



FINANCIAL SERVICES

Guidelines for MiCAR: EBA and ESMA Publish Consultation Paper

by **Mina Dawood, David Naughton**

Guidelines for MiCAR: EBA and ESMA Publish Consultation Paper

15th November 2023 | by Mina Dawood, David Naughton

A Consultation Paper was published by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) on two draft Joint Guidelines.

MiCAR

The EBA and ESMA have joint mandates in relation to issuing guidelines in respect of Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR). The draft Joint Guidelines address the required suitability assessments of members of the management body, and the suitability of shareholders and members with qualifying holdings of issuers of asset referenced tokens (ARTs) and of crypto-asset service providers (CASPs).

Draft Joint Guidelines

The aim of draft Guidelines is to implement an EU harmonised framework for such assessments by issuers of ARTs, by CASPs and to foster supervisory convergence. It is intended that the Guidelines will provide clarity with respect to the criteria to assess the suitability of the management body, the shareholders and members with qualifying holdings, and therefore reduce the risk of arbitrage in the application of the rules:

1. The draft Joint Guidelines on the suitability assessment of the members of the management body of issuers of ARTs and CASPs provide common criteria to assess the appropriate knowledge, skills and experience of members of the management body as well as their good reputation, honesty and integrity and if they are able to commit sufficient time to perform their duties.
2. The draft Joint Guidelines on the suitability assessment of shareholders or members, whether direct or indirect, with qualifying holdings in issuers of ARTs or CASPs provide competent authorities common methodology to assess the suitability of the shareholders and members with direct or indirect qualifying holdings for purposes of granting authorisation as issuers of ARTs or as CASPs, and for carrying out the prudential assessment of proposed acquisitions.

When finalised, the Guidelines should be used by CASPs, issuers of ARTs and competent authorities when carrying out the assessment of the requirements set out in MiCAR regarding the suitability of:

1. members of management bodies;
2. shareholders or members with direct or indirect qualifying holdings; and
3. persons who wish to acquire such qualifying holdings.

The Consultation

22 January 2024 is the deadline for the submission of comments on the [Consultation Paper](#). It is expected the Joint Guidelines will be finalised by the time MiCA becomes applicable later in 2024.

About the Authors



Mina Dawood
Associate Solicitor

Mina specialises in Financial Regulation and Investment Funds.

T: +353 16371517 **E:** mdawood@lkshields.ie



David Naughton
Partner

David Naughton is Head of Financial Services.

T: +353 1 637 1585 **E:** dnaughton@lkshields.ie