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EBA

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PUBLIC HEARING ON MICAR PRODUCTS ON MARKET ACCESS:

CPs on RTS and ITS on information for authorisation of ARTs issuers
RTS on information for notification for acquisition or increase of
qualifying holdings in ART issuers

Thursday 21 September 2023

Part 1

INTRODUCTION

Public hearing structure and functioning



Public hearing structure

Introduction

A. RTS/ITS authorisation

- Legal basis and overview
- Draft RTS content and specific issues
- Consultation questions

B. RTS on information for notification of acquisition or increase of QH

- Legal basis and main features
- Objectives and proportionality
- Consultation questions

Next steps

Q&A sessions

Suggestions for an efficient session

Should you need assistance or would like to intervene:

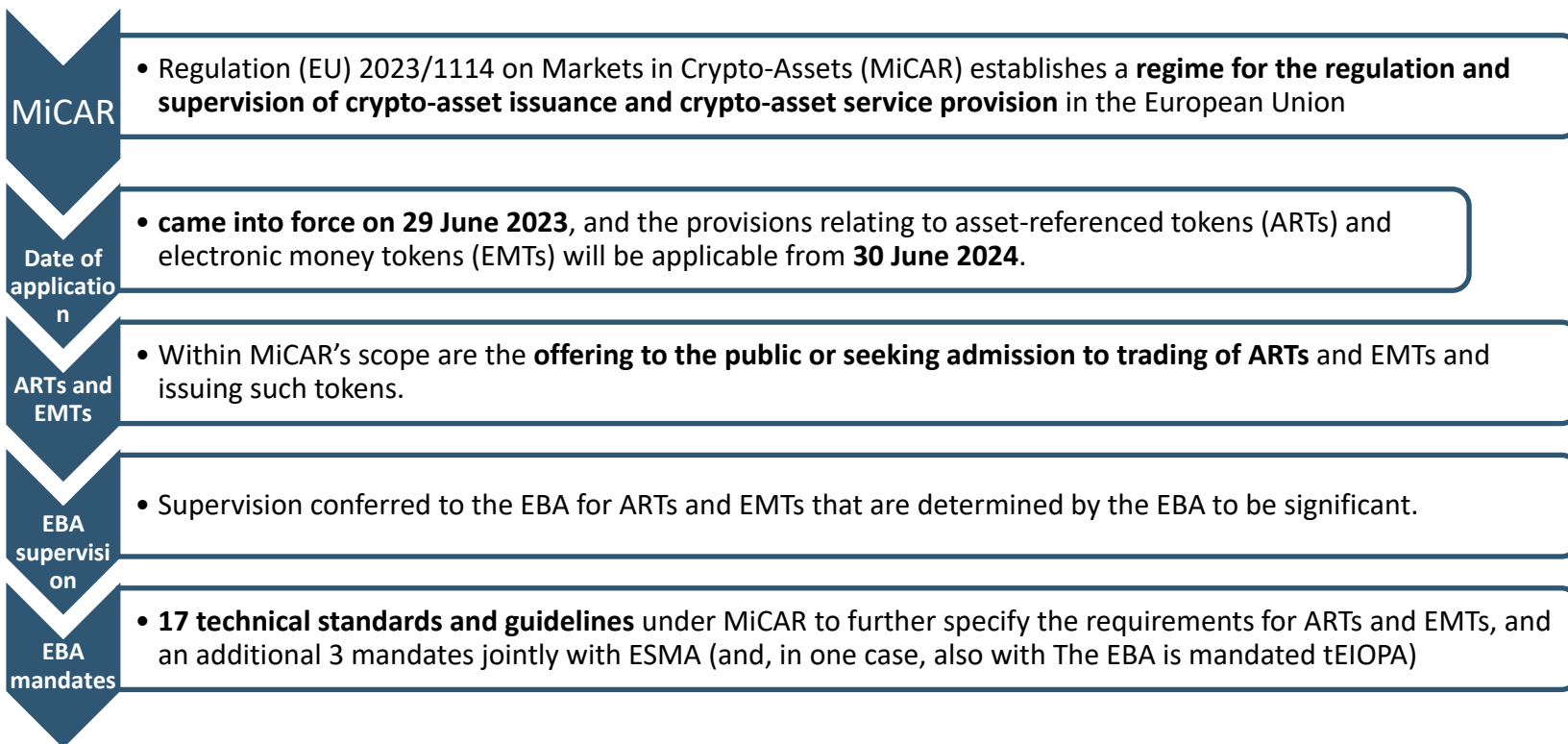
- **write on WebEx chat to any of the hosts or publicly;**
- **raise your hand on WebEx.**

To avoid background noise, please stay muted unless you take the floor.

To increase audio quality please turn off video streaming.

Please identify yourself (if you don't use full name on WebEx).

Introduction



12 July 2023

- EBA has **launched the public consultation** on the first package of Technical Standards developed under MiCAR

MiCAR first consultation package

- **The CPs on RTS/ITS on authorisation to the public offer or admission to trading of ARTs and on RTS on notification for acquisition of qualifying holdings in ART issuers are part of such first package**

Part 2

CONSULTATION PAPER ON RTS AND ITS ON INFORMATION FOR AUTHORISATION TO OFFER TO THE PUBLIC OR TO SEEK ADMISSION TO TRADING OF ASSET-REFERENCED TOKENS (ART)

RTS/ITS on information for authorisation: legal basis

Offer to the public or admission to trading of asset referenced tokens (ARTs) subject to authorisation under MiCAR	Article 18 (6) and (7) MiCAR: EBA mandates for two technical standards on application for authorisation to offer to the public or to seek admission to trading of ARTs
<ul style="list-style-type: none">• legal persons or other undertakings established in the EU (+ publication of white paper)• credit institutions are requested to have the white paper approved by the MiCAR CA, but are not subject to MiCAR authorisation requirement	<ul style="list-style-type: none">• RTS on the specification of information to be contained in an application for authorisation• ITS on the establishment of standard forms, templates and procedures for the information to be included in the application• The RTS and ITS have been developed in close cooperation with the ECB and with ESMA

The mandate for the RTS

- requires the EBA to **specify the information listed in Article 18(2)** to be contained in an application for authorisation
- **does not cover the assessment methodology** of the application, hence the **RTS will have to be read in conjunction with other MiCAR EBA regulatory products** e.g. on reserve of assets and internal governance

The mandate for the ITS

- **complements** the RTS and lays down **uniform modalities (standard letter and a template) and procedures**, for the submission of the application

RTS/ITS on information for authorisation: overview

Application for authorisation & white paper	Proportionality of information request
<ul style="list-style-type: none">• Application for authorisation: confidential and directed to the NCA• White paper: public and concise document (also submitted to with the application).• Draft RTS does not specify its content which is set out in Annex II MiCAR	<ul style="list-style-type: none">• Granular list of information in Article 18(2) MiCAR to be specified by the RTS• Proportionality for new applications, Article 18(3) MiCAR• Simplified prudential requirements compared to other financial institutions, hence less information needed• Voluntary classification as significant ART: increased details• Duplication of information request between white paper and application is minimised, but inevitable in some respects

RTS information for authorisation: content

Draft RTS leverages on EBA regulatory precedents on licensing, it covers

Programme of operations:

- **business plan**
- **Quantitative financial forecast** (viability of the business plan)
- **assessment of the risks** to which the issuer is exposed, **including ML/TF risks**

Internal governance arrangements:

- **third-party providers** (critical and important functions)
- **internal control framework** - including the **ICT risk management framework** (compliant with DORA);

Liquidity management and **reserve of assets** for the ART for which the authorisation is sought

- **Suitability** members of the **management body**
- **Good repute of shareholders or members with direct or indirect qualifying holdings**

(aligned to **ESMA** RTS authorisation CASP)

RTS/ITS on information for authorisation: specific issues

Functioning of proprietary DLT operated by the issuer or third party acting on its behalf, where ART is issued, transferred or stored	AML/CFT: issuers of ART are not per se obliged entities or subject to the Transfer of Funds Regulation
<ul style="list-style-type: none">➤ Balance between<ul style="list-style-type: none">➤ capturing necessary features and information requirements➤ Avoiding excessive details given evolving character of the technology	<ul style="list-style-type: none">➤ Authorisation has to be refused where the business model exposes the issuer or the sector to serious risks of ML/TF➤ Need for adequate information by NCAs on mechanism of issuance, distribution, redemption and ML/TF risk assessment

RTS/ITS information for authorisation: consultation Questions



Question 1. Do you consider that letter (a) of Article 3(2) captures in a clear and realistic manner all necessary requirements of the offer to the public or admission to trading of the asset-referenced tokens, including the mechanism for the issuance, redemption and distribution of the asset-referenced tokens?

Question n. 2: Do you consider that the information requirements about the internal control framework are sufficiently clear and exhaustive?

Question n. 3: Do you consider that Article 6(4) captures in a clear and correct manner all necessary information about the functioning of proprietary DLT or other similar technology where ARTs are issued, transferred and stored and that is operated by the issuer or a third-party operator acting on the issuer's behalf?

RTS/ITS information for authorisation: consultation

Questions



Question n. 4: Do you consider that the information requirements about the policies and procedures on the composition and management of the reserve of assets, as well as on the custody and investment of the reserve of assets are sufficiently clear and comprehensive?

Question n. 5: Do you agree with the general content and level of detail of the information to be contained in the application?

Question n. 6: Do you consider that Annex II to the ITS is sufficiently clear in the identification of the information requested for each field and sub-field?

Part 3

CONSULTATION PAPER ON 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

Draft RTS on information for notification of acquisition or increase of QH: legal basis

Acquisition or increase of QH in ART
issuers subject to prudential
assessment

Reputation of the
proposed acquirer

Suitability of persons
who will direct the
business of the target

Financial soundness of
the PA

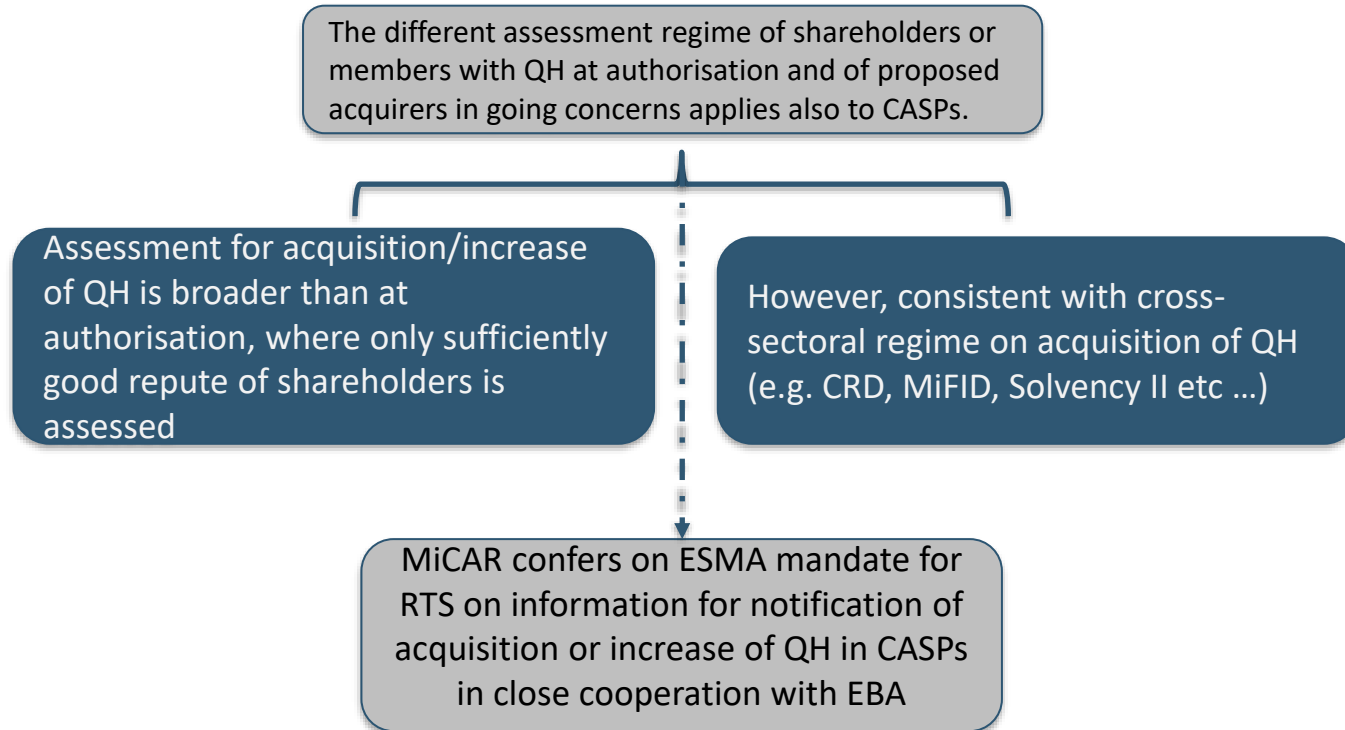
Sound and prudent
management of the
target

Suspicion of ML/TF risk

Article 42(4) MiCAR:
EBA mandate for 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
ARTs**, that is **necessary for the
prudential assessment** of the
proposed acquisition or increase

In close cooperation with ESMA

MiCAR regime on QH and draft RTS: main features



Draft RTS : objectives and proportionality

Objectives

- **Close alignment** with:
 - **ESMA RTS** on same matter to ensure uniformity within MiCAR
 - **existing cross-sectoral regime** on assessment of acquisition of QH, to ensure uniformity with other sectoral acts
- **Regulatory precedents leveraged on:** Commission Delegated Regulation (EU) 2017/1946; ESAS Joint GL on prudential assessment of acquisition of QH; EBA RTS on information for authorisation as credit institution

Proportionality

- **Information requirements articulated for:**
 - a) **natural and legal persons**, b) **acquisition thresholds** (up 20%, between 20%-50%, over 50%)
 - Legal persons: corporate, AIF, UCITS, trusts, sovereign funds
- **Reduced information requirements for:**
 - a) **indirect proposed acquirers** of QH, who do not **hold control**,
 - b) **proposed acquirer assessed** for QH by the **same NCA within the last two years**,
 - c) **proposed acquirer supervised by the same NCA supervising the target** issuer of ART

RTS information for notification acquisition QH: consultation questions



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?

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?

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?

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

Part 4

NEXT STEPS

Next steps

Public consultation
end date: **12 October
2023**

Please send your comments to
<https://www.eba.europa.eu/calendar/consultation-paper-draft-technical-standards-information-authorisation>

Envisaged submission
to the European
Commission **Q1/2024**

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