

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

Questions:

1. Question 1: Are the sections on subject matter, scope, definitions, addressees and implementation of the draft joint EBA and ESMA Guidelines on the assessment of the suitability of the members of the management body of issuers of ARTs and CASPs appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. Definitions based on CRD and EU Accounting Directive provide appropriate clarifications.
2. Question 2: Are the provisions on the application of the proportionality principle appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. However, it appears to us that additional points 12 f (i) and (ii) go beyond what is necessary for the purpose of proportionality when assessing the suitability of members as regards the knowledge and experience criteria as well as the members ability to commit sufficient time. The main criteria are, thus enough without the need for such additions.
3. Question 3: Are the provisions on the notion of sufficiently good repute appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. The provisions are in line with the criteria specified by the relevant EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU
4. Question 4: Are the provisions on the notion of individual and collective appropriate knowledge, skills and experience appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. However, we believe that point 27 (v) is beyond the purpose of suitability assessment; instead, it is more of a political nature. As stressed in our other replies to different consultations (ESMA MiCA Package 2), we must remain tech-agnostic and avoid creating misunderstandings about different consensus mechanisms. ESG criteria should only be included if CASPs are required to perform their own ESG reviews and analyses

and - as we mentioned in our response to ESMA MiCA Package 2 consultation - this should only be in the hands of the Issuers, who are predominantly required to prepare the white paper including ESG criteria as per MiCA.

5. Question 5: Are the provisions on the sufficient time commitment of a member of the management body appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. However, we would like to recommend to clarify that - while a minimum of necessary time commitment of each member is clear - the overall time commitment of the body needs to be taken into account. In other words: it should be clarified that it makes a difference if e.g., 3 or even 4 persons are members of the management body or if it is just two of them etc.
6. Question 6: Are the provisions in section D.3 and subsections D.3.1 and D.3.2. on the suitability assessment appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. We would like to recommend however that in Section D.3.1 (or wherever it seems fit), it is stated that experience in other financial market areas is properly credited according to MiCA suitability assessment and/or that Fit & Properness for other roles is a strong indicator of suitability. If a “fit & proper” role is ongoing (e.g. as MiFID II managing director), it could be stated that the suitability assessment should take this as a basis and assess only additional points regarding MiCA (e.g., special topics regarding Crypto Assets, cyber risks etc).
7. Question 7: Are the provisions in section D.4 on corrective measures appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear.
8. Question 8: Are the provisions in sections D.5 and D.6 on the assessment and decisions by competent authorities appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are appropriate and sufficiently clear. However, the rule in Point 64 for the ex-ante assessment of suitability of the members of the management body requiring issuers of ARTS and CASPs to notify the competent authority without undue delay on proposing the member for appointment goes beyond what is required for the assessment of suitability. Point 175 of the relevant Joint EBA-ESMA Guideline provides institutions with a two-week deadline for the notification: consequently; this should be clarified. Furthermore, we recommend to amend Points 66 and 74 in regards to special cases (e.g. open positions, emergency appointments etc). Suitability assessment should not take longer than 1 month in such cases, as it is - at least in Austria - not common to appoint a member without

the green-light of the NCA. If the deadline would be 6 months, it could leave CASPs key-positions open for a long period of time.

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

9. Question 9: Are the draft Joint Guidelines on the assessment of the suitability of the shareholders or members, whether direct or indirect, with qualifying holdings in issuers of ARTs or of CASPs appropriate and sufficiently clear?

**Bitpanda Answer:**

- Yes, we believe that the sections are sufficiently clear.