

1 MFSA Regulatory Updates in Q1 2024

Outcomes-based supervision on FIs and VFASPs

Following the publication of the MFSA [Supervisory Priorities](#), Fintech Supervision initiated the first round of outcomes-based assessments on the Financial Institutions (FIs) and VFA Service Providers (VFASPs) supervised by the MFSA, in February 2024 with the aim of assessing the level of compliance with the respective safeguarding of assets requirements emerging from the applicable frameworks. The Authority is now assessing the data collected through its survey with a view to (i) understand the level of compliance of the overall sector with the safeguarding requirements and (ii) establish a set of outcomes which will effectively promote increased compliance by all the licensed entities supervised by Fintech Supervision.

Fintech Supervision will be initiating its second outcomes-based supervisory assessment in Q2 2024 in order to assess the following:

- **FIs** (particularly those authorised to provide payment services and/or electronic money services) – their compliance with **passporting requirements** emerging from applicable requirements such as those provided in the [Financial Institutions Act](#) and the [European Passport Rights for Financial Institutions Regulation](#)
- **VFASPs** – their MiCA-readiness, in particular, by undertaking an assessment of VFASPs' compliance with the RTS on authorisation of crypto-asset service providers, which formed part of ESMA's [first consultation paper](#) issued on 12 July 2023.

The concept of 'regular & habitual' within the Financial Institutions Framework

The licensing and registration requirements emanating from article 3 of the [Financial Institutions Act](#), and the activities carried out by financial institutions referred thereto, rest on a broader albeit rudimentary principle that such activity is carried out on a regular and habitual basis.

In assessing whether an activity is deemed to be carried out on a regular and habitual basis, an activity may be considered to be undertaken on a regular or habitual basis if it is considered a regular occupation or business activity in its own right and not merely as ancillary to another business activity.

An activity should be considered a regular occupation or business activity if a person either:

- i) Holds itself out as providing any activity listed in the First Schedule for the account and at the risk of the person carrying out the activity; and/or
- ii) Is being directly or indirectly in receipt of remuneration or other benefits derived from carrying out any of the activities listed in the First Schedule of the Act.

In determining whether the service is provided on an ancillary basis, the fact that a service is provided as part of a package with other services does not, however, necessarily make it ancillary to those services and the guiding principle is whether that service is in fact itself carried out as a regular occupation or business activity.

Other criteria to consider in determining whether the services provided can be considered a regular occupation or business activity include:

- i) The remuneration received from the activity relative to entire income;
- ii) The existence of a business relationship through which habitual or frequent or regular provision of service is introduced; or
- iii) The person offering more than one type of any of the activities listed in the First Schedule of the Act.

Where multiple factors of the above are present then the service is likely to be considered regular and habitual.

Circular in relation to preparation for the DORA Regulation

The [DORA Regulation](#) and [Amending Directive](#) were published on 27 December 2022 and entered into force on 16 January 2023. In terms of the Amending Directive, the DORA Regulation will apply from 17 January 2025 and will be supplemented by a series of implementing technical standards, guidelines and reports.

In this respect, DORA presents provisions pertaining to areas of ICT risk and incident management; digital operational resilience testing, classification and reporting; ICT third-party risk management and voluntary information-sharing arrangements. ***In this regard, Authorised Persons are advised to begin preparations to ensure regulatory compliance.***

Pursuant to the [Circular to Authorised Persons](#), the MFSA has begun collecting data on applicants and Authorised Persons, namely their organisation size. A declaration form shall be made available for submission whereby organisations shall be requested to undertake a self-classification exercise (i.e.

determining whether their organisation is (1) a microenterprise; (2) a small enterprise; (3) a medium-sized enterprise; (4) a non-SME). The Authority has already commenced this exercise in relation to FIs and shall gradually be contacting other authorised persons for the classification process in due course.

Classification of organisation size, and updating of such, will be required by existing Authorised Persons against submission of a self-declaration form. For the establishing of an organisation size, applicants are to be guided by [Commission Recommendation 2003/361/EC](#) and additional material such as the [user guide to the SME definition](#) and the [SME Self-Assessment Questionnaire](#).

Amendments to the Credit Institutions and Financial Institutions (Payment Accounts) Regulations

On 23 February 2024, following amendments to the Payment Accounts Directive, the [Credit Institutions and Financial Institutions \(Payment Accounts\) Regulations](#) were updated to reflect new requirements surrounding the notification of refusal by a credit institution to open a payment account for its customer. The amending Legal Notice may be found [here](#).

2 Other Regulatory Updates in Q1 2024

Malta's National Risk Assessment

In January 2024, Malta's National Risk Assessment (NRA) was [published](#), providing a comprehensive assessment of the country's exposure to money laundering/ terrorist financing ('ML/TF') threats and vulnerabilities. **The NRA published the following set of recommendations to guide Financial Institutions and VFA Service Providers in applying preventative measures on a risk-based approach:**

On enhancing the risk-based approach:

- FIs and VFASPs are advised to review their CRA and BRA to ensure alignment with the results emanating from the NRA.
- FIs and VFASPs should review their CDD procedures at the onboarding stage as well as during ongoing monitoring to further ascertain that these are risk-based.

On monitoring the effectiveness of transaction monitoring systems for national and emerging risks:

- FIs and VFASPs should assess and monitor the effectiveness of their transaction monitoring system to properly detect transactions with the above risks.
- FIs and VFASPs should ensure that assessment of effectiveness considers the submission of good quality and material STRs.

On remedial action to address weaknesses in the AML/CFT control framework:

- FIs and VFASPs should adopt measures to assess the effectiveness of their AML/CFT control frameworks (e.g. internal audit)
- Taking action to address any shortcomings identified.
- Cooperation with supervisory authorities.

For FIs, the NRA also included recommendations on improving internal governance. The recommendations to the management bodies of FIs included:

- providing the MLRO with sufficient resources including appropriate staff and technological means.
- ensuring that the MLRO has full access to records, data, and documentation for the purposes of fulfilling their responsibilities.
- requesting regular oversight reporting, including non-compliance reporting.
- ensuring that employees are knowledgeable of the provisions of the PMLFTR and the measures, policies, controls and procedures applied in this regard.

On the other hand, the NRA **recommended improvement to the internal talent pool for VFASPs** by ensuring ongoing employee training programmes which include induction and ongoing training on crypto ML//TF typologies and training on the use of blockchain analysis tools.

Further to the above, in March 2024, the Authority issued **Guidance addressed to MLROs in the Financial Services Sector**, available here: <https://www.mfsa.mt/wp-content/uploads/2024/03/A-Guidance-for-Money-Laundering-Reporting-Officers-in-the-Financial-Services-Sector.pdf>

The Markets in Crypto-Assets Regulation

In January 2024, the ESMA continued to consult on the various Level 2 and Level 3 MiCA texts within its mandate, with publication of [consultation papers](#) containing draft guidelines on reverse solicitation and the conditions and criteria for the classification of a crypto-asset as a financial instrument.

In March 2024, the EBA issued (i) final draft technical standards on complaints handling for issuers of asset referenced tokens, and (ii) a consultation on guidelines on redemption plans which issuers of asset-referenced tokens and e-money tokens will be required to have in place later this year.

Finally, the European Commission [adopted](#) a number of MiCAR Delegated Regulations relating to the MiCA framework for significant issuers, as listed below:

1. Procedural rules for the exercise of supervisory powers by the EBA
2. Criteria for classifying ARTs and EMTs as significant
3. Supervisory fees applicable to significant issuers

The Commission has also issued a commission delegated regulation setting out the criteria and factors to be taken into account by ESAs and national competent authorities when exercising MiCA product intervention powers.

3 Other Publications

- IMF working paper titled 'ASAP: A conceptual model for digital asset platforms': <https://www.imf.org/en/Publications/WP/Issues/2024/02/02/ASAP-A-Conceptual-Model-for-Digital-Asset-Platforms-544387>
- BIS Working Paper on public information and stablecoin runs: <https://www.bis.org/publ/work1164.htm>
- BIS Working Paper on DeFi Leverage: <https://www.bis.org/publ/work1171.htm>
- OECD Report on the Limits of DeFi for Financial Inclusion: <https://www.oecd.org/publications/the-limits-of-defi-for-financial-inclusion-f00a0c7f-en.htm>

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