in all official EU languages.

2. Legislative references, abbreviations, and definitions

2.1. Legislative references

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹
MiCA	Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 ²
RTS on STOR	Commission Delegated Regulation (EU) xxxx/xxx of [date] specifying certain requirements in relation to the detection and prevention of market abuse under the Markets in Crypto Assets Regulation (MiCA)

2.2. Abbreviations

CASP	Crypto-asset service provider
EC	European Commission
ESMA	European Securities and Markets Authority
EU	European Union
MEV	Maximal extractable value
PPAET	Persons professionally arranging or executing transactions

2.3. Definitions

Social media	Online social networking service as defined in Article 2, point (7) of Regulation (EU) 2022/1925 of the European Parliament and the Council ³
Web-based platforms	Online platforms which collect and disseminate information and data on crypto-assets to promote informed investment decisions, accessible on a

¹ OJ L 331, 15.12.2010, p. 84.

² OJ L 150, 9.6.2023, p. 40.

³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

non-discriminatory basis and free of charge, as defined in Article 1 of the Commission Implementing Regulation (EU) 2024/2861⁴

⁴ Commission Implementing Regulation (EU) 2024/2861 of 12 November 2024 laying down implementing technical standards for the application of MICA with regard to the technical means for the appropriate public disclosure of inside information and for delaying the public disclosure of that information (OJ L, 2024/2861, 13.11.2024).

3. Purpose

These guidelines are based on Article 92(3) of MiCA and Article 16 of the ESMA Regulation. The objective of these guidelines is to ensure consistency between competent authorities' supervisory practices to prevent and detect market abuse involving crypto assets.

More specifically, they aim to establish consistent, efficient and effective supervisory practices among competent authorities to prevent and detect insider dealing, unlawful disclosure of inside information and market manipulation. They also aim to ensure the common uniform and consistent application of Title VI of MiCA (Articles 86-92).

Compliance and reporting obligations

3.1. Status of the guidelines

In accordance with Article 16(3) of the ESMA Regulation, competent authorities must make every effort to comply with these guidelines.

Competent authorities to which these guidelines apply to should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate.

3.2. Reporting requirements

Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply yet but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.

In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

A template for notifications is available on ESMA's website. Once the template has been filled in, it should be transmitted to ESMA.

4. Guidelines on supervisory practices for competent authorities to prevent and detect market abuse

4.1. Proportionality in the application of the Guidelines (Guideline 1)

1. Competent authorities should apply these guidelines in a way that is proportionate to the relevance of the activities and services performed by persons supervised in the crypto asset market and the risk that such activities and services pose to market integrity. Competent authorities are thus encouraged to develop and maintain a good understanding of the risks posed by CASPs and issuers directly supervised, as well as of the risks posed by other persons (traders, miners, validators or relevant persons active on social media), whose actions are susceptible to constitute market abuse (e.g. order book manipulation, MEV 5 strategies, or spreading of false or misleading information).
2. Taking into consideration the rapid evolution of crypto markets, competent authorities should be particularly alert and vigilant to possible new forms of market abuse behaviours, adopting a risk-based approach in respect of the activities prescribed in these guidelines.
3. When applying these guidelines, competent authorities should also adjust their own approach to market surveillance taking into consideration the progress achieved in relation to e.g. data availability and development of new market surveillance tools.

4.2. General approach to prevent and detect market abuse under MiCA (Guideline 2)

4. Competent authorities' approach to supervision in relation to market abuse in crypto assets should be risk-based, which means that competent authorities are expected to prioritise and use their resources efficiently and commensurately with the level of risk identified.
5. When considering risks, competent authorities are expected to be forward-looking, by taking into consideration to the extent possible potential and emerging risks of market abuse.
6. Competent authorities are encouraged to monitor the crypto assets market in a way that enables them to respond to identified risks to market integrity without undue delay. In particular, competent authorities are expected to follow up on a detected threat to market integrity in a reasonable timeframe. Identified issues should not be left without a proper conclusion or action plan.

⁵ Maximum amount of value a blockchain miner or validator can make by changing the order of transactions during the block production

7. Where new risks to market integrity in crypto assets are identified, competent authorities should supplement, seek to expand, or adjust their supervisory strategy for crypto-assets and action as appropriate.
8. Competent authorities are encouraged to incorporate their objectives and priorities related to prevention and detection market abuse under MiCA in their supervisory strategy.

4.3. Integration of existing supervisory practices (Guideline 3)

9. Competent authorities are encouraged to integrate dedicated measures to prevent and detect market abuse in the crypto-assets markets into their existing supervisory practices. Before integrating new measures, competent authorities are encouraged to evaluate the extent to which practices already in place for the detection and prevention of market abuse concerning financial instruments may cover the specific forms of market abuse with respect to crypto assets, and adapt or extend them, as appropriate.
10. For example, competent authorities could include in their monitoring activity those manipulative practices that may stem from the specific technology behind crypto-assets (e.g. abusive MEV strategies) or the way they are offered or evaluated (e.g. token supply manipulation or – for stablecoins – the assessment of the backing assets).
11. In addition, competent authorities should consider monitoring social media on a best effort basis to cover information posted on crypto assets, given the higher risk of spreading false or misleading information that such media may pose in the crypto environment in comparison to traditional financial markets.
12. Similarly, with respect to insider dealing, competent authorities should take into consideration, in addition to the possession of inside information by a person having access to inside information through the exercise of an employment, profession or duties (e.g. employee in a CASP aware of the decision to list a new token on a trading platform), the possession of inside information by a person in relation to his/her role in the distributed ledger technology or similar technology (e.g. miners or validators conducting front running or influencing the flow of validated transactions).

4.4. Common supervisory culture to ensure market integrity under MiCA (Guideline 4)

13. Competent authorities should play an active role in building a common EU supervisory culture and consistent supervisory practices under MiCA.
14. To achieve this objective, competent authorities should share among them information to facilitate a common understanding of the market integrity risks posed by crypto assets, issuers, CASPs, and any other market participant.
15. Competent authorities should inform each other of the measures adopted to prevent and detect market abuse pursuant to these guidelines, and exchange on the best practices identified to ensure market integrity.

16. In addition, competent authorities are encouraged to share their direct experiences on supervision in the area of market abuse concerning crypto assets and to highlight the difficulties encountered, by presenting and discussing supervisory cases in the relevant ESMA groups.
17. As a result of such exchanges, competent authorities may also propose that ESMA adopt specific supervisory convergence tools to promote supervisory convergence across the EU.
18. To get a more comprehensive view on the crypto market participants and products and in compliance with the rules on professional secrecy, competent authorities may, on a voluntary basis, consider entering into dialogues and exchanges of experiences with other authorities (e.g. authorities responsible for consumer protection or prevention and anti-money laundering authorities), when their supervisory activity appears to be connected to the crypto assets markets.

4.5. Adequacy of resources (Guideline 5)

19. To ensure the availability of sufficient resources to achieve their supervisory objectives, competent authorities are encouraged to have dedicated staff to carry out their functions and duties in the oversight of crypto asset markets.
20. To identify the resources and the staff needed to conduct detection and prevention of market abuse in crypto asset markets, competent authorities are encouraged to consider the following elements:
 - a) knowledge and competence of their staff with respect to the functioning of crypto-assets and the relevant technologies used (e.g. consensus mechanisms) as well as to the roles of participants in on-chain transactions;
 - b) the need for adequate tools specific to crypto assets market surveillance;
 - c) the need to carry out data driven market surveillance, in addition to event-based surveillance.
21. Competent authorities are encouraged to take part in initiatives for the ongoing training of the relevant staff.

4.6. Open dialogue with stakeholders about market integrity risks (Guideline 6)

22. To better comprehend technological developments and potential emerging market integrity risks with respect to crypto assets, competent authorities should proactively engage with stakeholders connected or associated with crypto asset markets, as well as experts, academics, relevant public advocacy groups, IT firms and data service providers and persons to whom the performance of tasks relating to prevention, monitoring, detection of potential market abuse has been outsourced to by PPAETs.

23. Competent authorities should take into consideration the outcome of such exchanges in the identification of emerging risks, new market abuse strategies, and in the development of potential solutions, including new tools to mitigate risks to market integrity with reference to crypto assets.

4.7. Initiatives to promote market integrity among market participants (Guideline 7)

24. To promote market integrity, competent authorities should consider adopting educational initiatives that increase awareness among market participants of the behaviours which may constitute market abuse and of the relevant sanctions. When providing the relevant information, competent authorities should use language that is adequate to the nature of the persons to which the initiatives are addressed.
25. Such initiatives could for example entail:
- a) the use of the competent authorities' website, as well as other communication channels (e.g. social media, blogs, newsletters, and podcasts, where available), to explain which conduct may constitute market abuse and to provide relevant examples related to crypto assets;
 - b) regular trainings to market participants on compliance and prevention of market abuse under MiCA;
 - c) Q&As with informative purposes related to the prevention and detection of market abuse.
26. Competent authorities may develop the educational initiatives described in the present guideline autonomously or in collaboration with other competent authorities and ESMA, as appropriate.
27. To further promote prevention of market abuse, competent authorities should also consider opportunities of:
- a) encouraging issuers, PPAETs and CASPs not falling under the PPAET category, to adopt best practices which go beyond legal requirements. For instance, competent authorities could suggest issuers to inform employees who have access to inside information about what actions could constitute insider dealing or unlawful disclosure of inside information and on the relevant consequences, or suggest operators of trading platform to inform their users about the behaviours which may constitute market abuse and of the relevant sanctions;
 - b) informing operators of trading platform for crypto assets of the need to upgrade and update their surveillance infrastructure to newly identified or emerging market manipulation risks; and
 - c) providing targeted guidance and feedback on compliance measures to be implemented by PPAETs.

28. The information provided in the context of educational or other initiatives by competent authorities under this guideline should not be qualified as legal advice or reduce the responsibility of the market participants with respect to their obligations under MiCA or any other applicable law or regulation.

4.8. Monitoring and surveillance by NCAs (Guideline 8)

29. To protect the integrity of crypto-asset markets, NCAs should conduct data driven market monitoring and surveillance, in collaboration with other competent authorities or, under their responsibility, by delegation to other authorities or service providers, as appropriate.
30. Competent authorities' market monitoring and surveillance activities should include publicly available data, regulatory data on orders and transaction obtained from CASPs, and to the extent possible, reconciliation of on-chain and off-chain and cross market data.
31. Competent authorities should also consider including in their market monitoring and surveillance activity any communications regarding crypto assets, including communications taking place on web-based platforms, social media and blogs, newsletters and podcasts, if they are used to disseminate information on crypto assets, adopting a risk-based approach (considering e.g. the subjects, number of users and accessibility).
32. In conducting on-going supervision on media, competent authorities may adopt automated monitoring that is able to identify patterns, keywords and trends, to be complemented by human analysis.

4.9. Supervision of PPAETs' arrangements, systems and procedures to prevent and detect market abuse (Guideline 9)

33. Competent authorities are expected to ensure that the PPAETs' arrangements, systems, and procedures to prevent and detect market abuse pursuant to Article 92(1) of MiCA and the RTS on STOR remain appropriate on an ongoing basis.
34. Adopting a risk-based approach to supervision, the frequency and the relevance of the competent authorities' supervisory actions should be proportionate and adequate to the scale, size and nature of the business activity carried out by the PPAET, for example by making a distinction between CASPs operating a trading platform and CASPs only receiving, transmitting or executing orders on behalf of clients.

4.10. Reaction to a STOR (Guideline 10)

35. Competent authorities should adopt adequate and proportionate procedures to analyse the STORs received from PPAETs to ensure effective analysis and appropriate supervisory action. The above procedures should:

- a) clearly identify all the steps that the competent authorities should follow upon receipt of an STOR;
- b) for each step, indicate the responsible unit/function within the competent authorities; and
- c) provide the criteria for grading the behaviour reported through the STORs according to parameters such as severity and recurrence.

36. The actions adopted by competent authorities pursuant to the above procedure should be proportionate to the detected threat.

4.11. ESMA coordination (Guideline 11)

37. Competent authorities should consider requesting ESMA's coordination of inspections or investigations, in accordance with 95(5) of MiCA whenever, in a cross-border case:

- a) there is evidence or a suspicion that more than two competent authorities are competent for a case;
- b) uncoordinated action may impair the final outcome of an investigation; or
- c) uncoordinated action may lead to extra burden for market participants.

4.12. Third-country obstacles to the effective exercise of NCAs' supervisory functions for the detection of cross-border market abuse (Guideline 12)

38. A competent authority should inform the other relevant competent authorities and ESMA where, in the course of its supervisory activities, it identifies:

- a) CASPs whose business model might hinder the effective exercise of competent authorities' supervisory functions with respect to market abuse. An example could be where a CASP authorised to execute orders on behalf of clients sends a significant number of transactions to trading platforms outside of the EU, as this may prevent the use of STORs as a tool to combat market abuse. Where such CASPs are identified, competent authorities should strive to agree on a common approach to supervision in such cases;
- b) any obstacles in its interactions with third-country competent authorities that might hinder the effective exercise of their supervisory functions in relation to market abuse.

39. When assessing whether there are potential obstacles to effective supervision, competent authorities should consider all relevant information, including:

- a) relevant laws, regulations or administrative provisions of a third country;

- b) any difficulties involved in the enforcement of those laws, regulations or administrative provisions;
- c) the possibility of exchanging information with the third-country competent authorities and any difficulties in obtaining information from them;
- d) the complexity and transparency of the structure of the group to which a supervised entity under MiCA belongs and of the persons having close links with an entity supervised under MiCA;
- e) the location or the activities performed by the entities that are members of the group to which an entity supervised under MiCA belongs, or of the persons having close links with an entity supervised under MiCA.