POSITION PAPER

ESBG response to ESMA consultation on the criteria for the assessment of knowledge and competence under MiCA

ESBG (European Savings and Retail Banking Group)

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GENERAL INFORMATION

ESMA invites comments on all matters in this paper and in particular on the specific questions below I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

QUESTIONS

Q1: *Do you agree with the minimum requirements regarding qualification, experience and continuous professional development of staff giving information on crypto-assets and crypto-asset services to clients included in paragraphs 19 to 21 of draft Guideline 2? If not, what would, in your view, be adequate minimum requirements? Please state the reasons for your answer.*

ESBG members welcome the objectives of the proposed draft Guidelines to establish consistent, efficient, and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform, and consistent application of the provisions of MiCA.

Paragraph 17 of the draft Guidelines states the following: "Where the information or advice about crypto-assets or crypto-asset services is provided in an automated or semi-automated manner, crypto-asset service providers should ensure that these guidelines apply to staff determining the content of the information or advice that will be provided to the clients and staff setting the parameters and deciding on the settings for such information or advice".

In this regard, and in order to align training requirements with the principle of proportionality, while providing certainty to market participants, we consider it necessary to amend the wording of paragraph 19. This should clarify that the following requirements about supervision do not apply to staff determining the content of the information or advice to be provided to clients, as well as to staff setting the parameters and deciding on the settings for such information or advice:

a. (…) (…) "and appropriate experience of at least 6 months under supervision; or
b. appropriate experience of at least 1 year under supervision".

We believe this change would be aligned with the principle of proportionality and, at the same time, would also provide certainty for market participants.

Initial Training

Section 19 of the draft Guidelines establishes a minimum of 80 hours of professional qualification prior to the certification exam to provide information on crypto assets. We consider this obligation to be excessive and very general,

as it forces entities to train these employees based solely on quantitative criteria.

Nonetheless, we believe that establishing an equal minimum number of training hours across the EU would be an appropriate measure to ensure uniformity and quality of professional training in the field of crypto-assets, while ensuring supervisory consistency.

Continuing Training
Paragraph 21 of the draft Guidelines establishes a number of annual hours of continuing professional development (CPD) for staff who provide information on crypto assets. Specifically, it proposes a number of hours of no less than 10.

We believe that establishing an equal minimum number of training hours across the EU would be an appropriate measure to ensure uniformity and quality of professional training in the field of crypto-assets, while ensuring supervisory consistency.

Q2: *Do you agree with the minimum requirements regarding qualification, experience and continuous professional development of staff giving advice on crypto-assets and crypto-asset services to clients included in paragraphs 24 to 26 of draft Guideline 3? If not, what would, in your view, be adequate minimum requirements? Please state the reasons for your answer.*

Initial Training
Section 24 of the draft Guidelines establishes a minimum of 160 hours of professional training prior to the certification exam for providing advice on crypto assets. As in the response to Q1, we consider this obligation to be excessive and very general, as it forces entities to train these employees based solely on quantitative criteria. Nonetheless, we believe that establishing an equal minimum number of training hours across the EU would be an appropriate measure to ensure uniformity and quality of professional training in the field of crypto-assets, while ensuring supervisory consistency.

Continuing Training
Paragraph 26 of the draft Guidelines establishes a number of annual hours of continuing professional development (CPD) for staff providing advice on crypto assets. Specifically, it proposes a number of hours of no less than 20.

We believe that establishing an equal minimum number of training hours across the EU would be an appropriate measure to ensure uniformity and quality of professional training in the field of crypto-assets, while ensuring supervisory consistency.

Q3: *Do you agree that with the proposed draft guidelines? Please state the reasons for your answer.*

Opportunity of the Guidelines
According to the legal background of the draft Guidelines, ESMA justifies their development based on the mandate granted by Article 81.15 of MiCA: "1. Article 81(15) of MiCA provides for ESMA to issue guidelines specifying the criteria for the assessment of knowledge and competence in accordance with paragraph 7 of this Article."

However, Article 81.15 of MiCA does not refer to paragraph 7 on the knowledge and competence of staff providing advice or information on crypto assets, but rather to paragraph 8, concerning the collection of information on the knowledge and experience of clients or potential clients:

"15. By 30 December 2024, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 specifying:

a) the criteria for the assessment of client knowledge and competence in accordance with paragraph 2;

b) the information referred to in paragraph 8; and

c) the format of the periodic statement of accounts referred to in paragraph 14."

Duplicate Training
We believe it is necessary to draw attention to the growing trend of imposing training obligations on credit institution staff under different regulations (MiFID, MCD, CCD, MiCA, etc.) and the duplication of training requirements this creates. For example, we believe that imposing training obligations on basic or common financial topics on staff who are already certified to market other products that incorporate this knowledge into their certification should be avoided. The objective would be to require only specific and specific training on the crypto-asset products that each institution markets and advises, and for general training on basic topics to be valid for other certifications.

Establishing staff knowledge and skills requirements is a highly relevant cost issue for credit institutions, and therefore, we believe that an impact and cost assessment should be considered when setting both the knowledge and the hours of initial and ongoing staff training.

Q4: *Are there any additional comments that you would like to raise and/or information that you would like to provide?*

We request clarification on how the staff experience requirement should be calculated in the following cases not addressed in the draft ESMA Guidelines:

1. If the entities foresee the adoption of an automated or semi-automated model, that is, decentralized through remote channels.
2. If in the future, with the guidelines already in force, an entity will consider moving from a decentralized model to a model in which the service is provided in offices.

About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping 32 savings and retail banks in 27 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. Advocating for a proportionate approach to banking rules, ESBG unites at EU level some 859 banks, which together employ 619,000 people driven to innovate at 37,000 branches. ESBG members have total assets of € 6,35 trillion, provide € 372 billion in loans to customers, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable and responsible 21st century banking. Learn more at www.wsbi-esbg.org.

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