Crypto, TradFi & Digital

Investment advice special: the MiCA perimeter takes shape

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Crypto-asset advice: ESMA and the AMF tighten the regulated perimeter

Previous editions of the Regulatory Brief have tracked the progressive application of MiCA: the end of the grandfather clause on 1 July 2026 (Edition #13), the European Parliament's vote on dollar stablecoins (Edition #16), the protection of retail investors against crypto scams (Edition #17) and, more broadly, the application of the AI Act from 2 August 2026 (Edition #18), followed by the CNIL recommendation on tracking pixels (Edition #19). This twentieth edition continues that thread by addressing a subject that directly shapes all financial distribution models: the clarification of the perimeter of advice on crypto-assets under MiCA.

Two recent publications, coordinated at the European and national levels, redraw the dividing lines between information, commercial introduction and regulated advice. On 10 July 2026, ESMA published its Q&A 2882, dated 18 June 2026, devoted to the "perimeter of advice on crypto-assets under MiCA compared with MiFID II". On 27 July 2026, the AMF published the update of its Position-Recommendation DOC-2006-23, which transposes ESMA's doctrine into French law and clarifies the specific situations in which a financial investment adviser (Conseiller en Investissements Financiers, CIF) without CASP authorisation may continue to operate.

The reach of these two texts extends well beyond CIFs alone. They concern all players who steer clients towards crypto-asset service providers: financial investment advisers, business introducers, comparison sites, affiliate platforms, commercial partners, hybrid finance/crypto brokers and content platforms. The central message is simple: under MiCA, providing advice on crypto-assets is a regulated service whose performance requires authorisation as a CASP, and that perimeter is broader than investment advice within the meaning of MiFID II, since it may cover not only transactions in crypto-assets but also the personalised recommendation to use a crypto service.

This edition offers a strategic reading of these developments. The detailed analyses of the two texts, the in-depth review of the ESMA Q&A and the operational reading of the updated AMF doctrine are available to Seqlense Notes subscribers.

The weak signal

Under MiCA, personally recommending that a client use a crypto service may constitute regulated advice, even in the absence of any recommendation relating to a specific token or a particular transaction.

This formulation, which sums up the most structural contribution of ESMA Q&A 2882, marks a break with the intuitive reading of many players in financial distribution. For twenty years, the notion of investment advice, as defined by MiFID, has been closely associated with the recommendation of a specific transaction or financial instrument. Under MiCA, ESMA confirms that the object of the advice is broader: it may relate to transactions in crypto-assets as well as to the use of a crypto service (custody, exchange, transfer, portfolio management). This extension has a direct consequence: activities usually described as “introduction”, “business introduction” or “referral” may, depending on how they are conducted, cross the line into regulated advice.

The decisive factor identified by ESMA is neither the contractual label used nor the existence of remuneration, but the substance of the exchanges with the client, their personalised nature, their adaptation to the recipient's particular situation and the overall journey within which the recommendation sits. Warnings and disclaimers of the “this does not constitute advice” type do not alter the true characterisation of the service. For the players concerned, the analysis can therefore no longer be limited to reading the contractual documents: it must cover actual practices, sales scripts, questionnaires, client journeys and the chronology of the exchanges.

Focus 1 - ESMA Q&A 2882: a perimeter broader than MiFID II

ESMA's Q&A 2882, dated 18 June 2026 and publicly announced on 10 July 2026, addresses a question central to the industry: “How should the perimeter of advice on crypto-assets under MiCA be understood, and to what extent is it comparable to the notion of investment advice under MiFID II?”. The ESMA's answer establishes two structural points.

First point: the core of the test remains close to MiFID II. There must be a personalised recommendation, that is to say one presented as suitable for the person or based on their circumstances, addressed to a person in their capacity as an investor or potential investor, and not exclusively to the public. Second point, and this is the main contribution: the object of the recommendation is broader under MiCA. Under MiFID II, advice relates to transactions involving financial instruments. Under MiCA, it may relate both to a transaction in crypto-assets and to the use of a crypto-asset service. Personally recommending that a client use a particular custody service, exchange service or transfer service may therefore be enough to characterise regulated advice.

ESMA draws an important operational consequence from this: so-called “introduction” services, such as situations where a person recommends a CASP or a crypto service without recommending any transaction, may fall within MiCA advice where they involve a personalised recommendation. Conversely, the mere listing of a CASP, under identical conditions for all potential investors and without any additional assessment, does not normally constitute a recommendation.

➔ **Detailed analysis available on Seqlense Notes:** *“ESMA Q&A 2882 - The perimeter of advice on crypto-assets under MiCA”*. A complete review of ESMA's five analytical criteria, a qualification matrix covering practical situations, the interplay with ESMA's Guidelines on suitability, the requirements of Article 81 of MiCA and the question of the interplay with Articles 59 and 60 of MiCA on authorisation and notification.

Focus 2 - The AMF update of DOC-2006-23: a change of regime for CIFs

On 27 July 2026, the AMF published version VF8 of its Position-Recommendation DOC-2006-23, updated to incorporate the lessons of the ESMA Q&A and to adapt the French doctrine applicable to financial investment advisers (CIFs). The update amounts to a change of regime for the profession.

Before MiCA became applicable, advice to subscribers of digital assets fell in France under an optional PSAN (digital-asset service provider) registration regime. Where a CIF did not hold that authorisation, the AMF accepted that the activity could be carried out under its "other wealth-management advisory activities", provided the organisational and conduct-of-business rules specific to CIFs were complied with. The AMF now expressly states that this analysis has become obsolete. MiCA characterises advice on crypto-assets as a regulated service whose provision requires authorisation as a crypto-asset service provider. The national CIF status therefore no longer allows, on its own, direct advice on crypto-assets or crypto-asset services.

One important technical point deserves emphasis: unlike investment firms, CIFs are not eligible for the simplified notification procedure that MiCA opens to certain financial entities already authorised (Article 60 of MiCA). A CIF wishing to provide crypto advice must therefore obtain CASP authorisation covering advice, applied in a manner proportionate to the nature, scale and complexity of the services envisaged, although that proportionality does not amount to an exemption.

➔ **Detailed analysis available on Seqlense Notes:** *"ESMA-AMF - Advice on crypto-assets under MiCA"*. A complete operational reading of the AMF doctrine, a qualification matrix covering different situations, the regime for intra-group CIFs, the chronology of the client journey as a compliance criterion, the practical consequences for distribution models and an analysis grid for business-introduction agreements.

Focus 3: Two preserved spaces for CIFs without CASP authorisation

The AMF's doctrine does not exclude CIFs without CASP authorisation from the conversation with their clients about crypto-assets. It defines two boundaries which, if respected, allow the CIF to continue operating within its traditional perimeter.

First boundary: generic allocation to the crypto asset class. As part of an overall wealth study, a CIF may recommend an allocation including a general range of exposure to the crypto asset class, without recommending an identified crypto-asset or a particular crypto service. That intervention remains outside MiCA advice as long as it does not take that final step. Second boundary: the recommendation of financial instruments exposed to crypto-assets. Units of alternative investment funds (AIFs) invested in crypto-assets, or certain debt securities indexed to their value, legally remain financial instruments; recommending them therefore falls within investment advice under the CIF regime and not within advice on crypto-assets under MiCA.

The legal characterisation of the recommended object thus becomes decisive. Directly advising on bitcoin falls under MiCA; advising on a financial instrument exposed to bitcoin may continue to fall under MiFID II and the CIF regime. This distinction, technically precise, opens a workable path for CIFs wishing to build crypto exposure into their advice without undertaking the demanding CASP authorisation procedure, provided they calibrate their interventions carefully and document their practices clearly.

What to watch

- The **first French supervisory positions** (AMF thematic inspections, possible SPOT summaries) on CIF practices in the light of the new doctrine.
- The **evolution of business-introduction agreements** between CIFs, CASPs and hybrid brokers; a renegotiation exercise expected in the second half of 2026.
- The **European supervisory convergence**: the other European NCAs (BaFin, AFM, CSSF, CONSOB, CNMV) are likely to publish their own national versions of the ESMA doctrine in the coming months.

Focus 4: A structural exercise for the whole of distribution

Beyond the specific case of CIFs, the new perimeter of MiCA advice requires an in-depth review of distribution models combining traditional finance and crypto-assets. Three families of players are directly concerned.

Business introducers and affiliates who steer their clients or prospects towards CASPs must now assess whether their practices remain within the scope of mere commercial introduction or fall within regulated advice. The boundary lies not in the contractual label ("introduction", "referral", "business introduction") but in the substance of the exchange. Online comparison sites and content platforms, which feed a growing share of crypto investment journeys, must review the personalisation of their recommendations: a ranking or listing identical for all visitors is clearly distinct from a questionnaire or chatbot producing a recommendation tailored to the investor's profile. Finally, financial groups that include a CASP entity must pay particular attention to how intra-group services are presented: the AMF accepts a simple indication of the existence of a group CASP, provided the nature of the link is clearly disclosed and the limits of the CIF's status are recalled.

For all these players, the new doctrine calls for a coordinated review of business-introduction agreements, sales scripts, questionnaires, individual emails, comparison tools and the sequencing of client journeys, not only in their contractual formalisation but also in their operational implementation by advisers and partners.

➔ **The two complete analyses** *"ESMA Q&A 2882"* and *"ESMA-AMF - Advice on crypto-assets under MiCA"* are available to Seqlense Notes subscribers, with qualification matrices, analysis grids for business-introduction agreements, a mapping of risk areas and operational recommendations by type of player.

Key takeaways

Five structural points to take on board:

- **ESMA Q&A 2882** (dated 18 June 2026, announced on 10 July 2026) confirms that advice on crypto-assets under MiCA is **broader than investment advice under MiFID II**; it may cover transactions as well as the use of crypto services.
- The **AMF updated its doctrine DOC-2006-23 on 27 July 2026**: CIF status no longer allows, on its own, direct advice on crypto-assets or crypto services. CASP authorisation is required, applied proportionately to the scale and complexity of the services.
- CIFs do **not benefit from the simplified notification procedure** that MiCA opens to certain financial entities already authorised (Article 60 of MiCA).
- Two spaces are preserved for CIFs without CASP authorisation: the **recommendation of a generic allocation to the crypto asset class**, and the **recommendation of financial instruments exposed to crypto-assets** (units of crypto AIFs, indexed debt securities).
- **Business introducers, comparison sites, affiliates, commercial partners and hybrid brokers** are directly concerned. Disclaimers of the "this does not constitute advice" type are not enough to neutralise a characterisation that rests on the substance of the exchanges.

Conclusion

The ESMA / AMF sequence of summer 2026 on the perimeter of MiCA advice is a supervisory signal of prime importance for the whole of European financial distribution. It extends the logic of effective MiCA application begun with the end of the grandfather clause (Edition #13): having established who may provide crypto services (authorised CASPs), the European framework now clarifies the conditions under which a client may be steered towards those services. For CIFs, business introducers, comparison sites and hybrid finance/crypto groups, the subject calls for a coordinated review of documents, scripts and journeys over the coming months, before the first concrete supervisory positions further define the practical reach of the doctrine.

Want to go further? Subscribers to **Seqlense Notes** have access to the two detailed analyses, including the complete review of ESMA Q&A 2882, the qualification matrices covering practical situations, the operational reading of the updated AMF doctrine, the practical consequences for distribution models and the analysis grid for business-introduction agreements.

Main sources

- ESMA, *Q&A No. 2882, "Perimeter of advice under MiCA compared to MiFID II"*, dated 18 June 2026, publicly announced on 10 July 2026 (esma.europa.eu, publications-data/questions-answers/2882).
- AMF, *Position-Recommendation DOC-2006-23 (VF8)*, updated 27 July 2026; questions and answers on the regime applicable to financial investment advisers; AMF news item « Conseil sur crypto-actifs : l'AMF met à jour sa doctrine concernant les CIF » (amf-france.org).
- Regulation (EU) 2023/1114 (MiCA), in particular Articles 59 (authorisation), 60 (notification for financial entities already authorised) and 81 (requirements applicable to advice on crypto-assets and portfolio management).
- ESMA, *Guidelines on certain aspects of the suitability requirements and format of the periodic statement for portfolio management activities under MiCA*, reference ESMA35-1872330276-2031 (March 2025).
- ESMA, *Q&A No. 2143 (tied agents under MiFID II)* and *Q&A No. 2013 (tied agents under MiCA)*; the interplay between the two regimes.
- Directive 2014/65/EU (MiFID II), in particular Article 4(1)(4) on the definition of investment advice.

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