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Joint EBA and ESMA Guidelines on the assessment of the suitability of the members of the management body of issuers of asset-referenced tokens and of crypto-asset service providers

A. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[1] and to Article 16 of Regulation (EU) No 1095/2010[2]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010, competent authorities, financial market participants and financial institutions must make every effort to comply with these guidelines. These guidelines set out appropriate supervisory practices within the European System of Financial Supervision and of how Union law should be applied.

2. Competent authorities as defined in Article 3(1) point (35)(a) of Regulation (EU) 2023/1114 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at financial market participants and financial institutions.

Reporting requirements

3. Within two months of the date of publication of these guidelines on EBA's and ESMA's website in all EU official languages, according to Article 16(3) of Regulation (EU) No 1093/2010 and of Regulation (EU) 1095/2010, competent authorities must notify the EBA or ESMA as to whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with these guidelines. In case of non-compliance, competent authorities must also notify ESMA or EBA within two months of the date of publication of these guidelines on ESMA's and EBA websites in all EU official languages of their reasons for not complying with these guidelines. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA or to ESMA.

4. Financial market participants and financial institutions are not required to report whether they comply with these guidelines.

5. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010 and on the ESMA website, in line with Article 16(3) of Regulation (EU) No 1095/2010.

[1] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

[2] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Securities and Market Authority (European Securities and Market Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, (OJ L 331, 15.12.2010, p. 84).

Subject matter, scope and definitions

Subject matter

1. In accordance with Article 21(3) and Article 63(11), of MiCA, these joint guidelines concern the assessment of the suitability of members of the management body of issuers of ARTs and CASPs.

Scope of application

2. These Guidelines apply at authorisation and on an ongoing basis to competent authorities, as defined in Article 3(1) point (35) (a) of MiCA, issuers of ARTs and CASPs[3], in accordance with Articles 34(2) and 68(1) of MiCA with regard to the assessment of suitability of members of the management body of

    a. an applicant issuer of ARTs seeking for an authorisation under Article 18 of MiCA or authorised in accordance with Article 21 of that Regulation ("issuer of ART" for the purpose of these Guidelines),

    b. an applicant CASP seeking for an authorisation under Article 62 of MiCA, or a CASP authorised in accordance with Article 63 of that Regulation ("CASP" for the purpose of these Guidelines), or, with reference to Article 68(1) of MiCA, providing crypto-asset services as part of their authorisation in accordance with paragraphs (2), (4), (5) and (6) of Article 60 of MiCA.

3. The suitability assessment is based on the requirement that members of the management body of issuers of ARTs and CASPs must meet the criteria set out in Articles 34(2) and 68(1) respectively, which provide that members of the management body shall be of sufficiently good repute and capable of committing sufficient time to effectively perform their duties as well as the assessment of whether members of the management body have the individually and collectively appropriate knowledge, skills and experience to perform their duties. Members of the management body of issuers of ARTs and CASPs shall not have been convicted of offences relating to money laundering or terrorist financing or of any other offences that would affect their good repute. The members of the management body to be assessed include persons that will become members of the management body of an issuer of ARTs or a CASP and members that have already taken up their position. Where the management body consists of a

[3] According to Article 60(10) of Regulation (EU) 2023/1114 the entities listed in Article 60, paragraphs (1) to (6) are not subject to, among others, Article 63 of Regulation (EU) 2023/1114.

management and a supervisory function, these Guidelines apply to both functions and members of both functions[4].)

Addressees

4. These Guidelines are addressed to competent authorities as defined in Article 3(1) point (35)(a) of MiCA.

5. These Guidelines are also addressed to:

   a. issuers, as defined in Article 3(1), point (10) of MiCA, authorised in accordance with Article 21 of that Regulation,

   b. applicant issuers, as defined in Article 3(1), point (11) of MiCA applying for an authorisation under Article 18 of that Regulation,

   c. CASPs, as defined in Article 3(1), point (15) of MiCA, authorised in accordance with Article 63 of that Regulation, or – with reference to Article 68(1) of MiCA – providing crypto-asset services as part of their authorisation in accordance with paragraphs (2), (4), (5) and (6) of Article 60 of MiCA.

   d. Applicant CASPs who submitted an application for an authorisation in accordance with Article 63 of MiCA.

Definitions

6. Terms used and defined under MiCA and the 'Joint EBA-ESMA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU', have the same meaning in these guidelines, in addition, the following definitions apply:

Group	means a group as set out in Article 2 point 11 of Directive 2013/34/EU.
Management body in its management function	means the management body acting in its role of directing effectively the issuer of ARTs or CASP and includes the persons who direct its business.
Management body in its supervisory function	means, where established, the management body acting in its role of overseeing and monitoring management decision-making.
Directorship	means a position as a member of the management body of an institution or another legal entity. Where the management body,

[4] Article 3(1), point 27 of Regulation (EU) 2023/1114 defines the management body as 'the body or bodies of an issuer, offeror or person seeking admission to trading, or of a crypto-asset service provider, which are appointed in accordance with national law, which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making in the entity and include the persons who effectively direct the business of the entity'.

	depending on the legal form of the entity, is composed by a single person, this position is also counted as a directorship.
Member	means a proposed or appointed member of the management body including acting on behalf of legal persons being a member of the management body.
Suitability	means in the context of a member of the management body that an assessed individual is deemed to have sufficient good repute, including honesty and integrity, and to have, individually and collectively with other members, appropriate knowledge, skills and experience and is individually able to commit sufficient time to perform the duties the member is responsible for.

B. Implementation

Date of application

7. These guidelines apply from 04/02/2025.

C. Joint Guidelines

C.1. Application of the proportionality principle

8. The proportionality principle aims to match governance arrangements consistently with the individual risk profile and business model of issuers of ARTs and CASPs, taking into account the individual position within the management body for which an assessment is made so that the objectives of the regulatory requirements, i.e. that the member is suitable regarding the specific position individually and suitable to be part of the collective management body, are effectively met.

9. Issuers of ARTs, CASPs and competent authorities should take into account the size of the issuer of ARTs or the CASP, its internal organisation and the nature, scale, and complexity of the assets issued and the services provided when assessing the individual and collective sufficient knowledge, experience and skills of members of the management body and that members individually are capable of committing sufficient time to effectively perform their duties in parallel to other obligatory time commitments they have.

10. Issuers of significant ARTs should have more sophisticated suitability policies and assessment processes as compared to issuers of non-significant ARTs. The same applies to CASPs, considering their size and the class of crypto asset services provided in accordance with Annex IV of MiCA.

11. All members of the management body of issuers of ARTs and CASPs should be of sufficiently good repute and have honesty and integrity regardless of the firm's size, internal organisation and the nature, scope and complexity of its activities, and the duties and responsibilities of the specific position.

12. For the purpose of applying the principle of proportionality when assessing the suitability of members as regards the knowledge and experience criteria as well as the members ability to commit sufficient time, the following criteria should be taken into account by issuers of ARTs, CASPs and competent authorities:

    a. the size of the issuer of ARTs or of the CASP in terms of the balance sheet total,

    b. the legal form of the issuer of ARTs or CASP and if it is listed or not,

    c. whether the issuer of ARTs or CASP is part of a group, and if so, the proportionality assessment for the group,

    d. the nature and complexity of all business activities,

    e. whether cross borders activities are provided and the size of the operations in each jurisdiction,

    f. in the case of an issuer of ARTs the following additional criteria:

        i. the volume and number of ARTs issued,

        ii. the size of the reserve of assets held by issuers of ARTs,

        iii. the type and complexity of the assets a token is referenced to,

        iv. the complexity of the instruments in which the reserve of assets are invested in.

    g. In the case of a CASP the following additional criteria:

        i. the type and volume of services provided and their criticality for the functioning of markets in crypto assets,

        ii. the type of clients.

C.2. Notions of suitability under Articles 34(2) and 68(1) of MiCA

C.2.1 Sufficient good repute

13. When assessing if the members of the management body of an issuer of ARTs or CASP are of good repute the assessment should cover in accordance with Articles 18(5)(a) and 62(3)(a) of MiCA the absence of a criminal record in respect of convictions and the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law or in relation to anti-money laundering legislation and counter-terrorist financing, to fraud or to professional liability. The assessment should in addition cover any other known facts that could lead to the assessment that the member is not of sufficiently good repute as specified in this

section. Those requirements apply on an ongoing basis in accordance with Articles 34(2) and 68(1) MiCA.

14. Members of the management body should not have been subject to sanctions, embargoes or measures that are related to terrorism, financing of terrorism or proliferation decided by a Member State, the Union or international organisation, e.g. United Nations. Where a member of the management body is added to such list of targeted financial sanctions, this member should be forbidden to perform its function and be removed from the management body.

15. The assessment of the good repute criteria of members of the management body of an issuer of ARTs or an CASP should be performed on the basis of the information referred to in the Commission Delegated Regulations adopted pursuant to Articles 18(6) of MiCA in the case of an issuer of ARTs and Article 62(5) of that Regulation in the case of CASPs.

C.2.2 Individual appropriate knowledge, skills and experience

16. Members of the management body should have an up-to-date understanding of the business activities of the issuer of ARTs or of the CASP and all its risks, at a level commensurate to their responsibilities. This includes an appropriate understanding of those areas for which an individual member is not directly responsible but is collectively accountable together with the other members of the management body.

17. Members of the management body should have a clear understanding of the issuer of ARTs or of the CASP's governance arrangements, their respective role and responsibilities and, where applicable, the group structure.

18. Members of the management body should understand the conflicts of interest that may exist between the issuer of ART or the CASP and any of its stakeholders.

19. Members of the management body should be able to contribute to the implementation of an appropriate corporate and risk culture, corporate values and behaviour within the management body to conduct the business in a competent and responsible manner.

20. The assessment of appropriate knowledge, skills and experience should consider:

    a. the role and duties of the position and the required capabilities;

    b. the knowledge and skills attained through education, training and practice;

    c. the practical and professional experience gained in previous positions and other current directorships; and

    d. the knowledge, skills and experience acquired and demonstrated by the professional conduct of the member.

21. The level and profile of the education of the member and whether or not it relates to the financial sector, including crypto-assets markets, or other relevant areas should be considered. In particular, education in the areas of finance, including crypto assets, economics, law, accounting, auditing, administration, financial regulation, information technology, and quantitative methods can in general be considered to be relevant for financial entities, including issuers of ARTs and CASPs.

22. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in a financial entity, issuer of ARTs or CASP or other firms in areas related to markets in crypto assets and other financial markets. A more thorough analysis of the member's practical experience with regard to the activities of the issuer of ARTs or of the CASP should be conducted, as the knowledge gained from previous occupations depends on the nature, scale and complexity of the business as well as the function that the member performed within it.

23. To properly assess the skills of the members of the management body, issuers of ARTs and CASPs should consider using the non-exhaustive list of relevant skills set out in Annex II to the Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, taking into account the role and duties of the position occupied by the member of the management body.

24. When assessing the adequate knowledge and experience of a member, consideration should be given to theoretical and practical experience relating to:

    a. financial markets regulation in particular with regard to financial instruments, as defined in Article 4(1), point (15) of Directive 2014/65/EU and DLT financial instruments as defined in Article 2(1)(11) of Regulation (EU) 2022/858;

    b. crypto assets, including asset-referenced and e-money tokens;

    c. the relevant understanding of the different nature of different kinds of crypto assets;

    d. risk management principles and procedures;

    e. the management of liquidity risks, market and credit risk in relation to the business activities of the issuer of ARTs or of the CASP;

    f. requirements under Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector[5];

    g. requirements regarding the use of third-party providers, including outsourcing arrangements and third-party provider management;

[5] OJ L 333, 27.12.2022, p. 1–79

h. accounting and auditing;

i. anti-money laundering and antiterrorist financing obligations;

j. data protection requirements;

k. the ability to assess the effectiveness of an issuer of ARTs or CASPs' arrangements that ensure effective governance, oversight and internal controls;

l. the interpretation of financial information and the identification of key issues based on this information;

m. managerial knowledge, including strategic planning, the understanding of an institution's business strategy or business plan and accomplishment thereof;

n. the ability to present their views, discuss strategies and business objectives; and

o. where the members position is within an issuer of ARTs, the relevant legal requirements for the issuing of ARTs.

25. With reference to point i. above, without prejudice to the national transposition of Directive 2015/849/EU, the member of the management body of CASPs identified as responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) Directive 2015/849/EU should have good knowledge, skills and relevant experience regarding ML/TF risk identification and assessment, and AML/CFT policies, controls and procedures. This person should have a good understanding of the extent to which the institution's business model exposes it to ML/TF risks.

26. When assessing the practical and professional experience gained from previous positions, particular consideration should be given to:

a. the nature of the position held and its hierarchical level;

b. the length of service within a position;

c. the number of subordinates;

d. the nature and complexity of the business where the position was held, including its organisational structure;

e. the scope of competencies, decision-making powers, and responsibilities of the member;

f. the technical knowledge gained through the position;

g. additional knowledge gained from academical activities.

27. Where applicable, members of the management body in its supervisory function should be able to challenge the decisions of the management body in its management function and other relevant management decisions where necessary and to effectively oversee and monitor management decision-making.

C.2.3 Collective appropriate knowledge, skills and experience

28. The composition of the management body should ensure that it has collectively the appropriate knowledge, skills and experience necessary to conduct all the business activities of the issuer of ARTs or of the CASP and to fulfil all of its responsibilities. This includes that the management body collectively has an appropriate understanding of all business areas and activities of the issuer of ARTs or of the CASP. The management body, as a whole, should also have appropriate knowledge, skills and experience with regard to the aspects listed under section C.2.2 and in addition regarding:

    a. The effective, sound and prudent management of the issuer of ARTs or of the CASPs, including:

        i. business continuity management,

        ii. the adequate consideration of the interest of its clients and the integrity of the market,[6]

        iii. the management of main risks related to the creation, use and management of crypto assets, the management of operational risks, including cyber risk,

        iv. the implementation of fraud detection and prevention measures,

        v. ESG factors and ESG risks, in particular regarding the consensus mechanism,

    b. the legal and regulatory environment,

    c. contractual law,

    d. consumer protection,

    e. information and communication technology and security, including, where relevant, the applied consensus mechanisms,

    f. distributed ledger or similar technologies relevant for their business activities,

    g. financial accounting and reporting,

[6] See RTS on conflict of interest

h. the activities of the risk management, compliance and internal audit functions or procedures, including the setting up of those functions or procedures,

i. relevant local and cross-borders financial markets, including relevant trading platforms,

j. managerial skills and experience,

k. the ability to plan strategically,

l. the management of groups and risks related to group structures, where the issuer of ARTs or CASP is a parent company of the group.

C.2.4 Sufficient time commitment of members of the management body

29. Members of the management body of issuers of ARTs, in accordance with Articles 34(2) of MiCA, or members of the management body of a CASP, in accordance with Article 68(1) of that Regulation, should be able to commit sufficient time to perform their functions and responsibilities. This includes that they are able to commit sufficient time in light of other obligations they might have.

30. Members should also be able to fulfil their duties in periods of particularly increased activity, or as a result of some major difficulty with one or more of its operations, taking into account that in such periods a higher level of time commitment than in normal periods may be required.

31. In the assessment of sufficient time commitment of a member, issuers of ARTs and CASPs should take at least the following into account:

a. the number of directorships in financial entities and other companies held by that member at the same time, taking into account possible synergies between different directorships, e.g. in a group context, including when acting on behalf of a legal person or as an alternate of a member of the management body;

b. the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;

c. the size, nature, scope and complexity of the activities of the entity where the member holds a directorship and, in particular, whether or not the entity is a non-EU entity;

d. the member's geographical presence and the travel time required for the role;

e. the number of meetings scheduled for the management body;

f. any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body's formal meeting schedule;

g. the nature of the specific position and the responsibilities of the member, including specific roles such as CEO, chairperson, or chair or member of a committee, whether the member holds an executive or non-executive position, and the need of that member to attend meetings in the companies listed in points (a) and (b) and in the financial entity;

h. other external professional or political activities, and any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;

i. the necessary induction and training;

j. any other relevant duties of the member considered necessary to be taken into account in the assessment as they oblige the member to commit time.

32. Issuers of ARTs and CASPs should record the roles, duties and required capabilities of the various positions within the management body and the expected time commitment required for each individual position, also taking into account the need to devote sufficient time for induction and training. For this purpose, CASPs that fall under class 1 of Annex IV of MiCA and issuers of non-significant ARTs should differentiate the expected time commitment between members of the management body in its management function and members of the management body in its supervisory function rather than for the individual positions within those functions.

33. A member of the management body should be made aware of the expected time commitment. Issuers of ARTs and CASPs may require the member to document the ability to devote the required time to the role in an appropriate way.

34. Issuers of ARTs and CASPs should monitor whether the members of the management body commit sufficient time to perform their functions. Preparation for meetings, attendance and the active involvement of members in management body meetings are all indicators of time commitment.

35. The impact of any long-term absences of members of the management body should be considered in the assessment of the sufficient time commitment of other individual members of the management body.

36. Issuers of ARTs and CASPs should keep records of all external professional and political positions held by the members of the management body. Such records should be updated whenever a member notifies the issuer of ARTs or the CASP of a change and when such changes come otherwise to the attention of the issuer of ARTs or CASP. Where such changes occur that may reduce the ability of a member of the management body to commit sufficient time to perform the members function, the issuer of ARTs or CASP should re-assess the member's ability to dedicate sufficient time to the function.

C.3. Suitability assessments of members of the management body by Issuers of ARTs and CASPs

37. Issuer of ARTs and CASPs should have the primary responsibility for ensuring, in accordance with Articles 34(2) and 68(1) of MiCA, that the management body collectively and its members individually are suitable at all times. They should ensure that the members of the management body have collectively and individually appropriate knowledge, skills and experience to ensure the effective, sound and prudent management and business continuity of the firm and the adequate consideration of the interest of their clients and the integrity of the market.

38. Issuers of ARTs and CASPs should ensure that all members of the management body are of sufficiently good repute, taking into account the criteria referred to in Section C.2.1, and are able to commit sufficient time to effectively perform their duties at all times taking into account the criteria in Section C.2.4.

39. Without prejudice to the shareholders' approval, the management bodies of issuers of ARTs and CASPs should adopt a suitability policy. The policy should include principles on the selection, monitoring and succession planning of its members and for re-appointing existing members and should set out at least the following:

    a. the process for the selection, appointment, re-appointment and succession planning of members of the management body and the applicable internal procedure for the assessment of the suitability of members, including the internal function responsible for providing support for the assessment (e.g. human resources);

    b. the criteria to be used in the assessment, which should include the suitability criteria set out in these Guidelines;

    c. the criteria on the composition of the management body, including how diversity aspects in terms of gender, age, educational and professional background and geographical provenance of members of the management body are to be taken into account and, where applicable, how targets regarding the appropriate gender balance will be met;

    d. the communication channel with the competent authorities; and

    e. how the assessment and its result should be documented, including the setting of an appropriate retention period.

40. Issuers of ARTs and CASPs, should perform the assessment or a re-assessment of the suitability of the management body, and its members:

    a. when applying for authorisation before commencing the activities that require authorisation;

b. when material changes to the composition of the management body occur, including:

   i. when appointing new members of the management body, including in the context of a direct or indirect acquisition or increase of a qualifying holding in the issuer of ARTs or the CASP. This assessment should be limited to newly appointed members and the collective suitability of the management body;

   ii. when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed to a different position within the management body. This assessment should be limited to the members whose position has changed and to the analysis of the relevant aspects, taking into account any additional requirements for the position and the collective suitability of the management body;

c. where material changes to the business model and activities, underlying legal provisions or technologies used occurred;

d. on an ongoing basis, in the light of any relevant new fact or situation. In particular, a re-assessment should be performed in the following cases:

   i. when there are concerns regarding the individual or collective suitability of the members of the management body;

   ii. in the event of a possible material impact on the reputation of a member of the management body, or the issuer of ARTs or CASPs, including cases where members do not comply with the firm's conflict of interest policy;

e. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted in connection with that issuer of ARTs or CASP, or where it has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country in any event that can otherwise materially affect the suitability of the member of the management body.

41. Issuers of ARTs and CASPs should re-assess the sufficient time commitment of a member of the management body if that member takes on an additional directorship or starts to perform new relevant activities.

42. Where re-assessments of the collective suitability are performed, issuers of ARTs and CASPs should focus their assessment on the relevant changes in their business model and activities, strategies, technical infrastructures, and risk profile and in the distribution of duties within the management body and their effect on the required collective knowledge, skills and experience of the management body.

43. When assessing a member`s appropriate knowledge, skills and experience, issuer of ARTs or CASPs should, within the same time period, also assess the collective suitability of the

management body. In particular, it should be assessed what knowledge, skills and experience the individual brings to the collective or, in the case of a member that has left the management body, the knowledge and experience that might, following the change of composition of the management body, be missing.

44. The knowledge, skills and experience assessments of individual members of the management body and of the collective management body, should be carried out before the individual members are appointed. Where applicable, the management body in its supervisory function should be responsible for performing the final assessment.

45. By way of derogation from paragraph 44, the suitability assessments may, without prejudice to national law, be performed as soon as practicable but in any case, within one month of the appointment of the member of the management body, in any of the following cases for which the issuer of ARTs or the CASP has duly provided a justification:

    a. Shareholders, owners or members of the issuer of ARTs or of the CASP nominate and appoint members of the management body at the shareholder's or equivalent meeting that have not been proposed by the issuer of ARTs or by the CASP or by their management body;

    b. a full individual suitability assessment prior to the appointment of an individual member or the collective suitability assessment following a change of the composition of the management body would disrupt the sound functioning of the management body, including as a result of the following situations:

        i. where the need to replace members arises suddenly or unexpectedly, e.g. death or disability of a member; and

        ii. where a member needed to be removed as the member was not any longer suitable.

46. The assessment of appropriate knowledge, skills and experience should take into account all matters relevant to and available for the assessments. Issuers of ARTs or CASPs should take into account the knowledge, skills and experience of the individual member of the management body when assessing the adequate collective knowledge, skills and experience of the management body and vice-versa.

47. The issuer of ARTs or the CASP should document the results of their assessment, and in particular any weaknesses identified between the necessary and the actual collective knowledge and experience of members of the management body, and measures to be taken to overcome these shortcomings, including induction or training to be provided.

48. To ensure the appropriate ongoing supervision, the issuer of ARTs and the CASP should inform the competent authority of the proposed appointment of members or without undue delay after the appointment of members.

49. Where the assessment is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the suitability of the management body continues to remain with the issuer of ARTs or the CASP.

C.3.1 Assessment of the individual suitability of members of the management body by CASPs and issuers of ARTs

50. As part of the assessment of the management body suitability, the issuer of ARTs or the CASP should assess the knowledge, skills and experience of individual members. For that purpose, the issuer of ART or the CASP should:

    a. gather information through various channels and instruments (e.g. diplomas and certificates, recommendation letters, curricula vitae, interviews, questionnaires);

    b. require the assessed individual to provide accurate information and to provide proof of that information, where necessary;

    c. validate, to the extent possible, the correctness of the information provided by the assessed individual;

    d. where applicable, evaluate within the management body in its supervisory function the assessment results; and

    e. where necessary, identify necessary corrective measures.

51. The issuer of ARTs or the CASP should document a description of the position of the member for which an assessment was performed, including the role of that position within the issuer of ARTs or CASP and should specify the results of the assessment in relation to knowledge, skills and experience and the results of the assessment of good repute and time commitment made in line with these Guidelines.

C.3.2 Assessment of the collective suitability of members of the management body by CASPs and issuers of ARTs

52. Where applicable, in assessing the collective appropriate knowledge, skill and experience, the issuer of ARTs or the CASP should assess the composition of the management body in its management and, where applicable, its supervisory functions separately.

53. The assessment of the appropriate collective knowledge, skills and experience should provide a comparison between the appropriate knowledge, skills and experience of the management body required for the performance of all business activities, including their organisational aspects and underlying processes, and the management body's actual collective knowledge and experience.

54. When assessing the collective appropriate knowledge, skills and experience of the management body, the issuer of ARTs or the CASP should first assess all individual members, map the results to the business activities and establish that for all such activities the

management body has collectively adequate knowledge, skills and experience to ensure the effective functioning of the management body.

55. The composition of the management body should ensure that the collective decision-making processes involve appropriate discussion, challenge and oversight. For that purpose, there should be a sufficient number of members with knowledge in each area to allow a discussion of decisions to be made.

56. The issuer of ARTs or the CASP should perform an assessment of the collective suitability of the management body to perform their duties under MiCA and document the results using either:

    a. The suitability matrix template included in Annex I as a basis and adapting it taking into account the criteria described in Section C.1; or

    b. their own appropriate methodology in line with the criteria set out in these Guidelines.

C.4. Issuers of ARTs' or CASPs' corrective measures

57. If an issuer of ARTs' or a CASP's assessment or re-assessment concludes that the management body or a member of the management body does not possess the adequate knowledge, skill and experience, or cannot commit sufficient time, the issuer of ARTs or the CASP should take appropriate corrective measures in a timely manner.

58. Where a member of the management body is not of sufficient good repute the member should not be appointed, be replaced or not be allowed to execute the position.

59. Appropriate corrective measures may include but are not limited to: adjusting responsibilities between members; replacing certain members; recruiting additional members; training single members; or training for the management body collectively to ensure that it has appropriate collective knowledge, skills and experience.

60. If an issuer of ARTs or a CASP's assessment or re-assessment identifies easily remediable shortcomings of the adequate knowledge, skills and experience or ability to commit sufficient time of the management body or a member of the management body, the issuer of ARTs or the CASP should take appropriate corrective measures to overcome those shortcomings in a timely manner.

61. In any case, competent authorities should be informed without delay of any material shortcomings identified concerning any of the members of the management organ and the management body's collective composition. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

C.5. Suitability assessment by competent authorities

62. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of members of the management body of issuers of ARTs and CASPs. When specifying the supervisory procedures, competent authorities should consider that a suitability assessment performed after the member has taken up his or her position could lead to the need to remove a non-suitable member from the management body or to a situation where the management body collectively has ceased to be suitable.

63. Competent authorities should ensure that a description of those assessment procedures is publicly available. The supervisory procedures should ensure that newly appointed members of the management body and the management body as a collective body are assessed by the competent authorities. The supervisory procedures should also ensure that re-appointed members of the management body are re-assessed by the competent authority in accordance with these Guidelines, where a re-assessment is necessary due to a change in the information required or the position held by the re-appointed member.

64. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance with the relevant regulatory requirements in a timely manner.

65. Competent authorities should require issuers of ARTs and CASPs to notify them without delay of any vacant positions within the management body. Competent authorities that assess the suitability of members of the management body before the appointment should require the issuer of ARTs or the CASP to notify them without undue delay after the firm decided to propose the member for appointment. Competent authorities that assess the suitability of members of the management body after the appointment should require the issuer of ARTs or the CASP to notify the appointment at the latest 2 weeks after the appointment. This notification should include the information referred to in paragraph 70.

66. In the duly justified cases referred to in paragraph 45, issuers of ARTs and CASP should be required to provide the complete documentation required under paragraph 70 to the competent authority within one month of the member being appointed.

67. Competent authorities should set out a maximum period for their assessment of suitability which should not exceed 4 months from the date when the notifications of the intended or actual appointment by the issuer of ARTs or the CASPs.

68. Where a competent authority establishes that information in addition to what is required under paragraph 70 is needed to complete the assessment, the period set under paragraph 67 may be suspended from the time when the competent authority requests additional information until its receipt.

69. Competent authorities should perform their assessment on the basis of the information provided by the issuer of ARTs and CASPs and assessed members and should assess them against the notions defined in these Guidelines, as applicable.

70. Competent authorities should require issuers of ARTs and CASPs to submit the information and documentation necessary for the assessment of the suitability of the member of the management body, including the information and documentation required for the suitability assessment at authorisation as specified in the Commission Delegated Regulation mandated under Articles 18(6) of MiCA with regard to the application of paragraph (2) (i) of this Article in the case of an issuer of ARTs and mandated under Article 62(5) of that Regulation with regard to the application of paragraph (2)(g) of this Article in the case of a CASP , containing proof of the members sufficient good repute, and the members and the management body's appropriate individual and collective knowledge, skills and experience and ability to commit sufficient time.

71. Where appropriate on a risk-based approach and for issuers of significant ARTs, competent authorities should use also interviews for the purpose of suitability assessments.

72. The assessment of the individual and collective suitability of the members of the management body should be performed on an ongoing basis by competent authority, as part of their ongoing supervisory activities.

73. Competent authorities may attend or conduct meetings with the issuer of ARTs or CASP, including with some or all members of its management body, or participate as an observer in meetings of the management body to assess the effective functioning. The frequency of such meetings should be set using a risk-based approach.

74. Competent authorities should ensure that necessary re-assessments under sections C.3, C.3.1 and C.3.2 are conducted by issuers of ARTs and CASPs. If a re-assessment of suitability by a competent authority is prompted by a re-assessment by an issuer of ARTs or CAPS, that competent authority should take into account the circumstances that prompted the re-assessment and its impact on the individual and collective suitability of the Management body.

C.6. Decision of the competent authority

75. Competent authorities should take a decision based on the assessment of individual and collective suitability of members of the management body within the maximum period referred to in paragraph 67 or, if the period has been suspended as referred to in paragraph 68, within the maximum period of 6 months.

76. Where the outcome of the assessment of suitability by the competent authority concludes that it is not sufficiently proven that the assessed person is suitable, including in situations where the provided information is not sufficient to complete the assessment, the competent authority should object to or not approve the appointment of that person, unless the identified shortcomings are remediable and can be overcome by other measures taken by the issuer of ARTs or by the CASP.

77. Where an issuer of ARTs or a CASP fails to provide sufficient information regarding the suitability of an assessed individual to the competent authority, the latter should inform the

firm that the member cannot be a member of the management body because it has not been sufficiently proven that the person is suitable or that it decided negatively.

78. Where shortcomings regarding the individual or collective knowledge, skills or experience of members of the management body are identified, the competent authority, considering the measures already taken by the issuer of ARTs or the CASP, should take appropriate measures to address the identified shortcomings and set a timeline for the implementation of these measures. Such measures should include as appropriate one or more of the following measures:

    a. requiring the issuer of ARTs or the CASP to organise specific training for the members of the management body individually or collectively;

    b. requiring the issuer of ARTs or the CASP to change the division of tasks amongst the members of the management body;

    c. requiring the issuer of ARTs or the CASP to refuse the proposed member or to replace certain members;

    d. requiring the issuer of ARTs or the CASP to change the composition of the management body to ensure the individual and collective suitability of the management body;

    e. removing the member from the management body of the issuer of ARTs or of the CASP;

    f. where appropriate, imposing administrative penalties or other administrative measures (e.g. setting out specific obligations, recommendations or conditions), including ultimately withdrawing the authorisation.

Joint Guidelines on the assessment of the suitability of the shareholders or members, whether direct or indirect, with qualifying holdings in issuers of ARTs or of CASPs

D. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Articles 16 of Regulation (EU) No 1093/2010[7] and to Article 16 of Regulation (EU) No 1095/2010[8]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010 and of Regulation (EU) 1095/2010, competent authorities, financial market participants and financial institutions shall make every effort to comply with these guidelines. These guidelines set out appropriate supervisory practices within the European System of Financial Supervision and of how Union law should be applied.

2. Competent authorities as defined in Article 3(1) point (35)(a) of MiCA to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at financial market participants and financial institutions.

Reporting requirements

3. Within two months of the date of publication of these guidelines on EBA's and ESMA's websites in all EU official languages, according to Article 16(3) of Regulation (EU) No 1093/2010 and of Regulation (EU) 1095/2010, competent authorities must notify the EBA or ESMA as to whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with these guidelines. In case of non-compliance, competent authorities must also notify ESMA or EBA within two months of the date of publication of these guidelines on ESMA's and EBA websites in all EU official languages of their reasons for not complying with these guidelines. Notifications should be submitted by persons with appropriate authority to report

[7] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

[8] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Securities and Market Authority (European Securities and Market Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, (OJ L 331, 15.12.2010, p. 84).

compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA or to ESMA.

4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010 and on the ESMA website, in line with Article 16(3) of Regulation (EU) No 1095/2010.

Subject matter, scope and definitions

Subject matter

Subject matter

5. In accordance with Article 16 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010, these Joint Guidelines lay down the methodology that competent authorities should use for the assessment of the circumstances giving rise to qualifying holdings (Section F.1 of the Guidelines).

6. These Joint Guidelines lay down the methodology that competent authorities should use for the assessment of the suitability of the shareholder or member that has qualifying holdings, whether direct or indirect (Section F.2 of the Guidelines):

   a) in an applicant issuer seeking for an authorisation under Article 18 of MiCA, in accordance with the mandate set out by Article 21(3) of that Regulation;

   b) in an applicant CASP seeking for authorisation under Article 62 of MiCA, in accordance with the mandate set out by Article 63(11) of that Regulation.

7. In accordance with Article 16 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010, these Joint Guidelines lay down the methodology that competent authorities should use for the assessment of the suitability of a proposed acquirer of direct or indirect qualifying holdings (Section F.3 of the Guidelines):

   a) in an issuer of ARTs authorised under Article 21 of MiCA, in accordance with the criteria set out by Article 42(1), points (a) to (e) of that Regulation;

   b) in a CASP authorised under Article 63 of that Regulation, in accordance with the criteria set out by Article 84(1), points (a) to (e) of that Regulation.

Scope of application

8. In accordance with Articles 18(2), point (j) or 62(2)(h) of MiCA, in case of application for authorisation as issuer of ARTs or as a CASP, the assessment of the proposed acquirers concerns the sufficiently good repute of the shareholders or members, whether direct or indirect, with qualifying holdings.

9. In accordance with Articles 42(1) and 84(1) of MiCA, in case of issuer of ART or CASP authorised under Article 21 or 63 of that Regulation, the assessment of the proposed acquirers concerns the suitability, based on the five assessment criteria set out therein, of the shareholders or members, whether direct or indirect, with qualifying holdings.

10. These guidelines do not apply to issuers of ARTs or CASPs that are authorised as credit institutions under Directive 2013/36/EU. Moreover, CASPs that are financial entities listed in Article 60, providing crypto-asset services as part of their authorisation in accordance with

paragraphs (2) to (6) of Article 60 of MiCA are not subject to Articles 63 and 84 but remain subject to the provisions of Article 68(2).

Addressees

11. These guidelines are addressed to competent authorities as defined in Article 3(1), point (35)(a) of MiCA.

Definitions

12. Unless otherwise specified, terms used and defined in MiCA have the same meaning in these Joint Guidelines. In addition, for the purposes of these guidelines, the following definitions apply including for purposes of cross-reference to the Joint ESAs Guidelines on QH:

Proposed acquirer	Means natural or legal person who, whether individually or acting in concert with another person or persons, intends to acquire or to increase, directly or indirectly, a qualifying holding in a target undertaking which is a an ART issuer authorised under Article 21 of MiCA or a CASP authorised under Article 63 of that Regulation, or a shareholder or member, who, whether directly or indirectly, individually or acting in concert with another person or persons, holds qualifying holding in an applicant issuer of ART seeking for an authorisation in accordance with Article 18 of that Regulation or in an applicant CASP seeking for an authorisation in accordance with Article 62 of that Regulation
Sectoral Directives or Regulations	Means MiCA
Shareholder or member	means a natural or legal person who owns shares in the target undertaking or, depending on the legal form of an institution, other owners or members of the target undertaking
Target supervisor	Means the competent authority, as defined in Article 3(1) point (35)(a) of MiCA, which is responsible for the supervision of the target undertaking
Target undertaking	Means: - an applicant issuer applying for an authorisation under article 18 of MiCA or - an issuer of ARTs authorised in accordance with Article 21 of that Regulation; or

	- an applicant CASP applying for an authorisation under article 62 of MiCA; or - a CASP, authorised in accordance with Article 63 of MiCA.
Joint ESAs Guidelines on QH	Means the Joint EIOPA, EBA and ESMA Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector of 16 December 2016 (JC/GL/2016/01).

E. Implementation

Date of application

13. These guidelines apply from 04/02/2025.

F. Joint Guidelines

F.1. Acting in concert, significant influence, indirect shareholders, decision to acquire

14. Competent authorities should determine whether the circumstances giving rise to a proposed acquisition of qualifying holding in a target undertaking are met, preliminary to the assessment of the suitability of the proposed acquirer.

15. For these purposes competent authorities should apply the assessment methodology set out in the Joint ESAs Guidelines on QH, namely in Title II, Chapter 1, Section 4 on Acting in concert, Section 5 on Significant influence, Section 6 on Indirect acquisitions of qualifying holdings, Section 7 on Decision to Acquire.

F.2. Assessment of suitability of shareholders or members, whether direct or indirect, with qualifying holdings at authorisation

16. Pursuant to Article 21(2), point (c) or Article 63(10), point (c) of MiCA, competent authorities shall assess whether the proposed acquirer with qualifying holdings in an undertaking applying for an authorisation under article 18 or for an authorisation under Article 62 of that Regulation are of sufficiently good repute as referred to in Article 34(4) and 68(2) of that Regulation (EU). Such assessment should be based on the criteria set out in Article 42(1) or in Article 84(1), point (a), on the reputation of the proposed acquirer and on point (e), on the absence of reasonable grounds to suspect that ML/TF are being committed or attempted, of MiCA.

17. For the assessment of the reputation of the proposed acquirer, competent authorities should refer for their assessment on the information set out to in the Commission Delegated

Regulations adopted pursuant to Articles 18(6) of MiCA in the case of an issuer of ARTs and Article 62(5) of that Regulation in the case of CASPs and should apply the methodology set out in Title II, Chapter 3, Section 10 of the Joint ESAs Guidelines on QH, on Reputation of the proposed acquirer – first assessment criterion, as applicable.

18. For the assessment of the absence of reasonable grounds to suspect that ML/TF are being committed or attempted, competent authorities should apply the methodology set out in Title II, Chapter 3, Section 14 of the Joint ESAs Guidelines on QH, on Suspicion of money laundering or terrorist financing by the proposed acquirer – fifth assessment criterion. Furthermore, competent authorities should apply paragraph 28 of these Joint Guidelines whenever the funds for the acquisition of the qualifying holdings consist in crypto-assets or whenever they derive from the exchange of crypto-assets into fiat currency.

19. For the purposes of the assessment of the aspects of sufficiently good repute relating to professional competences of the proposed acquirer, competent authorities should apply proportionality in accordance with paragraph 8.3 of section 8 of the ESAs Guidelines on QH, on Proportionality.

F.3. Assessment of the suitability of a proposed acquirer of a qualifying holding in accordance with Articles 42(1) or 84(1) of MiCA

20. In order to assess whether a natural or legal person have made the decision to acquire, competent authorities should apply Section 7 of the ESAs Joint GL on QH on Decision to acquire.

21. Competent authorities have to assess the suitability of proposed acquirers of direct or indirect qualifying holdings in an issuer of ARTs authorised in accordance with Article 21 of MiCA or in a CASP authorised in accordance with Article 63 of that Regulation, in accordance with the criteria set out in points (a) to (e) of Article 42(1) or of Article 84(1) of that Regulation respectively.

22. For the assessment of the criterion set out in Article 42(1), point (a) or in Article 84 (1), point (a) of MiCA on the reputation of the proposed acquirer, competent authorities should refer for their assessment to the information set out in the Commission Delegated Regulations adopted pursuant to Articles 42(4) of MiCA in the case of an issuer of ARTs and to Article 84(4) of that Regulation in the case of CASPs and should apply the methodology set out in Title II, Chapter 3, Section 10 of the Joint ESAs Guidelines on QH, on Reputation of the proposed acquirer – first assessment criterion, as applicable.

23. For the assessment of the criterion set out in Article 42(1), point (b) or in Article 84(1), point (b) of MiCA, relating to the reputation, knowledge, skills and experience of any person who will direct the business of the target undertaking, competent authorities should apply the assessment methodology laid down in the EBA and ESMA Joint Guidelines on the suitability assessment of the members of the management body of issuers of ARTs or of CASPs.

24. For the assessment of the criterion set out in Article 42(1), point (c) or in Article 84(1), point (c) of MiCA, competent authorities should apply the methodology set out in Title II, Chapter 3, Section 12 of the Joint ESAs Guidelines on QH, on Financial soundness of the proposed acquirer – third assessment criterion.

25. For the assessment of the criterion set out in Article 42(1), point (d), relating to the continuous compliance with the requirements set out in Title III of MiCA, or in Article 84(1), point (d) relating to the continuous compliance with the requirements set out in Title V of that Regulation, when it concerns prudential requirement, competent authorities should apply the methodology set out in Title II, Chapter 3, section 13 of the Joint ESAS Guidelines on QH, on compliance with prudential requirements of the target undertakings with that requirement.

26. With specific regard to issuers of ARTs, the continuous compliance with the prudential requirements on liquidity includes the requirements relating to the composition, management, investment, segregation and custody of the reserve of assets, with the view to meeting any potential request of redemption by the holders of the token.

27. For the assessment of the criterion set out in Article 42(1), point (e), or in Article 84(1), point (e) of MiCA respectively, competent authorities should apply the methodology set out in Title II, Chapter 3, Section 14 of the Joint ESAs Guidelines on QH, on Suspicion of money laundering or terrorist financing by the proposed acquirer – fifth assessment criterion.

28. Whenever the funds for the acquisition of the qualifying holdings consist in crypto-assets or whenever they derive from the exchange of crypto-assets into fiat currency, competent authorities, in addition to the application of the assessment methodology laid down in Title II, Chapter 3, Section 14 of the Joint ESAs Guidelines on QH, on the suspicion of money laundering or terrorist financing, should also identify:

    a. the distributed ledger address used by the proposed acquirer, where a transfer of crypto-assets is registered on a network using distributed ledger technology or similar, and the crypto-asset account number used by the proposed acquirer, where such an account exists and is used to process the transaction;

    b. the crypto-asset account number used by the proposed acquirer, where a transfer of crypto-assets is not registered on a network using distributed ledger technology or similar;

    c. where a transfer of crypto-assets is not registered on a network using distributed ledger technology or similar technology and not made from or to a crypto-asset account, a unique transaction identifier; and

    d. the crypto-asset service provider(s) of the parties to the transaction, as applicable.

29. Target supervisors should apply the principle of proportionality in their assessment in accordance with Section 8 on Proportionality of the Joint ESAs Guidelines on QH in case of

proposed acquirers in an issuer of ART authorised in accordance with Article 21 of MiCA, or in a CASP authorised in accordance with Article 63 of that Regulation.

30. In case the proposed acquirer intends to acquire a qualifying holding in a target undertaking which is an issuer of ARTs authorised in accordance with Article 21 of MiCA or in a CASP authorised in accordance with Article 63 of that Regulation, target supervisors should apply Title II, Chapter 2, Section 9, paragraphs 9.1 to 9.3 of the Joint ESAs Guidelines on QH with regard to the procedure applicable to the notification submitted by the proposed acquirer.

Annex I – Template for a matrix to assess the collective competence of members of the management body

Annex I to the Guidelines is provided as a separate Excel file.