ESMA_QA_2349

Submission Date
26/11/2024

Status: Published Answer Updated

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 67 / Paragraph 3

Subject Matter
Calculation of fixed overheads

Question
In Article 67, Paragraph 1, crypto asset providers shall at all time have prudential safeguards as the highest of the following;

- the amount of permanent minimum capital requirements indicated in Annex IV
- one quarter of the fixed overheads of the preceding year, reviewed annually

In Paragraph 3, the method to calculate the prudential requirement of one quarter of the fixed overheads of the preceding year, reviewed annually is stated as;

"Crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders or members."

When defining "total expenses" in the quoted sentence from Paragraph 3, does it in fact mean the total costs (fixed and variable overheads) after distribution of profits in the income statement for the preceding year, or is it meant to be the total fixed overheads after distribution of profits?

ESMA Answer

18-02-2026

Original language

Answer provided by the European Commission

CASPs must calculate their fixed overheads for the preceding year from the total of all the CASP’s overhead expenses, both fixed and variable, using the figures resulting from the applicable accounting framework. In light of the prudential requirements in Article 67 MiCA being an instrument to ensure consumer protection, all overhead costs need to be covered. In that calculation, only the items listed in Article 67(3)(a)–(d) of MiCA and no additional items may be subtracted. Unlike Article 13(4) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014, and (EU) No 806/2014, where only a minimum level of subtractable items are determined, Article 67, in contrast, is to be understood as exhaustive. Article 67 does not open the definition of subtractable items to the discretion of the national competent

authorities or CASPs.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.