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Draft EBA RTS to specify the requirements, templates and procedures for handling complaints under Art. 31 of MiCAR

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Virtual Public Hearing, 21 September 2023

GUIDANCE FOR PARTICIPANTS



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Outline of the presentation

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Introduction to the EBA



- The EBA is an independent member-based authority, accountable to the EU Parliament and EU Council;
- The EBA has the objective of protecting the public interest by contributing to the stability and effectiveness of the financial system;
- The EBA achieves this objective through many tasks, including through contributing to the sound, effective and consistent level of regulation and supervision;
- The EBA has different legal instruments at its disposal, including Technical Standards, Guidelines, Opinions;
- MiCAR conferred 17 mandates on the EBA, with 2 additional mandates in cooperation with ESMA and another one for the 3 ESAs



Purpose of the public hearing



The EBA organises ‘public hearings’ for its Technical Standards and Guidelines to allow interested parties to ask clarifications

- An EBA public hearing takes place during the consultation period, usually a month or so before the submission deadline of responses to the Consultation Paper (CP).
- The purpose of the hearing is for the EBA to present a summary of the CP, reproduce the questions of the CP, and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.
- The public hearing does therefore not replace written responses to the CP, as it is only through written responses that the EBA is able to give the views of stakeholders the required consideration.

Legal basis



- Regulation (EU) 2023/1114 on Markets in Crypto-Assets (MiCAR) establishes a regime for the regulation and supervision of crypto-asset issuance and crypto-asset service provision in the European Union
- MiCAR came into force on 29 June 2023, and the provisions relating to asset-referenced tokens (ARTs) and electronic money tokens (EMTs) will be applicable from 30 June 2024.
- Article 31 MiCAR mandates the EBA, in close cooperation with the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards (RTS) to further specify the requirements, templates and procedures for handling complaints received from holders of Asset-Referenced Tokens (ART) and other interested parties, including consumer associations that represent holders of ART, and procedures to facilitate the handling of complaints between holders of ART and third-party entities, where applicable.

Approach chosen for the development of the RTS



- This is not the first time that the EBA (and the other ESAs – ESMA and EIOPA) have developed complaints handling requirements. The ESAs have done so already as early as 2014.
- When the ESAs issued those Guidelines at the time, they took the view that complaints handling is something that is not specific to types of products or types of firms and therefore they should develop a single set of requirements that is uniformly applicable across all three sectors and all types of financial institutions. The ESAs also aimed at reducing compliance burdens for firms that offer more than one type of product.
- The ESAs maintained these principles ever since, and extended the Guidelines to other legal entities that were defined in EU law.
- EBA took also this approach for the RTS under MICAR but added requirements where the mandate explicitly required the EBA to do so.

Envisaged aims of the approach



- The EBA's approach aims at:
 - providing an adequate level of protection for consumers, in particular holders of ARTs;
 - making available to EU consumers, as much as possible, a single set of complaints handling arrangements, irrespective of the type of product or service and of the geographical location of the provider;
 - allowing those issuers of ARTs that also provide other financial services to streamline and standardise their complaints handling arrangements;
 - allowing national regulators to supervise the same requirements across all sectors of financial services;
 - reducing compliance costs for financial institutions, compared to an alternative scenario where complaints handling procedures would have deviated across markets, sectors, or financial institutions.

Option considered to develop the RTS



- As explained in the rationale section of the Consultation Paper in developing these standards, the EBA considered two options on how to proceed:
 - 1) reading across the aforementioned JC Guidelines and only deviate by inserting additional requirements that are needed to fulfill elements that are explicitly required in the MiCAR mandate but that do not exist in the JC Guidelines, or
 - 2) using as a basis a set of Technical Standards that ESMA had previously developed on complaints handling procedure under the European crowdfunding service providers for business Regulation (ECSPR)
- The EBA arrived at the view that the draft RTS proposed in this Consultation Paper should seize on the advantages of both option and propose a combination of them: follow the JC Guidelines and, where the RTS mandate under MiCAR requires the EBA to develop something additionally that is not covered in the JC Guidelines, read across from ESMA's Crowdfunding and draft MiCAR RTS to bring consistency.

Consultation Question 1: Do you consider that the approach proposed in the RTS strikes an appropriate balance between the various competing demands described? If not, please suggest an alternative approach and the underlying reasoning and evidence.

Specific requirements of the RTS mandate



- In order to fulfil the specifics of the RTS mandate, the content of the JC Guidelines has been read across and then amended as follows:
 - **Definitions of the JC Guidelines have been adapted to include IART and holders of ART and also a definition of ‘third-party entity’ (Article 1).** It ensures that all possible types of activities are covered by MiCAR. Third-party entities could be treated as outsourcers: in that sense, the IART should bear the responsibility of ensuring that such entities have in place arrangements for complaint-handling.
 - **The provision of information to the holder of asset-referenced tokens and other interested parties requiring complaints to be filed free of charge has been included (Article 3).** The wording which reads across the Guidelines 6 of the JC Guidelines now includes for the IART to provide information to the holder and other interested parties that complaints shall be filed and handled free of charge.
 - **Specific requirements for the templates, recordings and reporting have been included (Article 4);** The draft RTS proposes that IART must ensure that holders of ART and other interested parties representing holders of ART are able to submit complaints by electronic means or in paper form and free of charge using the standard template set out in the Annex of the draft RTS.

Consultation Question 2: Do you have any comments on the requirements proposed in Articles 1, 2, 3 or 4 of the draft RTS?

Specific requirements of the RTS mandate (cont.)



- **A procedure to investigate complaints and to communicate the outcome to holders of ART have been included (Article 5)**, in line with article 31 (4) stating that “Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to the holders of their asset-referenced tokens within a reasonable period of time”.
- **Specific provisions for complaints handlings involving third-party entities have been included (Article 6)**, in line with the requirements defined in article 31 (1) as well as the provisions under article 31(2) and (3) which respectively refer to the requirements to provide information about complaints filed free of charge and the template.

Consultation Question 3: Do you have any comments on the requirements proposed in Articles 5, 6 or 7 of the draft RTS?

Next steps



- **21 September 2023** – Public hearing;
- **12 October 2023** – Consultation period ends;
- **By Q4 2023** – Assessment of the responses to the CP and decision on what, if any, changes will be made to the draft RTS;
- **Q1 2024** – Envisaged publication and submission to the European Commission
- **Later in 2024** – Adoption of the RTS by the EU Commission, with a scrutiny period foreseen for EU Council and EU Parliament, and subsequent publication in the Official Journal and entry into force.
- We encourage you to submit a response to our Consultation Paper which you can submit via a link that is shown on the same EBA webpage where you registered for today’s public hearing

Questions and Answers



Please indicate your name in the Webex chat if you'd like to take the floor [and indicate on which topic you'd like to intervene] or write your question / comment directly in the chat.

Thanks !

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