

Deloitte Banking Alert

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EBA and ESMA: consultation on two sets of Joint Guidelines on suitability assessments of the management body and holders of qualifying holdings under MiCAR

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) published on the 20th of October a Consultation Paper on two draft Joint Guidelines covering the suitability assessment of members of the management body, and suitability of shareholders and members with qualifying holdings of issuers of asset referenced tokens (ARTs) and of crypto-asset service provider (CASPs). The guidance will provide clarity and harmonisation with respect to the criteria to assess the suitability of the management body, the shareholders, and members with qualifying holdings, thus reducing the risk of arbitrage in the application of the rules. The consultation runs until 22 January 2024.

Background

The EBA and ESMA have received two joint mandates under MiCA (Markets in Crypto-Assets) to issue respectively:

- (i) guidelines on the assessment of the suitability of the members of the management body of issuers of ARTs and of the shareholders and members, whether direct or indirect, that have qualifying holdings in issuers of ARTs in accordance with Article 21(3); and
- (ii) guidelines on the assessment of the suitability of the members of the management body of the CASP and of the shareholders or members, whether direct or indirect, that have qualifying holdings in the CASP in accordance with Article 63(11).

In addition to such mandates, EBA and ESMA are empowered to issue guidelines addressed to competent authorities or financial market participants, pursuant to Article 16 of their respective founding Regulations, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS (European System of Financial Supervision), and to ensuring the common, uniform and consistent application of Union law.

On this basis, EBA and ESMA consider also appropriate to issue Guidelines clarifying the circumstances giving rise to a qualifying holdings, i.e acting in concert, significant influence, indirect shareholders and decision to acquire and clarifying the methodology to assess the suitability, in accordance with Article 42(1), points (a) to (e) and Article 84(1), points (a) to (e) of MiCA, of a proposed acquirer of qualifying holdings in an issuer of ARTs authorised under Article 21 of that Regulation or in a CASP authorised under Article 62 of that Regulation, respectively.

Key takeaways

To foster and protect the integrity of the market in crypto assets and related services and to promote trust, it is important to ensure that the members of the management body of issuers of ARTs and CASPs as well as the people that hold or wish to acquire qualifying holdings in them are suitable. Proposed acquisitions of direct or indirect qualifying holdings in authorised ART issuers or authorised CASPs are subject to prior prudential assessment under Articles 41(1) and 84(1) of MiCA, requiring proposed acquirers to be assessed against the five suitability criteria set out therein and relating to:

- a. reputation of the proposed acquirer;
- b. suitability of the members of the persons who will direct the business of the target undertaking as a result of the acquisition;
- c. the financial soundness of the proposed acquirer;
- d. the ability of the target undertaking to comply or continue to comply with the applicable prudential requirements;
- e. the absence of suspicion of risk of money laundering or terrorist financing.

Having suitable management bodies as part of issuers of ARTs and CASPs robust governance arrangements contributes to the trust into the financial system and contribute to ensure the confidence in those assets and services, supporting the development of an ecosystem of crypto assets.

Next steps

EBA and ESMA are consulting on the two draft Guidelines for a period of three months. It is expected that the two final Guidelines will be available when MiCA becomes applicable.

For further questions regarding the aspects mentioned in this alert, please don't hesitate to contact us:



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Sources: [Joint EBA and ESMA GL on suitability of the MB and QH under MICA.pdf \(europa.eu\)](#)