

SUBMIT VIA WEB FORM TO:

<https://www.esma.europa.eu/press-news/esma-news/esas-consult-guidelines-under-markets-crypto-assets-regulation>

To whom it may concern,

**Re: The European Supervisory Authorities' Consultation Paper on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114**

**About Global 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,  
Elise Soucie – Executive Director – GDF



## Response to the Consultation Paper: Executive Summary

GDF convened its European Union (EU) Working Group to analyse the European Supervisory Authorities' (EBA, EIOPA and ESMA) (ESAs) Consultation Paper (CP) on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114. Please note that as this response was developed in collaboration with GDF members, as well as community partners, that portions of our response may be similar or verbatim to individual member responses. In particular, GDF was pleased to collaborate on this response with the ACI Financial Markets Association and are grateful for their contributions.

Overall, GDF is supportive of the aim of the proposals made in the Consultation Paper and of the ESA's draft guidelines providing templates and standardised tests for the classification of crypto-assets and templates establishing content and form of complementary explanations and legal opinions to give much greater clarity to the market. We appreciate the timing of the Consultation Paper, in particular as the Markets in Crypto Assets Regulation (MiCAR) is now beginning to be implemented in the EU, bringing crypto assets within the regulatory perimeter. GDF believes that including crypto assets within regulated financial markets is an important step towards building a comprehensive EU global framework for digital assets and needs to be done with appropriate and comprehensive regulatory frameworks including the classification of crypto-assets.

GDF has worked with our members to provide a constructive assessment, and technical analysis of the templates for explanations and opinions, and the standardised test for the classification of crypto assets, taking into account how the implementation of such a template would impact the market. Through this process, the EU Working Group identified two areas of the standardised test which could benefit from additional clarification. The two areas identified are:

- 1. Additional Guidance and Clarity on What is Meant by “Technology Similar to DLT”**
- 2. Clarity on Mutual Exclusivity Between the Tests for EMT and ART**

### **1. Additional Guidance and Clarity on What is Meant by “Technology Similar to DLT”**

GDF members request additional guidance and clarity on what is meant by “Technology Similar to DLT”. This could be interpreted in various ways. While we welcome the ESAs noting that, “To assess if a technology is similar to DLT the functional attributes of such technology should be considered, including the basis on which the records (the ledger) are held, shared and how consensus is achieved (i.e., the functioning of the consensus mechanism),” we believe further guidance would be beneficial. For example, perhaps the ESAs could share evaluation criteria for technologies they consider to be similar or further Q&A Guidance could be provided on this point.

### **2. Clarity on Mutual Exclusivity Between the Tests for EMT and ART**

GDF members would support additional clarity on the diamond yellow box of the Flow Chart which notes, “Is it referencing a value or right or combination thereof, including one or more



official currencies.” It was noted that where this diamond states, “*one* or more” it could overlap or be confused with the previous diamond box which states, “Is it referencing the value of one official currency.” GDF would welcome clarity that these diamonds are mutually exclusive, and that the “one or more” box references combinations of one currency with other values or rights and is distinct from the “one official” currency box. An example to distinguish between the two many also be beneficial in providing this clarity.

### **Response to the Consultation Paper: Questions for Public Consultation**

Please note that given our focus areas set out in the executive summary, and as we are broadly supportive of the template as well as the standardised test set out by the ESAs our primary feedback relates to Q4.

#### ***Q1: Do respondents have any comments on the template for the purposes of Article 8(4) Regulation (EU) 2023/1114?***

GDF is supportive of the template proposed.

#### ***Q2: Do respondents have any comments on the template for the purposes of Article 17(1) point (b)(ii) and Article 18(2) point (e) of Regulation (EU) 2023/1114?***

GDF is supportive of the template proposed.

#### ***Q3: Do you consider that the fields of the template relating to explanations as to regulatory status are sufficiently clear and would enable a proportionate completion in line with the simplicity or complexity of the structure of the crypto-asset to which the explanation or legal opinion relates?***

GDF is supportive of the template proposed and members find them sufficiently clear.

#### ***Q4: Do respondents have any comments on the standardised test?***

Overall, GDF is supportive of the template set out by the ESAs and the standardised test. We welcome the clarity that this provides to the market. Our comments seek to clarify a few points within the Flow Chart for the standardised test which we believe are important to provide additional legal certainty as well as ensure consistent implementation of the standardised test across EU jurisdictions. The points in which we seek clarity are as follows:

1.) GDF members request additional guidance and clarity on what is meant by “Technology Similar to DLT”. This could be interpreted in various ways. While we welcome the ESAs noting that, “To assess if a technology is similar to DLT the functional attributes of such technology should be considered, including the basis on which the records (the ledger) are held, shared and how consensus is achieved (i.e., the functioning of the consensus mechanism),” we believe further guidance would be beneficial. For example, perhaps the ESAs could include evaluation criteria for technologies they consider to be similar or further Q&A Guidance could be provided on this point.

2.) GDF members would support additional clarity on the diamond yellow box of the Flow Chart which notes, “Is it referencing a value or right or combination thereof, including one or more official currencies.” It was noted that where this diamond states, “*one* or more” it could overlap or be confused with the previous diamond box which states, “Is it referencing the value of one official currency.” GDF would welcome clarity that these diamonds are mutually exclusive, and that the “one or more” box references combinations of one currency with other values or rights and is distinct from the “one official” currency box. An example to distinguish between the two many also be beneficial in providing this clarity.