

EBA/CP/2023/14

12 July 2023

Consultation Paper

Draft Regulatory Technical Standards on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42(4) of Regulation (EU) 2023/1114.

Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	6
4. Draft regulatory technical standards on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42(4) of Regulation (EU) 2023/1114	8
5. Accompanying documents	31
a. Draft cost-benefit analysis / impact assessment	31

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 12.10.2023. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Article 42(4) of Regulation (EU) 2023/1114 (MiCAR) mandates the European Banking Authority (EBA) to develop, in close cooperation with the European Securities and Markets Authority (ESMA), regulatory technical standards (RTS) to specify the detailed content of the information to be submitted with the notification of direct or indirect acquisitions or increase of qualifying holdings in issuers of asset-referenced tokens ('ARTs'), that is necessary for the prudential assessment of the proposed acquisition or increase. As such, the draft RTS are relevant for proposed acquirers of qualifying holdings in issuers of ARTs as well as for competent authorities under MiCAR that will carry out the prudential assessment of the proposed direct and indirect acquisition in accordance with Article 41(4) of the same Regulation. Such prudential assessment has to be performed by the competent authority against the five criteria set out in Article 41(1) of Regulation 2023/1114, namely: a) reputation of the proposed acquirer (integrity and professional competence); b) suitability of the persons who will direct the business of the target undertaking, to the extent the proposed acquirer intends to appoint any; c) financial soundness of the proposed acquirer; d) compliance with prudential requirements of the target undertaking; e) reasonable ground to suspect an attempt or increase in the money laundering or terrorist financing risk by the proposed acquisition.

Against such criteria, the information request set out in the draft RTS includes information on:

- i. the identity, past convictions, financial soundness and financial and non-financial interests in the target entity of the natural or legal persons intending to acquire the holding;
- ii. the good repute, knowledge skill and experience of the members of the management body where the proposed acquirer intends to appoint/replace members of the management body of the target entity;
- iii. the proposed acquisition such as the proposed acquirer's strategy in respect of the acquisition and the information on the new group structure after the acquisition of the qualifying holding;
- iv. the legitimate origin of the sources of funding for the acquisition such as details on the assets that have to be sold by the acquirer, as well as the details on the channels used to transfer such funds;

The principle of proportionality has been considered and integrated in the RTS by envisaging the provision of different sets of information by the indirect shareholders depending on whether the proposed acquirer indirectly acquiring or increasing a qualifying holding in the target entity holds or intends to acquire the control of an existing holder of qualifying holding in the target entity, or where the existence of a qualifying holding is determined by multiplying the qualifying holding held in the target entity per the percentage of the qualifying holdings held indirectly along the holding chain. Furthermore, proportionality has also been reflected in the draft RTS by allowing proposed acquirers to submit a set of reduced information in specific cases explicitly identified where the proposed acquirer has been assessed by the same competent authority in the last two years, or where the proposed acquirer is an undertaking authorised and under the supervision of the same competent authority of the target entity.

Next steps

The draft RTS will be submitted to the Commission for endorsement following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

3. Background and rationale

Regulation (EU) 2023/1114 on market in crypto-assets ('MiCAR') reserves the issuance of asset-referenced tokens (ARTs) to legal persons, other undertakings or credit institutions established in the EU. Legal persons and other undertakings intending to issue ARTs have to be granted authorisation by the competent authority designated under MiCAR. Suitability of the persons with influence on the regulated entities is a pillar of prudential regulation, accordingly MiCAR requires any natural or legal person intending to directly or indirectly acquire, alone or in concert, qualifying holdings in issuers of ARTs or to increase directly or indirectly such qualifying holding, to submit a prior notification to the competent authority of that issuer of ARTs (the target entity), and to be subject to a prudential assessment.

The main objectives of the provisions on the acquisitions or increases of qualifying holdings in MiCAR are therefore to provide the necessary legal certainty, clarity and predictability regarding the process and the prudential assessment to be performed by the competent authorities as defined in point (35), point (a) of Article 3(1) of MiCAR by:

- a. defining a clear and transparent procedure for the assessment of the proposed acquisition or increase of qualifying holdings by the competent authority, including setting a maximum period of time for the assessment; and
- b. specifying clear and consistent criteria of prudential nature to be applied by the competent authorities in the assessment process.

With a view to ensuring a European harmonised approach to the prudential assessment, and in particular that it is based on the same type and breath of information, Article 42(4) of MiCAR requires the EBA, in close cooperation with ESMA, to draft regulatory technical standards (RTS) to specify the detailed content of the information that is necessary to carry out the prudential assessment and that needs to be submitted with the notification of the proposed acquisition or increase of qualifying holdings. In accordance with MiCAR, such information has to be "relevant for the prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition" (Article 42(4) MiCAR).

The draft RTS therefore aims to set out a EU harmonised content of the set of information that the proposed acquirer of qualifying holdings in an ART issuer is required to submit in the notification to the competent authority.

Articles 41 and 42 MiCAR, relating to the process and assessment criteria applicable to the acquisition or increase of direct or indirect qualifying holdings in ART issuers, are aligned and mirror the process, timeline and assessment criteria set out in Directive 2007/44/EC laying down a maximum harmonisation regime on the acquisition of qualifying holdings across the financial sector.

Taking into account such alignment, the RTS aims to achieve consistency with existing regulatory products on the assessment of direct or indirect acquisition or increase of qualifying holdings, including the content of the information to be submitted to support the prudential assessment. For this purpose, the development of the draft RTS on information for notification has relied on Commission Delegated Regulation (EU) 2017/1946 on information for notification of acquisitions of qualifying holdings in investment firms, and on the Annex to the Joint ESAs Guidelines on the prudential assessment of the acquisition or increase of qualifying holdings (JC/GL/2016/01)¹.

Furthermore, a separate mandate for the development of RTS to specify the detailed content of the information necessary for the prudential assessment of such acquisitions or increases of qualifying holdings in crypto-asset service providers ('CASPs') is conferred to ESMA, in close cooperation with the EBA (Article 84(4) MiCAR). Within MiCAR, the prudential assessment of the acquisition or increase of qualifying holdings in issuers of ARTs or in CASPs is perfectly aligned, and mirrors each other. Articles 83 and 84 of MiCAR on the direct or indirect acquisition or increase of qualifying holdings in crypto-asset service providers CASPs, mirror Articles 41 and 42 MiCAR. The EBA and ESMA have therefore closely cooperated to the maximum alignment of the two RTSs on information for notification with the view to ensure consistency internally within the scope of application of MiCAR and externally, with other regulatory products applicable in the financial sector. This is particularly relevant taking into account that ART issuers and CASPs may be the same undertaking.

In accordance with MiCAR, the information to be submitted with the notification of the proposed acquisition or increase of a qualifying holding has to be "relevant for the prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition" (Article 42(4) MiCAR). Accordingly, the RTS articulates the content of the information request based on the nature of the proposed acquirer, whether it is a natural or a legal person, in such latter case whether it is a corporate, a trust, an alternative investment fund (AIF), an undertaking for collective investment in transferable securities (UCITS) or a sovereign fund. Proportionality is reflected in the differentiated sets of information, corresponding to the different size/thresholds of the acquisition, required to assess the financial soundness and the assurance of sound and prudent management of the target undertaking. Proportionality is also reflected in the different sets of information requested to indirect shareholders identified via the application of the control or of the multiplication criterion and information waivers in case of previous assessments. The submission of a reduced set of information does not exempt the competent authority from assessing the proposed acquirer. It is noted that during the preparation of this draft RTS, questions emerged with regards to some aspects of the information which would not be requested from indirect shareholders identified via the multiplication criterion. For this reason, and depending on the feedback received to this consultation paper, the EBA might amend the list of information required from this type of indirect shareholders if there are grounds to believe that important information could be missing.

Finally, the EBA intends to consider, also on the basis of the feedback that it will receive from consultation, whether further requirements are necessary in the draft RTS for the purpose of the assessment by CAs of whether the issuer of ARTs will be able to comply and continue to comply with the provisions of Title III of MiCAR after the intended acquisition.

¹https://www.esma.europa.eu/sites/default/files/library/jc_gl_2016_01_joint_guidelines_on_prudential_assessment_of_acquisitions_and_increases_of_qualifying_holdings_-_final.pdf?download=1

4. Draft regulatory technical standards on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42(4) of Regulation (EU) 2023/1114

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset reference tokens

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European parliament and of the Council of 31 May 2023 on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, and in particular to Article 42(4) thereof,

Whereas:

- (1) A detailed content of the information that is necessary to carry out the prudential assessment of direct or indirect proposed acquisitions or increases of qualifying holdings in an issuer of asset-referenced tokens which has been authorised in accordance with Article 21 of Regulation (EU) 2023/1114 ('target entity') should be submitted by the proposed acquirer to the competent authority, within the meaning of point (34) of Article 3(1) of Regulation 2023/1114 with the notification of such proposed acquisition or increase. The submitted information should enable competent authorities to carry out the prudential assessment of the proposed acquisition, be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition and be true, accurate and up-to-date.
- (2) Information on the identity of the proposed acquirer should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person, in order to enable the competent authority of the target entity to assess the reputation of that proposed acquirer.
- (3) Where the proposed acquirer is a legal person, information on the identity of the ultimate beneficial owners and on the reputation and experience, over the last ten years, of the persons who effectively direct the business of the proposed acquirer is also necessary to perform the prudential assessment.

- (4) Similarly, it is important, where the proposed acquirer is an alternative investment fund (AIF), as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council², or an undertaking for collective investment in transferable securities (UCITS) authorised in accordance with Article 5 of Directive 2009/65/EC of the European Parliament and of the Council³, its alternative investment fund manager (AIFM) or the AIF in the case of an internally- managed AIF, or its UCITS management company or the UCITS investment company in the case of a self-managed UCITS, should provide the competent authority of the target entity with the identity and reputation of the individuals in charge of making the investment decisions for the fund.
- (5) Similarly, where the proposed acquirer is or is intended to be a trust structure, it is necessary for the competent authority of the target entity to obtain information on both the identity of the trustees who will manage the assets of the trust, and on the identity of the settlor and of the beneficial owners of those assets to be able to assess the reputation and experience of these persons.
- (6) Where the proposed acquirer is a sovereign wealth fund, it should provide the competent authority with information on the identity and reputation of the persons holding high level position in the ministry, government department or other public body in charge of making the investment decisions for the fund.
- (7) Where the proposed acquirer is a natural person, it is necessary to obtain information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer over the last ten years in order to provide the competent authority of the target entity with full information relevant to the assessment of reputation. Where the proposed acquirer is a legal person, it is necessary to obtain this information in relation to any undertaking under the proposed acquirer's control, and any shareholder with a qualifying holding in the proposed acquirer, in order to provide the competent authority with full information relevant to the assessment of reputation.
- (8) The information relevant to the assessment of reputation should include details of criminal convictions and proceedings, historical or ongoing, as well as civil or administrative cases. Similarly, information should be provided in relation to all open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer, as well as any other relevant information such as refusal of registration or dismissal from employment or from a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.
- (9) Information on whether an assessment as acquirer, or as a person who directs the business of any relevant entity has already been conducted by another competent authority or other authority, and, if so, the outcome of such assessment should be provided by the proposed acquirer, in order to ensure that the outcome of investigations run by

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

³ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).

other authorities are duly considered by the competent authority of the target entity when conducting its own assessment of the proposed acquirer.

- (10) With regard to the proposed acquisition of indirect qualifying holdings in the target entity, it is adequate to calibrate in a proportionate way the content of the information request. For this purpose, it is relevant to differentiate two cases. The first one is the case where the natural or legal person indirectly acquiring or increasing a qualifying holding in the target entity holds or intends to acquire the control of an existing holder of qualifying holding in the target entity. The second is the case where the existence of a qualifying holding is determined by multiplying the qualifying holding held in the target entity by the percentage of the qualifying holdings held indirectly along the holding chain. In the second case, having regard to the more limited influence that such an indirect shareholder or member with qualifying holdings may exercise on the target entity, a reduced set of information should be submitted.
- (11) Financial information concerning the proposed acquirer should be provided in order to assess the financial soundness of that proposed acquirer.
- (12) It is important for the competent authority of the target entity to assess whether the existence of any potential conflict of interests could affect the financial soundness of the proposed acquirer and the sound and prudent management of the target entity. Therefore, proposed acquirers should provide information on the financial and non-financial interests or relationships of the proposed acquirer with any shareholders or directors or members of the management body of the target entity or person entitled to exercise voting rights in the target entity, or with the target entity itself or its group.
- (13) The submission of additional information, including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition is necessary when the proposed acquirer is a legal person. This should allow the competent authority of the target entity to complete the assessment of the proposed acquisition, including in cases where the legal and group structures involved may be complex and may necessitate detailed review in relation to reputation, potential action in concert with other parties, and the ability of the competent authority of the target entity to continue effective supervision of the target entity.
- (14) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be provided so that the competent authority of the target entity can assess whether there are obstacles to the effective supervision of the target entity posed by the legal regime of the third country, and can also ascertain the proposed acquirer's reputation in that third country.
- (15) Specific information enabling an assessment as to whether the proposed acquisition will impact the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be submitted by the proposed acquirer. For legal persons, it is necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and of the group it would belong to after the acquisition.
- (16) The proposed acquirer should provide information on the financing of the proposed acquisition, including information concerning all means and sources of financing. The proposed acquirer should also be able to present evidence about the origin and legitimacy of the source of all such funds and assets in order for the competent authority of

the target entity to assess their certainty, sufficiency and legitimate origin, including whether there is suspicion of risk or increased risk of money laundering or terrorist financing.

- (17) Proposed acquirers intending to acquire a qualifying holding of between 20 % and up to 50% in the target entity should provide information on the envisaged strategy to the competent authority of the target entity in order to ensure a comprehensive assessment of the proposed acquisition. Similarly, proposed acquirers intending to acquire a qualifying holding of less than 20 % in the target entity but exercising an equivalent significant influence over it through other means such as the relationships between the proposed acquirer and the existing shareholders, the existence of shareholders' agreements, the distribution of shares, participating interests and voting rights across shareholders or the proposed acquirer's position within the group structure of the target entity should also provide that information to ensure a high degree of homogeneity in assessing proposed acquisitions.
- (18) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to be in possession of certain information on the entity's future strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.
- (19) It is proportionate in certain cases, that the proposed acquirer should submit reduced information. Namely where the proposed acquirer has been assessed for acquisition or increase in qualifying holdings by the competent authority of the target entity within the previous two years, it should be required to submit only the information that has changed since the previous assessment. Similarly, where the proposed acquirer is an authorised undertaking and subject to the prudential supervision of the competent authority of the target entity, it should be exempted from submitting certain pieces of information that is already in the possession of the supervisor.. In both cases, the proposed acquirer should only submit information specific to the proposed acquisition and be required to sign a declaration certifying that the information set-out in this Regulation that has not been submitted because in possession of the competent authority is true, accurate and up-to-date.
- (20) This Regulation is based on the draft regulatory technical standards submitted to the European Commission by the European Banking Authority. The European Banking Authority has developed these draft regulatory technical standards in close cooperation with the European Securities and Market Authority.
- (21) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council;

HAS ADOPTED THIS REGULATION:

Article 1

General information relating to the proposed acquirer

- 1 Where the proposed acquirer is a natural person, the proposed acquirer shall provide the competent authority of the target entity with the following identification information:
 - (a) personal details, including all of the following:
 - (i) the person's name and, if different, the person's name at birth;
 - (ii) the date and place of birth;
 - (iii) the person's nationality or nationalities;
 - (iv) the person's personal national identification number, where available;
 - (v) the person's current place of residence, address and contact details, and any other place of residence in the past ten years;
 - (vi) a copy of an official identity document;
 - (vii) the name and contact details of the principal professional adviser, if any, used to prepare the notification;
 - (b) detailed curriculum vitae, stating the relevant education and training, and any professional experience in managing holdings in companies, any management experience, any professional activities or other relevant functions currently performed, and any previous professional experience relevant to financial services, crypto-assets or other digital assets, distributed ledger technology ('DLT'), information technology, cybersecurity, digital innovation;
- 2 Where the proposed acquirer is a legal person, the proposed acquirer shall provide the competent authority of the target entity with the following information:
 - (a) the name of the legal person;
 - (b) the name and contact details of the principal professional adviser, if any, used to prepare the application;
 - (c) where the legal person is registered in a central register, commercial register, companies register or similar public register, the name of the register in which the legal person is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;
 - (d) the validated, issued and duly renewed ISO 17442 legal entity identifier released in accordance with the terms of any of the accredited Local Operating Units of the Global Legal Entity Identifier System;
 - (e) the addresses of the legal person's registered office and, where different, of its head office, and principal place of business;
 - (f) contact details of the person within the proposed acquirer to contact regarding the notification;
 - (g) corporate documents or agreements governing the legal person and a summary explanation of the main legal features of the legal form of the legal person as well as up-to-date overview of its business activity;

- (h) whether the legal person has ever been or is regulated by a competent authority in the financial services sector or other government body and the name of such authority or other government body;
 - (i) where the legal person is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849, the applicable anti-money laundering and counter terrorist-financing policies and procedures;
 - (j) a complete list of the persons who effectively direct the business of the proposed acquirer and, in respect of each such person, the name, date and place of birth, address, contact details, a copy of the official identity document, the national identification number where available, the detailed curriculum vitae stating relevant education and training, the previous professional experience, and the professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in letters (a) and (b) of Article 2;
 - (k) the identity of all persons who are the legal person's ultimate beneficial owners, in accordance with Article 3(6)(a)(i) or 3(6)(c) of Directive (EU) 2015/849, in respect of each such person, the name, date and place of birth, address, contact details, and, where available, the national identification number, together with the information referred to in letters (a) and (b) of Article 2.
- 3 Where the proposed acquirer is a trust, the proposed acquirer shall provide the competent authority of the target entity with the following information:
- (a) the identity of all trustees who manage assets under the terms of the trust document, in respect of each such person, the date and place of birth, address, contact details, a copy of the official identity document, the national identification number where available, the detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in letters (a) and (b) of Article 2;
 - (b) the identity, including the date and place of birth, address, contact details, copy of the official identity document, of each person who is a settlor, a beneficiary or a protector (where applicable) of the trust property and, where applicable, their respective shares in the distribution of income generated by the trust property;
 - (c) a copy of any document establishing and governing the trust;
 - (d) a description of the main legal features of the trust and its functioning, as well as an up-to-date overview of its business activity, and type and value of the trust property;

- (e) a description of the investment policy of the trust and possible restrictions on investments, including information on the factors influencing investment decisions and the exit strategy in relation to the issuer of asset-referenced tokens;
 - (f) the information set out in letter (i) of paragraph (2).
- 4 Where the proposed acquirer is an alternative investment fund (AIF) as defined in point (a) of Article 4(1) of Directive 2011/61/EU or an undertaking for collective investment in transferable securities (UCITS) authorised in accordance with Article 5 of Directive 2009/65/EC, its alternative investment fund manager (AIFM) or the AIF in the case of an internally-managed AIF, or its UCITS management company or the UCITS investment company in the case of a self-managed UCITS investment company shall provide the competent authority of the target entity with the following information:
- (a) details of the investment policy and any restrictions on investments, including information on the factors influencing investment decisions and of exit strategies;
 - (b) the identity and position of the persons responsible, whether individually or as a committee, for determining and making the investment decisions for the AIF or UCITS, as well as a copy of any contract in case of delegation of portfolio management to a third party or, where applicable, terms of reference of the committee. For each such person the AIFM or UCITS management company, or the AIF or self-managed UCITS investment company shall provide the date and place of birth, address, contact details, a copy of their official identity document, their national identification number where available, their detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed, together with the information referred to in letters (a) and (b) of Article 2;
 - (c) the information set out in letter (i) of paragraph (2);
 - (d) a detailed description of the performance of qualifying holdings previously acquired by the AIFM or UCITS management company on behalf of the AIFs or UCITS they manage or by the AIF or self-managed UCITS investment company, in accordance with this paragraph in the last three years in other similar firms or in firms providing services in relation to crypto-assets or issuing crypto-assets, indicating whether the acquisition of such qualifying holdings was approved by a competent authority and, if so, the identity of that authority.
- 5 Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide the competent authority of the target entity with the following information:
- (a) the name of the ministry, government department or other public body in charge of determining the investment policy of the sovereign wealth fund;
 - (b) details of the investment policy of the sovereign wealth fund and any restrictions on investment;

- (c) the names and positions of the individuals in high level administrative position in the ministry, government department or other public body who are in charge of determining the investment policy and who are responsible for making the investment decisions for the sovereign wealth fund. For each such individual the proposed acquirer shall provide the date and place of birth, address, contact details, a copy of their official identity document, their national identification number where available, their detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in letters (a) and (b) of Article 2;
- (d) details of any influence exerted by the ministry, government department or other public body referred to in point (i) on the day-to-day operations of the sovereign wealth fund;
- (e) the information set out in letter (i) of paragraph (2), where applicable.

Question for consultation.

Question n. 1

Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?

Article 2

Additional information relating to the proposed acquirer that is a natural person

The proposed acquirer that is a natural person shall also provide the competent authority of the target entity with the following:

- (a) a statement containing the following information in respect of the proposed acquirer and of any undertaking directed or controlled by proposed acquirer over the last 10 years:
 - (i) subject to national legislative requirements concerning the disclosure of spent convictions, information about any criminal conviction or proceedings where the person has been found against and which were not set aside;
 - (ii) information about any civil or administrative decisions concerning the person that are relevant for the assessment of the acquisition of the qualifying

holding in the issuer of asset-referenced tokens, and any administrative sanctions or measures that were imposed as a consequence of a breach of laws or regulations, including disqualification as a company director, in each case which was not set aside and against which no appeal is pending or may be filed, and of criminal convictions in respect of which information shall also be provided for rulings still subject to appeal;

- (iii) any bankruptcy, insolvency or similar procedures;
 - (iv) any pending criminal investigations or procedures including relating to precautionary measures;
 - (v) any civil, administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person concerning matters which may reasonably be considered to be relevant to the assessment of the acquisition of the qualifying holding in the issuer of asset-referenced tokens;
 - (vi) where such documents exist, an official certificate or any other equivalent document, where such documents do not exist any reliable source of information concerning the absence of any of the events set out in points (i) to (v) of this point (a) in respect of the person. Official records, certificates and documents shall have been issued within three months before the submission of the notification;
 - (vii) any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
 - (viii) any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out a trade, business or a profession;
 - (ix) any expulsion by a regulatory or government body or by a professional body or association;
 - (x) any position of responsibility within an entity subject to any criminal conviction or civil or administrative penalty or other civil or administrative measure that is relevant for the assessment of the suitability or authorisation process taken by any authority or any on-going investigation, in each case for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the involvement, if any, in them;
 - (xi) any dismissal from employment or a position of trust, any removal from a fiduciary relationship, save as a result of the relationship concerned coming to an end by passage of time, and any similar situation;
- (b) where another supervisory authority has already assessed the person concerned, the identity of that authority, the date of the assessment and evidence of the outcome of this assessment;

- (c) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
- (d) a description of the current business activities of the person and of any undertaking which the person directs or controls;
- (e) financial information, including credit ratings and publicly available reports on any undertakings directed or controlled by the person;
- (f) a description of the financial interests of the person, and of any non-financial interests of the person with any of the following natural or legal persons:
 - (i) any other current shareholder or member of the target entity;
 - (ii) any person entitled to exercise voting rights of the target entity in any of the following cases or combination of them:
 - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management of the target entity in question;
 - voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
 - voting rights attached to shares which are lodged as collateral with that person, provided the person controls the voting rights and declares his or her intention of exercising them;
 - voting rights attached to shares in which that person has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii) by an undertaking controlled by that person;
 - voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person;
 - voting rights which that person may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
 - (iii) any person that is a member of the management body of the target entity;
 - (iv) the target entity itself or any other member of its group;
- (g) to the extent any conflict of interest arises from the relationships referred to in point (f), proposed methods for managing such conflict;

- (h) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/849 of the European Parliament and of the Council⁴;
 - (i) any other interests or activities of the person that may be in conflict with those of the applicant and proposed methods for managing those conflicts of interest.
- For the purposes of point (f), credit operations, guarantees and security interests, whether granted or received, including relating to crypto-assets or other digital assets, shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

Article 3

Additional information relating to the proposed acquirer that is a legal person

- 1 The proposed acquirer that is a legal person shall also provide the competent authority of the target entity with all of the following:
 - a) the information referred to in:
 - (i) n. (i) to (xi) of letter (a) of the first subparagraph Article 2 in relation to the legal person and any undertaking under the legal person's control;
 - (ii) letter (b) of the first subparagraph Article 2 in relation to the legal person;
 - (iii) letter (d) of the first subparagraph of Article 2 in relation to the legal person;
 - (iv) letter (e) of the first subparagraph of Article 2 in relation to the legal person, any member of the management body in their executive function of the legal person or any undertaking under the legal person's control;
 - b) a description of financial interests, and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
 - (i) any other current shareholder or member of the target entity;
 - (ii) any person entitled to exercise voting rights of the target entity in any of the following cases or combination of them:
 - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management of the target entity in question;

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 of 5.6.2015, p. 73).

- voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
 - voting rights attached to shares which are lodged as collateral with that person, provided the person or entity controls the voting rights and declares its intention of exercising them;
 - voting rights attached to shares in which that person has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii), by an undertaking controlled by that person;
 - voting rights attached to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person;
 - voting rights which that person may exercise as a proxy where the person can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (iii) any politically exposed person, as defined in Article 3(9) of Directive (EU) 2015/849;
- (iv) any person that is, according to national legislation, a member of the administrative, management or supervisory body, or of the senior management of the target entity;
- (v) the target entity itself or any other member of its group;
- c) to the extent any conflict of interest arises from the relationships referred to in point (b), proposed methods for managing such conflicts;
- d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;
- e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
- f) and where the proposed acquirer is part of a group, as a subsidiary or as the parent company, a detailed organisational chart of the group structure and information on the activities currently performed by the entities of the group and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;
- g) if the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial and the non-financial entities of the group;

- h) identification of any credit institution, payment institution or e-money institution; assurance, insurance or re-insurance undertaking; collective investment undertakings and their managers or investment firm within the group, and the names of the relevant supervisory authorities;
- i) annual financial statements, at individual level and, where applicable, at consolidated and sub-consolidated levels, for the last three financial years, where the legal person has been in operation for that period of time, or such shorter period of time for which the legal person has been in operation and financial statements were prepared, approved by the statutory auditor or audit firm as defined in Article 2, points (2) and (3), of Directive 2006/43/EC of the European Parliament and of the Council⁵, where applicable, including each of the following items:
 - (i) the balance sheet;
 - (ii) the profit and loss accounts or income statements;
 - (iii) the annual reports and financial annexes and any other documents registered with the registry or competent authority of the legal person, including, as set out as relevant in the annual reports, financial annexes and any other registered documents;
 - (iv) where the proposed acquirer is a newly set-up legal person or entity, in the absence of any financial statements, an updated summary as close as possible to the date of notification, of the financial situation of the proposed acquirer, as well as the financial forecasts for the next three years, and the planning assumptions used in base case and stress scenario.

For the purposes of point (b), credit operations, guarantees and security interests, whether granted or received, including relating to crypto-assets or other digital assets, shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

- 2 Where the proposed acquirer that is a legal person has its head office in a third country, it shall provide the competent authority of the target entity all of the following information:
- a) where the legal person is supervised by an authority of a third country in the financial services sector:
 - (i) a certificate of good standing, or equivalent where not available, from such third country authority in relation to the legal person;
 - (ii) general information about the regulatory regime of that third country as applicable to the legal person;
 - (iii) a detailed description of the applicable anti-money laundering and counter-terrorist financing legal framework, including its consistency with

⁵ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance) (OJ L 157, 9.6.2006, p.87).

the recommendations of the Financial Action Task Force, and of the related procedures applicable to that person;

- (iv) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity.

Article 4

Information to be submitted by persons acquiring an indirect qualifying holding in the target entity

- 1 A proposed acquirer shall submit the information set out in paragraph (2) where it:
 - a) intends to acquire, directly or indirectly, control within the meaning of Article 2, points (9) and (10) and Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ('control'), over an existing holder of a qualifying holding in a target entity, irrespective of whether such existing holding is direct or indirect; or
 - b) controls, directly or indirectly the proposed direct acquirer of a qualifying holding in a target entity.
- 2 Where the conditions set out in letters (a) or (b) of paragraph (1) are met, the proposed acquirer shall submit the following:
 - a) information set out in Article 1, paragraph (1), in Articles 2, 6 and 8, and in Article 9, 10 or 11, as applicable, if the proposed acquirer is a natural person;
 - b) information set out in Article 1, paragraph (2), (3), (4) or (5) as applicable, in Articles 3, 6 and 8, and in Article 9, 10 or 11 as applicable, if the proposed acquirer is a legal person.
- 3 Where the application of paragraph (1) does not determine that an indirect qualifying holding is acquired by a natural or legal person, the proposed acquirer shall submit the information set out in paragraph (4), where the percentages of the holdings across the corporate chain, starting from the qualifying holding held directly in the target entity, multiplied per the holding in the level immediately above in the corporate chain results in a qualifying holding of 10% or more. The multiplication shall be applied up the corporate chain for so long as the result of the multiplication is 10% or more.
- 4 Where the conditions set out paragraph (3) are met, or where the proposed acquirer controls a natural or legal person holding a qualifying holding in accordance with the application of paragraph (3), the proposed acquirer shall submit the following:
 - a) information set out in Article 1, paragraph (1), Article 2, letters (a), (b) to (f) and (h), Article 6, in letters (a) to (f), and in Article 8, if the proposed acquirer is a natural person;
 - b) information set out in Article 1, paragraph (2), (3), (4) or (5), in Article 3, paragraph (1), letter (a), points (i) to (iv), Article 3, paragraph (1), letter (b), point

(iii); Article (3), paragraph (1), letters (f) to (i), Article 3, paragraph (2), in Article 6, letters (a) to (f), and in Article 8, if the proposed acquirer is a legal person.

Question for consultation.

Question n. 2

Do you agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion?

Article 5

Information on the persons that will direct the business of the target entity

In case the proposed acquirer envisages the appointment of one or more members of the management body of the target entity, the notification shall contain all the information referred to in Article 9 of the [RTS on information for authorisation for applicant issuer of asset-referenced tokens] for each such proposed member.

Article 6

Information relating to the proposed acquisition

The notification relating to the proposed acquisition shall provide the following information:

- a) identification of the target entity;
- b) details of the proposed acquirer's intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment;
- c) information on the shares of the target entity owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:
 - i) the number and type of shares – whether ordinary shares or other – of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition, along with the nominal value of such shares;
 - ii) the share of the overall capital of the target entity that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
 - iii) the share of the overall voting rights of the target entity that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target entity;

- iv) the market value, in euros and in local currency, of the shares of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition;
- d) any action in concert with other parties, including the contribution of those other parties to the financing of the proposed acquisition, the means of participation in the financial arrangements and future organisational arrangements;
- e) the content of intended shareholder's agreements with other shareholders in relation to the target entity;
- f) the proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case;
- g) copy of the contract of acquisition.

Article 7

Information on the new proposed group structure and its impact on supervision

- 1 Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with an analysis of the perimeter of consolidated supervision of the group which the target entity would belong to after the proposed acquisition. That analysis shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group those requirements would apply on a full or sub-consolidated basis.
- 2 The proposed acquirer shall also provide the competent authority of the target entity with an analysis of the impact of the proposed acquisition in any way, including as a result of close links of the proposed acquirer with the target entity, and on the ability of the target entity to continue to provide timely and accurate information to its competent authority.

Article 8

Information relating to the financing of the proposed acquisition

- 1 The proposed acquirer shall provide the competent authority of the target entity a detailed explanation of the specific sources of funding for the proposed acquisition, enabling to prove their legitimate origin, certainty and sufficiency, including:
 - a) detailed description of the activity that generated the funds and assets for the acquisition, supported by relevant documents such as financial statements, bank statements, tax statements and any other document or information providing evidence to the competent authority that no money laundering or terrorist financing is attempted through the proposed acquisition;
 - b) details on any assets, including any crypto-assets, which are to be sold to help finance the proposed acquisition, such as conditions of sale, price, appraisal and

details about the characteristics of those assets, including information on when, how and from whom they were acquired;

- c) details on access to capital sources and financial markets including details of financial instruments to be issued;
- d) if the funds used for the acquisition of the holding have been borrowed, information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, as well as information on the source of revenue to be used to repay such borrowings;
- e) details on the means of payment to transfer the funds and assets from the proposed acquirer to the proposed seller to purchase the holding enabling to reconstruct the transfers in line with Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849, irrespective of whether the transfer is executed via credit institutions or payment institutions or any other network used;
- f) details of the wallet where the crypto-assets used or exchanged into official currency to acquire the holding were stored, of the crypto-asset service provider(s) used and of the address identifiers of the originator and of the beneficiary on the DLT;
- g) information on any financial arrangement with other persons who are or will be shareholders of the issuer of asset-referenced tokens.

For the purposes of point (c), where the lender is not a credit institution or a financial institution authorised to grant credit, the proposed acquirer shall provide comprehensive information and supporting evidence on the origin of the funds borrowed including, the lender's activity, legal form and place of residence, and any contractual clause empowering the lender to give instructions to the borrower about the qualifying holding.

- 2 Where the proposed acquirer is a trust, the method of financing the trust and resources ensuring the financial soundness of the trust to support the issuer of asset-referenced tokens.

Question for consultation.

Question n. 3

Do you consider the list of information under Article 8 complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem?

Article 9

Additional information for qualifying holdings of up to 20 %

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, the proposed acquirer should provide a document on the strategy to the competent authority of the target entity containing, where relevant, the following information:

- a) the strategy of the proposed acquirer regarding the proposed acquisition, including the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of his shareholding in the foreseeable future;
- b) an indication of the intentions of the proposed acquirer towards the target entity, and in particular whether or not it intends to act as an active minority shareholder, and the rationale for that action;
- c) information on the financial position of the proposed acquirer and its willingness to support the target entity with additional financial interests if needed for the development of its activities or in case of financial difficulties.

Article 10

Additional information for qualifying holdings of more than 20 % and up to 50%

- 1 Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of more than 20% and up to 50%, the proposed acquirer should provide a document on the strategy to the competent authority of the target entity containing, where relevant, the following information:
 - a) all the information requested pursuant to Article 9;
 - b) details on the influence that the proposed acquirer intends to exercise on the financial position including dividend policy, the strategic development, and the allocation of resources of the target entity;
 - c) a description of the proposed acquirer's intentions and strategy towards the target entity, covering all the elements referred to in Article 11(2) with a level of detail proportionate to the influence in the target entity stemming from the acquisition.
- 2 Where, depending on the global structure of the shareholding of the target entity, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of more than 20% and up to 50%, the proposed acquirer shall provide the information set out in paragraph 1.

Article 11

Additional information for qualifying holdings of more than 50%

- 1 Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of more than 50%, or the target entity becoming its

subsidiary, the proposed acquirer shall provide a three year time horizon business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.

- 2 The strategic development plan referred to in paragraph 1 shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
 - a) the overall aim of the proposed acquisition;
 - b) financial goals which may be stated in terms of return on equity, cost/benefit ratio, earnings per share, or in other terms as appropriate;
 - c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target entity;
 - d) general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

With regard to point (d), for proposed acquirers authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

- 3 The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and, where applicable, a consolidated basis, for a period of three years, include the following:
 - a) a forecast balance sheet and income statement;
 - b) forecast prudential capital requirements and reserve of assets;
 - c) information on forecasted level of risk exposures including market, operational (such as cyber and fraud), credit and environmental risks as well as other relevant risks;
 - d) a forecast of provisional intra-group transactions.
- 4 The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph 1 shall include the impact on:
 - a) the composition and duties of the members of the management body, and where applicable, the main committees created by such decision-taking body including information concerning the persons who will be appointed as members of the management body;
 - b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance including anti-money laundering and counter terrorism financing, and risk management, and including the appointment of the key functions holders of internal audit, compliance officers and risk managers;

- c) the overall IT and technology architecture including any changes concerning the policy relating to third-party service providers of critical or important functions, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools including back-up, business continuity plans and audit trails;
- d) the policies governing third-party service providers of critical or important functions, including information on the areas concerned, on the selection of service providers, and on the respective rights and obligations of the principal parties as set out in contracts such as audit arrangements and arrangements for the custody and investment of the reserve of assets, and the quality of service expected from the provider;
- e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target entity, including any modification regarding the voting rights of the shareholders.

Article 12

Reduced information requirements

- 1 Where the proposed acquirer has been assessed for the acquisition or increase in qualifying holdings by the same competent authority of the target entity in accordance with Articles 41(1) or 83(1) of Regulation (EU) 2023/1114, Article 13 of Directive 2014/65/EU, Article 23 of Directive 2013/36/EU, Article 59 Directive 2009/138/EC, Article 32 of Regulation (EU) No 648/2012, within the previous two years from the submission of the notification, such proposed acquirer shall only submit to the competent authority of the target entity the information that is specific to this proposed acquisition or that has changed since the previous assessment.

The proposed acquirer shall submit a signed declaration indicating the exact information set out in this Regulation that has not been submitted, certifying that it has not changed since the previous assessment and that it is still true, accurate and up-to-date.

- 2 Without prejudice to paragraph (1), where the proposed acquirer is an undertaking authorised by and subject to the ongoing prudential supervision of the competent authority of the target entity, it shall only submit the information set out in this Regulation specific to the proposed acquisition and shall be exempted from the submission of the information already in possession of that competent authority.

The proposed acquirer shall submit a signed declaration indicating the exact information referred to in this Regulation that has not been submitted because already in possession of that competent authority and certifying that such information is true, accurate and up-to-date.

- 3 For purposes of this Article, information specific to the proposed acquisition set out in this Regulation includes at least all of the following:
 - a) where proposed acquirer is a natural person:

- (i) information set out in Article 1(1);
 - (ii) information set out in Article 2, letters (c) to (i) where the proposed acquisition is covered by paragraph (1) , information set out in Article 2, letters (f) to (i) in case of proposed acquisitions covered by paragraph (2);
 - (iii) information set out in Articles 5,
 - (iv) information set out in Article 6,
 - (v) information set out in Article 8;
 - (vi) the information set out in Article 9, 10 or 11 as applicable.
- b) where proposed acquirer is a legal person, trust, an alternative investment fund (AIF) in accordance with Article 4(1)(a) of Directive 2011/61/EU or an undertaking for collective investment in transferable securities (UCITS) in accordance with Article 1(2) of Directive 2009/65/EC, or a sovereign wealth fund:
- (i) information set out in Article 1(2), letters (a) to (f);
 - (ii) information set out in Article 3(1), letter (a), n. (ii) to (iv), as well as letters (b) to (d), and in Articles 5 as applicable; where the proposed acquisition is covered by paragraph (1) of this Article, also information set out in Article 3(1), letter (i), n. (i) to (iv)
 - (iii) information set out in Article 6 and 7;
 - (iv) information set out in Article 8;
 - (v) the information set out in Article 9, 10 or 11 as applicable.

Question for consultation.

Question n. 4

Do you agree with the identified cases where reduced information requirements apply, with the related safeguards and with identified information specific for the proposed acquisition?

Question for consultation.

Question n. 5

Do you find the provisions of this draft Regulation sufficiently clear and comprehensive?

Article 13

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

[For the Commission

On behalf of the President

[Position]

5. Accompanying documents

a. Draft cost-benefit analysis / impact assessment

As per Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation), regulatory technical standards developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses 'the potential related costs and benefits.' This section presents the IA of the main policy options included in this Consultation Paper (CP) on regulatory technical standards (RTS) on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42(4) of Regulation (EU) 2023/1114 ('MICAR').

Regulation (EU) 2023/1114 sets out a new legal framework for the issuers of asset-referenced tokens. As part of the process of acquiring a qualifying holding in issuers of asset-referenced tokens the potential acquirers need to submit a prior notification to the competent authority with supporting information on the proposed acquisition. The aim of the notifications is to enable the CA to conduct an assessment on the suitability of the proposed acquirer in accordance with the five assessment criteria set out in Article 42(1), letters (a) to (e).

A. Problem identification

As part of the notification to the competent authority, the proposed acquirer of a qualifying holding in an issuer of asset-reference token has to submit a notification with supporting information to be used for the CA's assessment of their suitability. As the assessment is to be conducted by the national or EU competent authority having jurisdiction on the ART issuer.

The lack of a standardised set of information to be requested from the proposed acquirers may lead to diverging approaches and different practices across Member States hindering the level playing field and leading to regulatory arbitrage across EU Member States. Against this background, the new EU regulatory framework mandates the EBA, in cooperation with ESMA, to develop an RTS to specify a detailed list of information to be submitted with the notification by the proposed acquirer of qualified holdings in an ART issuer.

B. Policy objectives

The draft RTS in this consultation paper aim at fostering the level playing field in terms of information to be submitted by the proposed acquirer for the notification of acquisitions of qualifying holdings in ART issuers across the EU by establishing detailed content of the notification.

C. Baseline scenario

In a baseline scenario no harmonisation of the information requested would be made, and the CAs would request information to inform their assessments based on the criteria in Article 42 (1) of MiCAR. Due to the general nature of these criteria, the specific documentation and information requested may diverge significantly across MSs, which in turn may result in diverging approaches of the assessments. This may ultimately lead to regulatory arbitrage across MSs, with potential acquirers choosing to conduct acquisitions in MSs where the approaches to assessment are perceived as more lenient or more suitable to their situation, as well as to fragmentation of markets.

D. Options considered, Cost-Benefit Analysis, Preferred option

Section D. presents the main policy options discussed and the decisions made during the drafting of the RTS. Advantages and disadvantages of the policy options and the preferred options resulting from this analysis are assessed below.

Policy issue 1: Alignment of the provisions set out in the draft RTS with current regulation on acquisition of qualifying holdings

The EBA considered two policy options as to how and to what extent alignment with other relevant regulatory products should be achieved. It is understood that alignment of the provisions on qualifying holdings across the financial sector ensures consistency of practices, further promoting the integration of financial markets.

Option 1a: ensure consistency with the information request laid down in other relevant regulatory products relating to the information to be contained in the notification of proposed acquisition of qualifying holdings under other EU legal acts, in particular the Commission Delegated Regulation (EU) 2017/1946, while duly reflecting the specificities of the issuer of ARTs by including specific adjustments.

Option 1b: draft a wholly new list of information irrespective of consistency with notification requirements provided under other EU legal acts

Leveraging on existing regulatory products ensures the highest alignment of the provisions across the financial sector. Specific adjustments to these provisions, reflecting the features of the new crypto-ecosystem, would allow to have provisions that are better adapted to the specific sector.

In the light of this, the preferred policy option has been to leverage on Commission Delegated Regulation (EU) 2017/1946 and to introduce adapt and update certain provisions. Notably, the information on the financing of the acquisition has been adjusted to include cases of funding via crypto-assets. In the

context of the assessment of the professional competence previous experiences in information technology, distributed ledger technology (DLT) and crypto assets has been duly reflected in the text. **Option 1a has therefore been chosen as the preferred option.**

Option 1b has not been followed as a fully-fledged list of information for proposed acquirers would have jeopardized the efforts to harmonise the provisions on qualifying holdings across the financial sectors.

Policy issue 2: List of information to be provided when reaching different thresholds

Option 2a: Require different sets of information when reaching different holding thresholds corresponding to different levels of influence exercised by the persons with qualifying holdings (up to 20%, from 20% to 50% and above 50%)

Option 2b: Require a single set of information to be provided in case of any acquisition or increase of holdings in ARTs issuers

The requirement to provide a single set of information in case of any acquisitions or increase of qualifying holdings in ARTs issuers (option 2b) has the advantage of being simple to apply. However, such an option would not reflect the reference to different thresholds set out in the Level 1 text, and would not allow to undertake a more proportionate approach. Proportionality is in fact achieved by requesting three separate list of information which depend on the level of influence exercised by shareholders, distinguishing between three possible buckets.

In assessing which option, 2a or 2b, to follow, consideration has been given to the need to ensure consistency with existing regulatory products on the same matters, such as Commission Delegated Regulation (EU) 2017/1946 and the ESAs Joint Guidelines on the prudential assessment of the proposed acquisition of qualifying holdings, which includes three separate Articles on the type and detail of the information requested depending on the size of the acquisition and the influence that the proposed acquirer will exercise in the target entity.. Considering that this approach better incorporates the principle of proportionality and ensure closer alignment with the existing regulatory products, **option 2a was preferred.**

Policy issue 3: Application of the principle of proportionality by envisaging reduced information requirements for proposed acquirers in specific situations

Option 3a: Allowing proposed acquirers to submit reduced information in specific cases to reflect the principle of proportionality

Option 3b: Do not envisage the possibility for proposed acquirers to submit reduced information , since the principle of proportionality is reflected in other provisions of the draft RTS (for instance, request of more granular information based on the size of the qualifying holdings acquired) and since all the information requested under the draft RTS is relevant for the prudential assessment

Allowing reduced information requirements for proposed acquirers in certain specific cases enhances the application of the principle of proportionality. At the same time, the information request defined under the draft RTS is necessary for the assessment of the five criteria laid down in Article 42(1) MiCAR. With a view to strike a balance between the two conflicting arguments, a dedicated Article on reduced information requirements in specific circumstances has been introduced.

As a result, reduced information is only allowed in cases in which the proposed acquirer has already been assessed by the same competent authority of the target entity in the previous two year. In this

case, the proposed acquirer is allowed to submit only the information that is changed since the last notification to the competent authority. Therefore, **option 3a was preferred.**

b. Overview of questions for consultation

Question 1. Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?

Question 2. Do you agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion?

Question 3. Do you consider the list of information under Article 8 complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem?

Question 4. Do you agree with the identified cases where reduced information requirements apply, with the related safeguards and with identified information specific for the proposed acquisition?

Question 5. Do you find the provisions of this draft Regulation sufficiently clear and comprehensive?

c. Feedback on the public consultation

Summary of key issues and the EBA's response



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Responses to questions in Consultation Paper EBA/CP/2023/14			
Question 1.			
Question 2.			
Question 3.			

