AUTHORISATION OF THE ACTIVITIES OF ASSET-REFERENCED TOKEN ISSUERS

Pursuant to the provisions of Section 19 (1)a) aa) and b) of Act CIII of 2023 on the Digital State and on the Provisions for Supplying Digital Services, Sections 17 (1) and 19 (1) of Government Decree 451/2016 (XII. 19.) on the Detailed rules of electronic services, and Section 3 (1) of MNB Decree 36/2017 (XII. 27.) on the Rules of electronic communication in official matters in progress before the Magyar Nemzeti Bank ("**Decree**"), the legal representative of the enterprise and the applicant (client) obliged, pursuant to Section 58 (2) of Act CXXXIX Of 2013 on the Magyar Nemzeti Bank ("**MNB Act**"), to apply electronic communication, shall submit its application, notification or other petition by using the prescribed form available in the information system supporting the electronic administration of the MNB ("**ERA System**") and introduced for the procedure related to the submission in question, in the manner and with content specified therein, simultaneously uploading the attachments specified by the law and other documents required by the MNB. In the licensing procedures, the applications and notifications must be submitted by using the prescribed electronic form available in the E-administration/Licensing service on the ERA interface on the MNB's website, attaching the certified electronic copies of the appendices. The resolutions, requests for clarification, notices and other communications of the MNB are delivered to the financial organisations or their legal representatives by sending them to the delivery storage space.

The "Good Business Reputation Questionnaire", which must be submitted as an annex to the application, is available on the MNB website under the heading Authorisation, Approval, Registration and Notification Procedures Forms, as a pdf file. The filled in and electronically signed questionnaire can be attached to the prescribed electronic form as an annex. The questionnaire is available at:
https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany

The website of the MNB includes information materials on electronic administration and the submission of annexes to be attached in authorisation procedures (electronic documents) at:
https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes

Further information related to certain aspects of the licensing procedures (e.g. ascertaining the good business reputation) is available at:
https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/tajekoztatok

I. Introduction

Regulation (EU) 2023/1114 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (**MiCA**) entered into force on 29 June 2023, with its parts that apply to the issuance of asset-referenced tokens applying **from 30 June 2024**. The MiCA applies to natural and legal persons and certain other undertakings that are engaged in issuing, offering to the public or admitting to trading, or providing services related to, crypto-assets in the EU. The MiCA makes the operation and activities of asset-referenced token issuers subject to prior MNB authorisation.

Transition period

According to Article 143(4) of MiCA, issuers of asset-referenced tokens that do not qualify as credit institutions and that have issued asset-referenced tokens in accordance with applicable law before 30 June 2024 may continue to do so until they are authorised under Article 21, provided that they have applied for authorisation before 30 July 2024.

Implementation of the MiCA in Hungary

As of 30 June 2024, Act VII of 2024 on the Crypto Assets Market **(Crypto Act**) placed the supervision of entities, persons and activities covered by the relevant legislation, including asset-referenced token issuers, under the supervision of the MNB. Section 40(41) of the MNB Act specifically states that "*[i]n carrying out its tasks provided for in Paragraph t) of Subsection (1) of Section 39 the MNB shall provide for the implementation of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.*"

II. Asset-referenced token issuers and the activities they can perform

Under Article 16(1) of the MiCA, no person in the Union may offer an asset-referenced token in a public offer or apply for admission to trading of an asset-referenced token unless that person is the issuer of that asset-referenced token, and:

a) is a legal person or other entity established in the Union and has received authorisation from the competent authority of its home Member State in accordance with Article 21; or
b) a credit institution in accordance with Article 17.

Pursuant to Article 16(1)(a) MiCA, the authorisation granted by the MNB is valid throughout the EU and allows the issuer of an asset-referenced token to offer the asset-referenced token for which it has been authorised to the public or to apply for admission to trading of such asset-referenced token throughout the EU (Article 16(3) MiCA).

In relation to Article 16(1)(a) MiCA, an undertaking other than a legal person may issue asset-referenced tokens only if its legal form provides equivalent protection to that provided by legal persons to the interests of third parties and is subject to prudential supervision equivalent to that provided by legal persons.

Article 16(2) of MiCA sets out the following **exceptions to** obtaining authorisation – in this case, the issuer of the asset-referenced token shall draw up a crypto-asset white paper as provided for in Article 19 and notify that crypto-asset white paper and, upon request, any marketing communications, to the MNB upon request:

- the average outstanding value of asset-referenced tokens issued by the issuer at the end of each calendar day over a 12-month period never exceeds EUR 5,000,000 or the equivalent in another official currency and the issuer is not linked to a network of other exempt issuers (Article 16(2)(a) MiCA); or
- the public offer for an asset-referenced token is addressed only to qualified investors and the asset-referenced token may be held only by such qualified investors. (Article 16(2)(b) MiCA).

III. Authorisation conditions for asset-referenced token issuers

III.1. The application

Information to be provided in the Authorisation Form based on the Draft RTS[1] (Draft Regulatory Technical Standards) on information for application for authorisation to offer to the public and to seek admission to trading of asset-referenced tokens and Draft Implementing Technical Standards on standard forms, templates and procedures for the information to be included in the application, under Article 18(6) and (7) of Regulation (EU) 2023/1114 (**Draft RTS**)[2]:
The applicant issuer

- company name, trading name
- registered office
- identification number (company registration number)
- LEI code
- contact details
- website address
- a declaration of the start of the accounting year to which it relates
- a declaration of completeness pursuant to Section 59 (2) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (MNB Act) (the applicant has provided the MNB with all relevant facts and data required for the issuance of the licence)

2 https://www.eba.europa.eu/sites/default/files/document_library/Publications/Consultations/2023/Consultation%20paper%20on%20draft%20Technical%20Standards%20on%20information%20for%20authorisation/1057529/MiCAR%20CP%20RTS-ITS%20information%20for%20authorisation.pdf

III.2. Crypto-asset white paper

The approval granted by the MNB in the authorisation procedure pursuant to Article 21(1) MiCA (or, in the case of credit institutions, pursuant to Article 17 MiCA) in respect of the issuers' crypto-asset white paper is valid throughout the Union. (Article 21(1) MiCA)

An asset-referenced token crypto-asset white paper **must contain** all of the **following specified information** (MiCA Article 19, Annex II):
(a) information about the issuer of the asset-referenced token;
b) information about the asset-referenced token;
(c) information about the offer to the public of the asset-referenced token or its admission to trading;
(d) on the rights and obligations attached to the asset-referenced token;
e) information on the underlying technology;
f) information on the risks;
(g) information on the reserve of assets;
(h) information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the asset-referenced token.[1]

The crypto-asset white paper shall also include the identity of the person other than the issuer who is offering or requesting admission to trading pursuant to Article 16(1)[2] and the reason why that person is offering or requesting admission to trading of that asset-referenced token. In cases where the crypto-asset white paper was not prepared by the issuer, the crypto-asset white paper must include the identity of the person who prepared the crypto-asset white paper and the reason why that person prepared it.

All of the information listed must be true, clear and not misleading, the crypto-asset white paper must not omit any material information, and the format must be concise and understandable.

The crypto-asset white paper **must contain** a clear and unambiguous **statement** that:
a) the asset-referenced token may lose all or part of its value;
b) the asset-referenced token may not always be transferable;
c) the asset-referenced token may not be liquid;
d) investor-compensation schemes under Directive 97/9/EC do not cover asset-referenced tokens;
(e) deposit guarantee schemes under Directive 2014/49/EU do not cover asset-referenced tokens.
Other than this statement, the crypto-asset white paper must not contain any statement as to the future value of the crypto-assets. (Article 19(3)-(4) MiCA).

The crypto-asset white paper must include **a statement by the management body** of the issuer of the asset-referenced token confirming that the crypto-asset white paper complies with the provisions of Title III of MiCA and that, to the best of the board's knowledge, the information presented in the crypto-asset white paper is true, fair and not misleading and that the crypto-asset white paper does not omit any information that could affect the conclusions that may be drawn from it (Article 19(5) of MiCA).

The crypto-asset white paper should include a **summary, inserted after the management statement**, which should contain, in brief and in non-technical language, key information relating to the public offer of the asset-referenced token or the proposed admission of the asset-referenced token to trading. The summary must be easy to understand and must be written in a clear and comprehensible format and in legible characters. The summary of the crypto-asset white paper provides sufficient information about the characteristics of the relevant asset-referenced token to help prospective holders of that asset-referenced token make an informed decision. The summary should indicate that holders of asset-referenced tokens have the **right to redeem them at any time** and should detail the conditions for redemption. The summary should include a **warning** that:

[1] In this context, see the related draft RTS prepared by the European Securities and Markets Authority (ESMA): On content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment. https://www.esma.europa.eu/sites/default/files/2023-10/ESMA75-453128700-438_MiCA_Consultation_Paper_2nd_package.pdf (pp. 85–101)

(a) it should be read as an introduction to the crypto-asset white paper;
(b) the prospective holder should base any decision to purchase the asset-referenced token on the content of the crypto-asset white paper as a whole and not on the summary alone;
(c) the offer to the public of the asset-referenced token does not constitute an offer or solicitation to purchase financial instruments and that any such offer or solicitation can be made only by means of a prospectus or other offer documents pursuant to the applicable national law;
(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or any other offer document pursuant to Union or national law (Article 19(6) MiCA).

The crypto-asset white paper shall contain the date of its notification and a table of contents and be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance. Where the asset-referenced token is also offered in a Member State other than the issuer's home Member State, the crypto-asset white paper shall also be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance. The crypto-asset white paper shall be made available in a machine-readable format. (Article 19(7)-(9) MiCA).

In terms of use of language, Hungarian and English shall be the languages for offers to the public in Hungary pursuant to Article 2 of MNB Regulation No. 28/2013 (XII. 16.) on the languages generally used in international financial markets, adopted by the Magyar Nemzeti Bank.

A crypto-asset white paper submitted in the course of the authorisation procedure under Article 21 of the MiCA, which complies with Article 19 of the MiCA, shall be deemed to have been approved upon the granting of the authorisation.

The disclosure elements of the crypto-asset white paper are set out in Annex II of the MiCA, and further strategic, risk-based requirements and details are set out in Article 3 of the Draft RTS.

III.3. Capital requirements for the asset-referenced token issuer

Article 35 of MiCA sets out the own funds requirements for asset-referenced token issuers (other than credit institutions). This requires issuers of asset-referenced tokens to have at all times at least the highest amount of **own funds**:

- EUR 350,000 (Article 35(1)(a) MiCA)
- 2 % of the average amount of the reserve of assets referred to in Article 36 (in this case, the average amount of the reserve of assets is the average amount of the reserve of assets calculated at the end of each calendar day during the preceding 6 months; and the average amount of the reserve assets covering each asset-referenced token if the issuer makes an offer for more than one asset-referenced token) (Article 35(1)(b) MiCA)
- one quarter of the fixed overheads for the preceding year (which amount shall be reviewed annually and calculated in accordance with Article 67(3).) (Article 35(1)(c) MiCA)

The own funds shall consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full pursuant to Article 36 of that Regulation, without the application of the threshold exemptions referred to in Article 46(4) and Article 48 of that Regulation.

III.4. Organisational requirements for asset-referenced token issuers

- **Articles of association** of the applicant issuer (Article 18(1)(c) MiCA)
- **Legal opinion** confirming that, where the applicant issuer is an undertaking which is not a legal person under the law governing it, its legal form provides for protection of third parties' interests equivalent to that provided by legal persons and is subject to prudential supervision equivalent to that provided by legal persons (Article 2(1)(j) of the Draft RTS)
- A **programme of operations** setting out the business model to be followed by the applicant issuer (Article 18(1)(d) MiCA), indicating the content of the elements set out in Article 4 of the Draft RTS.

- A **legal opinion** that the asset-referenced token does not qualify as a crypto-asset excluded from the scope of this Regulation pursuant to Article 2(4) or an e-money token (Article 18(1)(e) MiCA)[1])
- **Diagram showing the ownership structure and organisational structure of the issuer** as set out in Annex II to the Draft RTS
- Detailed description of the applicant issuer's **governance arrangements** under Article 34(1) (Article 18(1)(f) MiCA)

  Pursuant to Article 34(1) and (3) of MiCA, asset-referenced token issuers shall have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which they are or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. The management body of issuers of asset-referenced tokens shall assess and periodically review the effectiveness of the policy arrangements and procedures put in place for compliance and take appropriate measures to address any deficiencies in that respect.

  Article 5 of the Draft RTS details the requirements for the management system.
- Where cooperation agreements with specific crypto-asset providers exist, **a description of their internal control mechanisms and procedures** to ensure compliance with the obligations on the prevention of money laundering and terrorist financing imposed by Directive (EU) 2015/849. (Article 18(1)(g) MiCA)
- **Crypto-asset white paper** pursuant to Article 19 (MiCA Article 18(1)(k)) (see IV.1 of this Guide)
- **Policies** and procedures under Article 34(5), first subparagraph (MiCA Article 18(1)(l)):

  Article 34(6) MiCA generally requires issuers of asset-referenced tokens to **have adequate and proportionate systems, resources and procedures** in place to ensure the continuity and regularity of their services and activities, unless they have initiated a redemption plan as referred to in Article 47. To this end, issuers of asset-referenced tokens will maintain their systems and security access protocols according to the relevant EU standards.

  (a) the reserve of assets referred to in Article 36;

  (b) the custody of reserve assets in accordance with Article 37, including the segregation of assets;

  (c) the rights of asset-referenced token holders under Article 39;

  (d) the mechanism for issuing and redeeming asset-referenced tokens;

  e) protocols for validating asset-referenced token transactions;

  (f) the operation of the issuer's proprietary shared ledger technology, where asset-referenced tokens are issued, transferred and stored using shared ledger technology or similar technology operated by the issuers or a third party acting on their behalf;

  (g) the mechanisms to ensure the liquidity of the asset-referenced tokens, including the liquidity management policies and procedures for issuers of major asset-referenced tokens referred to in Article 45;

  (h) agreements with third party entities in respect of the operation of the reserve of assets, the investment of reserve assets, the custody of reserve assets and, where applicable, the public distribution of asset-referenced tokens. Where issuers of asset-referenced tokens enter into such arrangements, these arrangements must be set out in a contract with the third party entity. These contractual arrangements define the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and third party entities. Multi-jurisdictional contractual agreements should clearly provide for the choice of applicable law.

  (i) the written consent of the issuers of asset-referenced tokens to other persons who may offer or request the admission to trading of asset-referenced tokens in a tender offer;

  (j) the handling of complaints under Article 31;

  (k) conflicts of interest under Article 32.

  Article 7 of the Draft RTS sets out the requirements for liquidity management, asset management and redemption rights.
- Description of **contractual arrangements with third party entities** referred to in the second subparagraph of Article 34(5) (Article 18(1)(m) MiCA)

[1] In this context, it is recommended to take into account the draft guidelines on the criteria and conditions for classifying crypto-assets as financial instruments. https://www.esma.europa.eu/sites/default/files/2024-01/ESMA75-453128700-52_MiCA_Consultation_Paper_-_Guidelines_on_the_qualification_of_crypto-assets_as_financial_instruments.pdf

- Description of the applicant issuer's **business continuity policy** pursuant to Article 34(9) (Article 18(1)(n) MiCA)
  Issuers of asset-referenced tokens are required to have business continuity policies and plans in place to ensure that, in the event of a disruption to their ICT systems and processes, essential data and functions are preserved and their operations maintained or, if this is not possible, that those data and functions are quickly restored and their operations quickly resumed. (Article 34(9) MiCA)
- Description of **internal control mechanisms and risk management procedures** pursuant to Article 34(10) (Article 18(1)(o) MiCA)
  Pursuant to Article 34(8) MiCA, issuers of asset-referenced tokens shall identify sources of operational risk and minimise those risks by developing appropriate systems, controls and procedures.
  Article 34(10) MiCA requires issuers of asset-referenced tokens to have internal control mechanisms and effective risk management procedures, including effective control and security arrangements for the governance of ICT systems as provided for in Regulation (EU) 2022/2554 of the European Parliament and of the Council. The procedures shall provide for a comprehensive assessment of the use of third party entities under point (h) of the first subparagraph of paragraph 5 of this Article.
  Article 6 of the Draft RTS clarifies the detailed rules for the establishment of the internal control mechanism.
- **Description of** the applicant issuer's Article 31 **complaint handling procedures** (Article 18(1)(q) MiCA)
- Where applicable, **a list of the host Member States** in which the applicant issuer intends to offer the asset-referenced token in a public offering or in which the applicant issuer intends to apply for admission to trading of the asset-referenced token. (Article 18(1)(r) MiCA)

III.5. Conditions for members of the management body

According to Article 3(27) of MiCA, 'management body' means 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;

The definition of a management body, regardless of the designation, includes:
- the person who effectively controls the business activity (e.g. CEO)
- a member of the board of directors, including the chairperson,
- a member of the supervisory board, including the chairperson.

III.5.1 Management and professional competence

Pursuant to Articles 18(2)(i), (5)(b) and 34(2) MiCA, members of the management body are of sufficiently good repute and possess the appropriate knowledge, skills and experience to manage the applicant issuer, both individually and collectively.

According to Article 21(3) of MiCA, EBA and ESMA shall, by 30 June 2024, jointly issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 16 of Regulation (EU) No 1095/2010, respectively, on the assessment of the suitability of the members of the management body of issuers of asset-referenced tokens and of the shareholders and members, whether direct or indirect, that have qualifying holdings in issuers of asset-referenced tokens The MNB would like to inform applicants that an EBA-ESMA joint draft Recommendation [1] **(Draft Recommendation**) is available for the assessment of the suitability of the members of the management body, and it is recommended that it be taken into account in the procedure.

The Draft Recommendation will assess the suitability criteria taking into account the proportionality principle, based on the issuer's legal form, its membership in a group of companies, the nature and complexity of all activities, the size of its balance sheet total and whether the applicant issuer would also carry out cross-border activities. (Draft Recommendation, point D.1.12)

[1] https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/asset-referenced-and-e-money-tokens-micar/joint-0#:~:text=The%20Joint%20EBA%20and%20ESMA,management%20body%20as%20well%20as

The Draft Recommendation presents separately the exemplary criteria to be evaluated individually (D.2.2 points 16-27) and collectively (D.2.3 point 27).

III.5.2. Statements

Article 8(e) and (f) of the Draft RTS sets out the information to be provided during the authorisation procedure in relation to the assessment of suitability and good repute in relation to potential conflict of interest positions, family or business relationships.[1]

III.5.3. Sufficient time

Pursuant to Articles 18(5)(b) and 34(2) MiCA, members of the management body of an applicant issuer of asset-referenced tokens are required to commit sufficient time to perform their duties. The Draft Recommendation specifies that the time allocated for the performance of the duty must take into account all the positions of the management body members, the size of the companies, their scope of activity and their geographical location.

III.5. 4. Education

The MiCA does not explicitly prescribe what qualifications a management body member must have. The Draft Recommendation proposes to examine the level and direction of the qualification in relation to the existence of adequate knowledge and skills as described in Article 18(2)(i) MiCA. It cites as acceptable if the qualification is related to economics, law, accounting, administration, finance, financial management, information technology. It stresses, however, that education alone is not enough and that it is essential to have the right practical skills.

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[1] *(e) personal history, including all of the following, in respect of the nationality or na-tionalities held by the person, and of the person's places of residence of the last ten years if different from the country of nationality or nationalities: (i) criminal records, including criminal convictions and any ancillary penalties, and relevant information on pending or concluded criminal proceedings or investigations (including on money laundering, financing of terrorism, fraud or professional liability), relevant civil and administrative cases and discipli-nary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate or an equiv-alent document or, where such certificate does not exist, any reliable source of information concerning the absence of criminal convictions, investigations and proceedings. Official records, certificates and documents shall have been issued within three months prior to the submission of application for an au-thorisation;*
(ii) a statement of whether the person or any organisation managed by the person has been involved as a debtor in insolvency proceedings or a comparable pro-ceeding;
(iii) information about investigations, enforcement proceedings or sanctions by a supervisory authority which the individual is or has been directly or indirectly involved in;
(iv) information about refusal of registration, authorisation, membership or li-cence to carry out a trade, business or profession, or the withdrawal, revoca-tion or termination of registration, authorisation, membership or licence, or expulsion by a regulatory or government body or by a professional body or association;
(v) information about dismissal from employment or a position of trust, fiduciary relationship or similar situation, or the fact that the person was asked to resign from employment in such a position, excluding redundancies;
(vi) information about whether another competent authority has assessed the rep-utation of the individual, including the identity of that authority, the date of the assessment and the evidence of the outcome of that assessment;
(vii) information about whether an authority from another, non-financial, sector has assessed the individual, including the identity of that authority, the date of the assessment and evidence of the outcome of that assessment;
(f) a description of all financial and non-financial interests that could create potential material conflicts of interest affecting his or her perceived trustworthiness in the performance of the mandate as member of the management body of the issuer of asset-referenced token, including, but not limited to:
(i) any financial interests, including crypto assets, other digital assets, loans, shareholdings, guarantees or security interests, whether granted or received, and non-financial interests or relationships, including close relations such as spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodation, between the person or his or her close relatives or any company that the person is closely connected with, and the applicant issuer of the asset-referenced token, its parent undertaking
or subsidiaries, including any members of the management body or any per-son holding a qualifying holding in the applicant issuer of the asset refer-enced-token;
(ii) whether or not the person conducts any business or has any commercial rela-tionship, or has had such relationship over the past 2 years, with any of the persons listed in point (f) n. (i), or is involved in any legal proceedings with any such persons;
(iii) whether or not the person and the person's close relatives have any compet-ing interests with the applicant, its parent undertaking or its subsidiaries;
(iv) any financial obligations to the applicant issuer of asset-referenced tokens, its parent or its subsidiaries;
(v) any positions of international, national or local political influence held over the past 2 years;
(vi) where a material conflict of interest is identified, a statement of how that con-flict will be satisfactorily mitigated or remedied, including a reference to the outline of the conflicts of interest policy;

III.5.5. Good business reputation, no criminal record

According to Articles 18(2)(i) and 34(2) of the MiCA, members of the management body, persons shall be of sufficiently good repute. Pursuant to Article 18(5) MiCA, for the purposes of paragraph (2)(i), the applicant issuer of the asset-referenced token applicant shall provide evidence that all members of the management body **have a clean criminal record** and have not been subject to penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability.. Under Article 34(2) of the MiCA, a management body member 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. Article 8 of the Draft RTS further details the requirements for a clean criminal record.

The Draft Recommendation refers back to the EBA-ESMA Joint Guidelines on the assessment of the suitability of management body members and key management personnel, points 72–77.[1]

Further information related to certain aspects of the licensing procedures (e.g. Ascertaining Good Business Reputation) is available at: https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/tajekoztatok

III.6 Documents to be submitted in relation to the members of the management body during the authorisation procedure:

- to be submitted on form: identification data of the members of the applicant issuer's management body;
- proof of good repute requires a certificate of good repute with enhanced content, i.e. an official certificate of clean criminal record no more than 90 days old, which, in addition to confirming a clean criminal record, must also state that the applicant is not banned from exercising civil rights or exercising a profession. With regard to Section 71 (4a) of the PRJ Act, the MNB also accepts the extended certificate of good conduct if it contains information that the applicant has a clean criminal record and is not under a ban from exercising civil rights.[2]
- a document proving qualifications;
- a signed CV attesting professional and managerial experience, completed in the detail set out in Article 8 of the Draft RTS;
- the Business Reputation Questionnaire completed and signed by the management body member: the Good business reputation questionnaire, which is a mandatory attachment to the application, is available, without registration or logging in, on the ERA interface (Public Services/Forms/Select Forms/Good Business Reputation Questionnaires/Personal Licences), as a pdf file to be filled in, saved and validated.
The filled in and electronically signed questionnaire can be attached to the prescribed electronic form as an annex. The questionnaire is available at: https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany
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- a statement by the member of the management body on the minimum time spent performing his/her duties within the undertaking (the time spent on performing the function undertaken must be specified, subject to the details of the positions held in other institutions, organisations in employment or other employment relationships as set out in Article 8 of the Draft RTS);
- declaration on Article 8(e) and (f) of the Draft RTS
- the suitability assessment prepared by the issuer for the management body member as set out in Article 8 of the Draft RTS.

III.7. Expectations of owners or members with a qualifying holding

A qualifying holding within the meaning of Article 3(36) of the MiCA is any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or of the

[1] https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-06%20Joint%20EBA%20and%20ESMA%20GL%20on%20the%20assessment%20of%20sustainability/1022108/Joint%20EBA%20and%20ESMA%20GL%20on%20the%20assessment%20of%20suitability_HU.pdf

[2] According to Section 71 (4a) of Act XLVII of 2009 on the Criminal Records System, the Register of Rulings by the Courts of the Member States of the European Union against Hungarian Citizens and on the Register of Biometric Data in Criminal and Law Enforcement Matters (PRJ Act.), if the applicant is prohibited from an occupation or activity, then the fact specified in Paragraph (3) (e) (the occupation or activity from which the applicant is prohibited) must be indicated in the official certificate of clean criminal record in the case of an application to prove the fact specified in Paragraph (3) (b) (i.e. that the applicant has no criminal record), even in the absence of such an application.

voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council, respectively, taking into account the conditions for the aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the issuer of asset-referenced tokens or the management of the crypto-asset service provider in which that holding subsists

Pursuant to Article 41(1) of MiCA, any natural or legal persons or such persons acting in concert who intend to acquire, directly or indirectly (the 'proposed acquirer'), a qualifying holding in an issuer of an asset-referenced token or to increase, directly or indirectly, such a qualifying holding so that the **proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50%**, or so that the issuer of the asset-referenced token would become its subsidiary, shall notify the competent authority of that issuer thereof in writing, indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 42(4).

The 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 (**Draft RTS on the acquisition of qualifying holdings**)[1] contains detailed information on the assessment of the good repute, integrity and suitability of a direct or indirect acquirer of the holding and the Draft Recommendation refers back to the Joint Guidelines on the supervisory assessment of acquisitions and increase of qualifying holdings in the financial sector **(Joint Guidelines**[2]).

On the basis of Article 42(1) of the MiCA, the Draft RTS on the acquisition of qualifying holdings and the Draft Recommendation, the MNB assesses the following in relation to the suitability of the proposed acquirer:

- the reputation of the proposed acquirer (Article 42(1)(a)), Article 9(a), (b) of the Draft RTS, Articles 1 to 3 of the Draft RTS on the acquisition of qualifying holdings
- the reputation, knowledge, skills and experience of the person who, as a result of the proposed acquisition, will become the manager of the business of the issuer of the asset-referenced token (Article 42(1)(b));
- the financial soundness of the proposed acquirer, in particular in relation to the type of business envisaged and carried out by the asset-referenced token in relation to the issuer of the acquiree (Article 42(1)(b)), the information provided for in Article 8(1) to (2) of the Draft RTS on the basis of Article 9(c) of the Draft RTS on the acquisition of qualifying holdings
- whether the issuer of the asset-referenced token will be able to continue to comply with the provisions of this Title (Article 42(1)(d));
- whether, in connection with the proposed acquisition, there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted within the meaning of Article 1(3) and (5) of Directive (EU) 2015/849 or that the proposed acquisition may increase the risk thereof (Article 42(1)(e)),
- information in Article 6 of the Draft RTS on the acquisition of qualifying holdings pursuant to Article 9(e) of the Draft RTS

- proof of the legal origin of the financial resources according to the information in Article 8 of the Draft RTS on the acquisition of qualifying holdings pursuant to Article 9(e) of the Draft RTS

III.7.1. Good business reputation

Pursuant to Article 18(2)(j) MiCA, it is necessary to demonstrate that the owners or members who directly or indirectly hold a qualifying holding in the applicant issuer are of sufficiently good repute. Articles 18(5)(c) and 32(4) of the MiCA state that the applicant issuer of an asset-referenced token shall provide proof for all shareholders and members, whether direct or indirect, that have qualifying holdings in the applicant issuer, of the absence of a criminal record in

[1] https://www.eba.europa.eu/sites/default/files/document_library/Publications/Consultations/2023/Consultation%20on%20information%20for%20assessment%20of%20a%20proposed%20acquisition%20of%20qualifying%20holdings%20in%20issuers%20of%20ARTs%20under%20MiCAR/1057530/CP%20RTS%20information%20for%20notification%20QH%20under%20MiCAR.pdf

[2] https://www.eiopa.europa.eu/publications/joint-guidelines-prudential-assessment-acquisitions-and-increases-qualifying-holdings-banking_en

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 and counter-terrorist financing, to fraud or to professional liability.

With regard to the assessment of the good reputation, integrity and suitability of a direct or indirect acquirer of the holding, the Draft Recommendation refers back to the provisions of Title II, Chapter 1, Subchapters 7 to 8, Chapter 2, Subchapter 9 and Chapter 3, Subchapters 10 and 14 of the Joint Guidelines.

III.7.2. Documents to be submitted during the authorisation procedure in relation to holders of qualifying holdings:

- to be submitted on form: identification data of the proposed acquirer in the applicant issuer;
- proof of good repute requires a certificate of good repute with enhanced content, i.e. an official certificate of clean criminal record no more than 90 days old, which, in addition to confirming a clean criminal record, must also state that the applicant is not banned from exercising civil rights or exercising a profession. With regard to Section 71 (4a) of the PRJ Act, the MNB also accepts the extended certificate of good conduct if it contains information that the applicant has a clean criminal record and is not under a ban from exercising civil rights.[1]
- Good Business Reputation Questionnaire: a mandatory annex to the application, the Good Business Reputation Questionnaire is available, without registration or logging in, on the ERA interface (Public Services/Forms/Select Forms/Good Business Reputation Questionnaires/Personal Licences), as a pdf file to be filled in, saved and validated. The filled in and electronically signed questionnaire can be attached to the prescribed electronic form as an annex. The questionnaire is available at: https://era.mnb.hu/ERA.WEB/PublicServices/Current?code=eraformanyomtatvany
- a declaration by the acquirer of the holding as set out in Article 9(d) of the Draft RTS,
- proof of the legal origin of the financial resources according to the information in Article 8 of the Draft RTS on the acquisition of qualifying holdings pursuant to Article 9(e) of the Draft RTS,
-ownership structure diagram under Article 9(a) of the Draft RTS.

III.8. Material and IT-related requirements for asset-referenced token issuers

Pursuant to Article 18(1)(p) MiCA, a description of the systems and procedures to **safeguard the availability, authenticity, integrity and confidentiality of the data** as referred to in Article 34(11) must be submitted with the application. According to Article 34(11) of MiCA, "issuers of asset-referenced tokens shall have systems and procedures in place that are adequate to safeguard the availability, authenticity, integrity and confidentiality of data as required by Regulation (EU) 2022/2554 and in line with Regulation (EU) 2016/679. Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities."

Presentation of the governance, organisational and regulatory framework for the security of information systems pursuant to Article 64 of Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (**DORA**), the Regulation that entered into force shall apply from 17 January 2025 in respect of crypto-asset providers authorised under the MiCA pursuant to Article 2(1)(f) of the DORA and issuers of asset-referenced tokens. The requirements in III.8.1 are therefore only to be met for authorisation procedures pending or launched after 17 January 2025.

III.8.1 Documents to be submitted during the licensing procedure to prove the fulfilment of the IT material conditions:

a) based on Article 5 of the DORA and Article 2 of the Delegated Regulatory Technical Standards **(Draft RMF RTS**) under Article 15 of the DORA;
b) a description of the project management arrangements for the establishment of ICT systems and the security principles applied, in accordance with Article 5 of the DORA and Article 15 of the Draft RMF RTS;

[1] According to Section 71 (4a) of Act XLVII of 2009 on the Criminal Records System, the Register of Rulings by the Courts of the Member States of the European Union against Hungarian Citizens and on the Register of Biometric Data in Criminal and Law Enforcement Matters (PRJ Act.), if the applicant is prohibited from an occupation or activity, then the fact specified in Paragraph (3) (e) (the occupation or activity from which the applicant is prohibited) must be indicated in the official certificate of clean criminal record in the case of an application to prove the fact specified in Paragraph (3) (b) (i.e. that the applicant has no criminal record), even in the absence of such an application.

c) the requirements for employees using or having access to the applicant's ICT facilities and the third party ICT service provider's personnel in accordance with the requirements of Article 5 of the DORA and Article 19 of the Draft RMF RTS;
d) a description of the IT systems under Article 7 of the DORA, with the following content:
    i.) the architecture of ICT systems and the elements of the network,
    ii.) business IT systems supporting the business activities provided,
    iii.) for an asset-referenced token-issuing institution, the IT systems that support the organisation and its business (e.g. accounting, statutory reporting systems, human resources, customer relationship management, email servers and internal file servers),
    iv.) the type of external relationships allowed (for example, with partners, service providers, other entities of the group and their teleworking employees, including the justification for the legitimacy of these relationships),
    v.) for each of the services listed in point (iv), the logical security measures and mechanisms put in place, including what control the institution issuing the asset-referenced token has over such access and the nature and frequency of each control – for example, technical or organisational, preventive or detective, real-time monitoring or periodic scanning, such as use of a separate active directory from the group, opening/closing communication lines, configuration of security devices, generation of keys and client IDs, system monitoring, authentication, confidentiality of communications, intrusion detection; anti-virus systems and logs,
    vi.) logical security measures and mechanisms to control internal access to information systems;
e) a detailed assessment of the ICT risks involved in the issuance of asset-referenced tokens, including third-party service providers and all risks arising from dependency on the operating environment, as well as the risk of fraud. A detailed description of the risk mitigation measures introduced or planned, as required by Article 6 of the DORA and Articles 1, 3 and 27 of the Draft RMF RTS;
f) the rules for the registration of the ICT systems' assets and the current records of the assets in accordance with Article 8 of the DORA and Articles 4-5 of the Draft RMF RTS;
g) a description of the preventive protection and security principles applied in the operation of ICT systems, as required by Article 9 of the DORA, with the following scope and level of detail:
    i.) the encryption and cryptographic solutions used (Article 7 of the Draft RMF RTS),
    ii.) ICT systems operating procedures and their regulation (Article 8 of the Draft RMF RTS),
    iii.) capacity and performance management procedures and solutions (Article 9 of the Draft RMF RTS),
    iv.) a description of the measures taken to address vulnerabilities and remediation programmes and updates (Article 10 of the Draft RMF RTS),
    v.) the security classification of the data and ICT systems and the security measures applied based on the classification, as well as the rules for data sharing, transmission and storage, the data storage structure and the security solutions applied to data links (Article 11 of the Draft RMF RTS),
    vi.) a description of the procedures and security measures used to ensure the secure operation of the network and the security of the data transmission, as well as the processes and technical solutions (authentication, registration, fraud prevention, etc.) used to monitor and secure the asset-referenced token transaction processes (Articles 13–14 of the Draft RMF RTS),
    vii.) procedures and contracts for the procurement, development and maintenance of ICT systems (RMF RTS Draft 16),
    viii.) processes, tools and policies to monitor changes to ICT systems (RMF Draft RTS 17),
    ix.) the measures and mechanisms for the physical security of the applicant's premises and data centre, such as access control and environmental security features (RMF Draft RTS 18),
    x.) the policies, procedures and systems in place for the secure management and recording of rights and access (RMF Draft RTS 20–21),
    xi.) a description of the procedures for detecting, monitoring, managing and tracking security events and incidents affecting ICT systems and the information assets managed by them (RMF Draft RTS 22);
h) the rules, systems and procedures in place to log and monitor events affecting ICT systems and to detect and respond to abnormal activities, in accordance with Article 10 of the DORA and Articles 12 and 23 of the Draft RMF RTS;
i) the assessment and regulation of the necessary and applied service continuity, communication and crisis management measures, the related response and recovery plans and testing documents, in accordance with Article 11 of the DORA and Article 26 of the Draft RMF RTS;

j) a description of backup policies and procedures, recovery and restoration procedures and methods in accordance with Article 12 of the DORA and Articles 24–25 of the Draft RMF RTS;
k) contracts or agreements governing the activities of third parties providing or supporting as a service the processes for the handling, processing, storage or deletion of data in ICT systems, and the internal procedures for the use of such services, on the basis of the delegated regulatory technical standard under Article 28(10) of the DORA Regulation ("Draft RTS 84"); a description of the technological and organisational solutions to ensure risk management and service continuity and accountability.

IV. Conduct of the procedure

Legal entities or other undertakings intending to offer asset-referenced tokens to the public or to admit them to trading must submit **their application for authorisation** to the competent authority of the Member State in which they are established, or, in the case of a company established in Hungary, to the MNB.

The MNB shall acknowledge receipt of the application in writing to the applicant issuer within two working days of receipt of the application**(acknowledgement of receipt**), pursuant to Article 18(4) MiCA.

Pursuant to Article 20(1) MiCA, the MNB shall assess within **25 working days** of receipt of the application whether the application, including the crypto-asset white paper referred to in Article 19, comprises all of the required information. If the application, including the crypto-asset white paper, is missing any required information, the MNB will immediately notify the applicant. Where the application, including the crypto-asset white paper, is not complete, competent authorities shall set a deadline by which the applicant issuer is to provide any missing information.

Pursuant to Article 20(2) MiCA, within **60 working days of receipt of a complete application**, the MNB shall assess whether the applicant issuer complies with the requirements of Title III and take a fully reasoned draft decision granting or refusing authorisation.

Within 60 working days of receipt of a complete application, the MNB **may request** from the applicant issuer any **information** on the application, including on the crypto-asset white paper referred in Article 19.

In the course of the assessment, the MNB may cooperate with competent authorities for anti-money laundering and counter-terrorist financing, financial intelligence units or other public bodies.

The assessment period under paragraphs 1 and 2 shall be suspended for the period between the date of request for missing information by the competent authorities and the receipt by them of a response thereto from the applicant issuer. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period under paragraphs 1 and 2. (Article 20(3) MiCA)

Within 60 working days of receipt of a complete application, the MNB shall forward the draft decision and the application to the **EBA, ESMA and the ECB**. If the applicant issuer is established in a Member State whose official currency is not the euro, or if the asset-referenced token is pegged to an official currency of a Member State that is not the euro, the MNB shall also forward the draft decision and the request to the central bank of that Member State. EBA and ESMA shall, **at the request of the MNB** and within **20 working days** of receipt of the draft decision and the request, issue an opinion on the assessment of the legal opinion referred to in Article 18(2)(e) and transmit their opinion to the MNB. Within 20 working days of receipt of the draft decision and the request, the ECB or, where applicable, the central bank referred to in (4) shall issue an opinion on the assessment of the risks that the issuance of the asset-referenced token concerned may pose to financial stability, the smooth operation of payment systems, the monetary transmission mechanism and monetary sovereignty and shall forward its opinion to the relevant competent authority. The opinions are non-binding, but the MNB shall take due account of them.

Where the MNB has requested the opinion of EBA and ESMA pursuant to Article 20(5) MiCA, it shall, **within 25 working days** of receipt of the opinions of EBA, ESMA, ECB pursuant to Article 21(1) MiCA, take a fully reasoned decision granting or refusing authorisation to the applicant issuer and shall notify the applicant issuer of such decision within 5

working days of the decision. If the applicant issuer receives the authorisation, its crypto-asset white paper **shall be deemed to be approved**.

Within two working days of the granting of authorisation, the MNB shall communicate to the single point of contact of the host Member States, the EBA, the ECB and, where applicable, the central bank referred to in Article 20(4), the information specified in Article 109(3). ESMA shall make that information available in the register until the starting date of the public offering or admission to trading in accordance with Article 109(3).

In addition to the above, applicants should also take note of the following information published on the MNB website:
"Information on certain issues most frequently arising in certain licensing and registration procedures affecting the practice of the MNB".[1]

V. Cases of refusal of a request for authorisation

Article 21 of the MiCA lists the circumstances in which the MNB shall refuse a request where there are objective and demonstrable grounds that:
(a) the management body of the applicant issuer might pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market;
(b) members of the management body do not meet the criteria set out in Article 34(2);
(c) shareholders and members, whether direct or indirect, that have qualifying holdings do not meet the criteria of sufficiently good repute set out in Article 34(4);
(d) the applicant issuer fails to meet or is likely to fail to meet any of the requirements of this Title;
(e) the applicant issuer's business model might pose a serious threat to market integrity, financial stability, the smooth operation of payment systems, or exposes the issuer or the sector to serious risks of money laundering and terrorist financing.

The MNB shall also refuse authorisation if the ECB or, where applicable, the central bank gives a negative opinion under Article 20(5)[2] on the grounds of a risk posed to the smooth operation of payment systems, monetary policy transmission, or monetary sovereignty.

VI. Administrative service fee

Pursuant to Section 19/A (1) of MNB Decree 32/2023. (VII. 19.) of the Governor of the Magyar Nemzeti Bank on the administrative service fees of the Magyar Nemzeti Bank applied in certain licensing and registration procedures in the context of the supervision of the financial intermediary system and with respect to trustee enterprises, the conduct of the authorisation procedure is subject to the payment of an administrative service fee of HUF 1,900,000.

For further information about the administrative service fee see:
https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf

If, after reviewing these guidelines, further questions arise which cannot be answered in a telephone or written consultation on a specific case, the MNB will also provide the applicant with the opportunity for personal consultation. For personal consultations, please contact the Secretariat of the Financial and Capital Markets Licensing Department (phone: +36 1-489-9731; e-mail: ptef@mnb.hu).
If the questions you have are purely IT-related, you may also contact the IT Supervision Department directly for a personal consultation (phone: +36 1-489-9780; e-mail: iff@mnb.hu).

Last amendment: November 2024

[1] Available at: https://www.mnb.hu/letoltes/tajekoztato-az-egyes-engedelyezesi-illetve-nyilvantartasba-veteli-eljarasok-soran-leggyakrabban-felmerulo-a-ma-gyar-nemzeti-bank-mnb-gyakorlatat-erinto-kerdesekkel-kapcsolatban-1.pdf

[2] EBA and ESMA shall, at the request of the competent authority and within 20 working days of receipt of the draft decision and the request, issue an opinion on the assessment of the legal opinion referred to in Article 18(2)(e) and transmit their opinions to the competent authority concerned.