

Notes

To the application form for a declaration of
no-objection under MiCAR

DeNederlandscheBank

EUROSYSTEM

Notes

to the application form for a declaration of no-objection for a qualifying holding in a MiCAR licence holder having its seat in the Netherlands.

These notes describe what DNB wants to see when considering your application for a DNO.

Contents

1 Introduction	4
2 General information	5
3 Control structure and legal group structure of the applicant	6
4 Reputation	9
5 Applicant's financial soundness	11
6 Impact on the MiCAR licence holder/qualifying holding	13
7 Funding	15

1 Introduction

If you wish to acquire a qualifying holding in a MiCAR licence holder, you must obtain a declaration of no-objection (DNO) issued by De Nederlandsche Bank N.V (DNB). In specific cases, you must also apply for a DNO if you wish to increase an existing qualifying holding.

Qualifying holding in a MiCAR licence holder

A qualifying holding is a direct or indirect holding of 10% or more of the issued capital of an enterprise or the power to exercise, directly or indirectly, 10% or more of the voting rights in an institution, or the power to exercise, directly or indirectly, an equivalent degree of control in an enterprise. This definition can be found in Section 3 (36) MiCAR. Such control may comprise special rights in respect of appointment, dismissal or suspension of management or supervisory board members of the MiCAR licence holder. In determining the number of voting rights of holders of participating interests in an enterprise, we also take into account the votes that the holder has or is deemed to have.

You must apply for a DNO if you intend to acquire or increase a qualifying holding in the following types of MiCAR licence holder (the target enterprise):

- Issuers of asset-referenced tokens ('ARTs' – Section 41 and 42 MiCAR)
- Crypto-asset service providers ('CASPs' – Section 83 and 84 MiCAR)

For more information, consult ESMA's:

- **RTS on the information to be included in an application for authorisation as crypto-asset service provider;**
- **RTS on the content of information to carry out the assessment of the proposed acquisition of a qualifying holding in a crypto-asset service provider.**

2 General information

Applicant

Step B. in the digital DNO application form.

Under “applicant”, you fill in the details of the prospective acquirer, i.e. the party acquiring or increasing the qualifying holding. Legal entities as well as natural persons can apply for a DNO.

You must fill in the applicant’s address details. If the applicant is a legal entity having its registered office in the Netherlands, you must provide its Dutch Chamber of Commerce registration number, an extract from the Trade Register and the most recent version of its articles of association. If the legal entity has its registered office outside the Netherlands, you must provide a comparable unique identification number from the trade register of the relevant country, and an extract from the trade register of the country where the legal entity has its registered office. If such a document is available in the jurisdiction where the entity was incorporated, we also need the most recent version of its articles of association.

External consultant

Step C. in the digital DNO application form.

You can also submit your application through an external consultant. We recommend that you engage the services of a consultant to assist you in the application process. Practice has shown that applications are often more complete and of a substantially higher quality if the applicant has sought advice, for example from a legal consultant. We can assess a complete and well substantiated DNO application more quickly and more thoroughly. If you decide to use the services of an external consultant please also provide us with this consultant’s details.

3 Control structure and legal group structure of the applicant

Step G. in the digital DNO application form.

Bandwidth

Your application must specify a bandwidth. With a bandwidth DNO, the size of the qualifying holding may vary within the specified bandwidth without the need to apply for a new or amended DNO.

Bandwidths have a lower limit of 10% (the DNO threshold) and can have upper limits of 20%, 30%, 50% or 100%.

Your application must include the bandwidth that corresponds to the actual intended size of the intended qualifying holding, which means this question does not concern any further intended increases of your holding in the future. Please note that in situations of acting in concert you must indicate the bandwidth that corresponds with the total holding (see below).

You must notify DNB of certain specific changes in the size of holdings. This applies to reductions below 10, 20, 30 and 50%. For example a reduction in size to below 20% for holdings with a bandwidth of 10%-30%, or if the size of the holding falls below 10%. In the latter case, the issued DNO will lapse by operation of law.

Acting in concert

Cooperation among shareholders aimed at creating a long-term common voting policy, based for example on a shareholder agreement or family relationships, may increase shareholders' influence on the target enterprise. This situation is referred to as "acting in concert" and has implications for the bandwidth of the DNO, and for establishing whether all parties requiring a DNO are actually in scope. Such a policy can be agreed on orally

and in writing. For example, a party is deemed to control the voting rights of a third party if it has made agreements with this party providing for a long-term common policy on exercising these voting rights.

If this is the case, the aggregate of voting rights that can be exercised by the parties that entered into the agreement must be taken into account when determining the bandwidth. All parties involved in the agreement will have to base their considerations of whether they need a DNO, and the applicable bandwidth, on this aggregate of voting rights.

You must provide the following information as an annex to your application form:

- the identity of the other parties involved;
- the manner of their involvement;
- plans or agreements made with these other parties regarding the financial institution;
- the percentage of the voting rights.

Please contact us before submitting your application if you are in doubt as to whether a situation qualifies as acting in concert.

Legal group structure

You must submit an organisation chart (shareholder structure) with your application showing the full legal group structure and control structure. The organisation chart must show the applicant-acquirer's group structure before and after the acquisition/increase of the proposed qualifying holding.

It must also specify the persons or legal entities that hold or will hold a direct or indirect qualifying holding in the MiCAR licence holder, stating the percentages of their interests and their voting rights. In some cases you may also have to provide information on the identities and interests of the investors involved in the acquisition/increase of the proposed qualifying holding.

Please also indicate which entities in the organisation chart are under supervision, listing the names of the relevant supervisory authorities and their contact persons.

Complex structures

If your DNO application involves acquiring or increasing a qualifying holding in a complex structure, you may have to provide additional information. Examples of complex structures may include multiple layers of enterprises, often involving (i) entities without a capital structure and/or without a specific legal form, (ii) entities established to separate legal and economic ownership, or a combination of these situations.

If your application involves a complex structure, please contact us before submitting your formal application, to discuss any additional information you may have to provide. For example, we may ask you to provide an overview

of the organisational structure showing the economic ownership and control relationships, a substantiation of which entities within this structure are subject to the DNO requirement, or an explanation of the tax positions of the entities in the organisational structure.

Financial and non-financial relationships

If your organisation has financial or non-financial relationships with the target enterprise, you must describe the nature of these relationships and provide information on any shareholder agreements. The same applies if your organisation has financial or non-financial relationships with other shareholders or parties entitled to exercise voting rights, management or supervisory board members, or policymakers or co-policymakers of the MiCAR licence holder.

You may provide information on the extent of control that shareholders jointly hold in the enterprise (see also "acting in concert"), the voting right ratios and the persons that codetermine the enterprise's policy in addition to the shareholders. You must also state if there are any intra-group financial loans or claims within the group of shareholders.

Conflicts of interests

If your financial and non-financial relationships or any other interests or activities are likely to cause a conflict of interests with respect to the MiCAR licence holder, you must describe any measures taken to mitigate such conflicts of interests.

Trusts

Please indicate whether the proposed qualifying holding relates to a trust, and if this is the case, you should indicate whether this trust is a legal entity and provide the names and details of the settlors, trustees and beneficial owners of the trust. The trustees are the individuals managing the trust's assets. The beneficial owners are the ultimate rightful claimants to the trust's assets. Please provide a description of the type of trust, stating which natural persons are responsible for exercising control on behalf of the trust.

Please provide a list of trustees and a description of their respective shares in the distribution of income. You must also provide a list of beneficial owners with a qualifying holding, and a description of their respective shares in the distribution of income.

4 Reputation

Step H. in the digital DNO application form.

The propriety of the applicant of a DNO must of course be beyond doubt. In addition to the propriety assessment we also assess DNO applicants' competence. In assessing competence, we distinguish between management competence and technical competence. Management competence largely depends on experience in acquiring and managing holdings, and the careful consideration observed in the process. Technical competence is mostly evident through experience in leading a MiCAR licence holder as a majority shareholder. The experience must also show proof of exercising due care. Together, propriety and competence determine the applicant's reputation.

If the applicant is a natural person, we will assess this individual's reputation. If the applicant is a legal entity, we will assess the reputation of the legal entity and of its day-to-day policymakers. All individuals to be assessed must complete and submit a separate "Initial assessment application form for a declaration of no-objection". An authorised representative may also do this on their behalf.

We perform track record assessments based on the information provided by the natural person to be assessed, and our review of that information. We verify whether the propriety of this person is beyond doubt. The person's intentions, actions and antecedents must not stand in the way of performing the duties of the job. In particular, we review criminal, financial and tax compliance, supervisory and tax administrative law antecedents, and other relevant information.

If the applicant is a legal entity

Please provide a list of all day-to-day policymakers of the legal entity submitting the application. It is your responsibility as an applicant to ensure we receive the necessary information for our assessments in time. If the acquisition or increase of the qualifying holding involves the appointment of a management or supervisory board member at the MiCAR licence holder, the digital "Application form for an initial assessment or regular assessment in the context of a licence" must be completed and submitted for this individual.

If the applicant is a natural person

On the digital form you must indicate whether the natural person is a day-to-day policymaker of the MiCAR licence holder in which the qualifying holding is to be acquired. If this is not the case, the digital "Initial assessment application form for a declaration of no-objection" must be submitted by or on behalf of this individual.

Additional questions

Please answer two additional questions. The policymakers of the applicant institution or the applicant (as a natural person) must provide an overview of their involvement in other enterprises as a shareholder or board member. The policymaker must also indicate if and how they are related to politically exposed persons (PEPs). PEP's are individuals who are or have been entrusted with prominent public functions, as well as the immediate family members or close associates of these individuals. If the policymaker is married to a PEP or is otherwise related to PEPs as a blood relative or in a financial sense, they may be at a higher risk of blackmail or other forms of pressure.

Appointments

The acquisition or increase of the qualifying holding may involve the appointment of a day-to-day policymaker or supervisory board member at the MiCAR licence holder with registered offices in the Netherlands. We will assess this day-to-day policymaker or supervisory board member on fitness and propriety. You need to submit specific information for this assessment; click this [link](#) for more information. The fit and proper assessment takes place before the appointment. If the appointment is connected to the proposed acquisition or increase of the qualifying holding, it will be considered as part of the DNO application assessment. The MiCAR licence holder must submit the application and the information required for the fit and proper assessment.

Certificate of good conduct/ criminal record extract

As part of the reputation assessment, you must be able to submit a statement issued by a competent authority on (the absence of) criminal-law antecedents. Please check our Open Book on Supervision pages for information about the situations in which a certificate of good conduct or a criminal record extract is required.

If you are unable to submit this statement for whichever reason, we recommend that you contact us before submitting your application.

5 Applicant's financial soundness

Step 1. in the digital DNO application form.

Business case

We assess the applicant's financial soundness to check whether it is able to finance the proposed qualifying holding and whether it is able to maintain a healthy financial situation for itself and for the MiCAR licence holder in the medium term. We therefore focus on the aim of the proposed acquisition or increase of the qualifying holding.

You must explain these aspects in a business case, in which you describe the period for which the proposed holding is to be held and your intentions with respect to the qualifying holding. You should also indicate whether you intend to act as an active or passive shareholder.

Finally, you must include a track record of investments in the financial sector over the past five years, unless of course this is your first investment. In that case, you only need to confirm there are no other investments in the financial sector.

Applicant's financial soundness

In order to assess the applicant's financial soundness, it must submit its most recent financial figures. The information to be provided depends on whether the application is submitted by a natural person or a legal entity.

Legal entity

A legal entity must submit the following documents:

- annual financial statements/balance sheets over the last three financial years, together with an independent auditor's report
- a credit rating if available

If the financial statements and independent auditor's reports are not available for all years, the most recent annual accounts must in any event have been audited by an independent auditor. The most recent financial statements must not be older than twelve months before the date of submission. If the period between the DNO application and the most recent financial statements is more than twelve months, you must provide an interim balance sheet or statement of assets together with an independent auditor's report, security interests and guarantees.

If the legal entity is newly formed or still in formation, you must submit a formation balance sheet together with an external auditor's report or a pro forma balance sheet.

The financial statements and independent auditor's report must comprise:

- a balance sheet;
- profit and loss account
- notes to the financial statements and any other relevant financial information;
- off-balance sheet liabilities (where applicable).

Natural person

A natural person must submit the following documents.

- A recent list of assets including security interests and guarantees, not older than twelve months and submitted together with an independent auditor's report of factual findings.
- An overview of holdings in the financial sector in which the applicant has an interest of over 50%.

The independent auditor's report on agreed-upon procedures must include a detailed description of the procedures performed in accordance with the International Standard on Related Services (ISRS) 4400, "Engagements to Perform Agreed-Upon Procedures Regarding Financial Information".

6 Impact on the MiCAR licence holder/qualifying holding

Step J. in the digital DNO application form.

Please describe the impact that you as the applicant expect to have on the MiCAR licence holder. The information to be provided depends on your or your enterprise's degree of control in the MiCAR licence holder, also taking into account the bandwidth. Again, you must take situations of acting in concert into account (see section 3 of these explanatory notes).

All bandwidths

Explanatory notes

Please provide a description of the bandwidth of control and how control is exercised with respect to:

- The financial position of the MiCAR licence holder (e.g. dividend policy).
- The strategic policy of MiCAR licence holder.
- The allocation of funds and resources of the MiCAR licence holder.

Policy plan

Besides this additional information, you must submit a policy plan setting out your intentions and expectations regarding the qualifying holding in the medium term, addressing at least the following points:

- financial targets for the medium term (e.g. return on equity, cost-benefits ratio, earnings per share, etc.);
- possible redirection of activities/products/targeted customers and possible reallocation of funds and resources of the MiCAR licence holder;
- integration of the MiCAR licence holder into the applicant's group structure, describing the expected synergies/cost benefits, and a description of the group policy regarding intragroup transactions and intra-group relationships.

- possible changes with respect to governance (management board, supervisory board, key functions).

Additional information for a bandwidth of up to 100%

Change of control

If the applicant obtains majority control in the MiCAR licence holder, implying a change in control, the following information must be submitted to substantiate the proposed holding.

- The intended strategy for the next three years with respect to the holding.
- A detailed description of the significant changes the applicant envisages for the MiCAR licence holder.
- A description of the applicant's intentions and expectations regarding the financial enterprise for the medium term, addressing the following points:
 - Outlook for financial position
 - Corporate governance and organisational structure

Outlook for financial position

We also require you to submit information about the outlook for the financial position of the MiCAR licence holder at the consolidated and individual levels for the next three years, including:

- a balance sheet and profit and loss account;
- relevant prudential capital requirements and solvency ratios;
- information on the level of risk exposures (credit risk, market risk, operational risk, etc.) for the MiCAR licence holder.
- Estimated intra-group claims and liabilities.

Corporate governance and organisational structure

proposed qualifying holding on the corporate governance and the organisational structure of the MiCAR licence holder. You must at least address the following subjects.

- The composition (including proposed appointments) and duties of the management board and the main committees and bodies (e.g. senior management team, risk committee, audit committee, remuneration committee, etc.) and key function holders.
- Changes in procedures and systems related to administration, accounting, audit, internal control, and compliance (including anti-money laundering policy), including intended appointments in key positions in these areas (e.g. auditor, controller, compliance officer and a portfolio manager appointed by the applicant with respect to the proposed holding).

- IT systems and IT architecture. This involves changes in e.g. the following areas:
 - outsourcing policy;
 - data flowchart;
 - in-house and external software;
 - essential data;
 - system security procedures and tools (e.g. back-up systems, continuity plans, audit trails, etc.)
- The outsourcing policy (e.g. type of operational processes, selection of external service providers, etc.), and the rights and obligations of the parties involved in the outsourcing agreements (e.g. audit arrangements, service level agreements, etc.).

Please contact us if you have any questions about the information to be submitted.

7 Funding

Step K. in the digital DNO application form

Please provide information on how the proposed holding is to be financed, including information on the source of funds and the transfer of payments. Based on the information you submit – and in order to issue a DNO to you – we must be able to exclude that the financing of the qualifying holding is used for purpose of money laundering or terrorist financing.

You must include the following information with your application:

- Details on the origin of the resources used to finance the proposed holding and the proportion of borrowed capital in the total amount.
 - Information on the means and the network used to transfer payments for the proposed holding (availability of resources, financial arrangements)
 - Information on the means used to access capital sources and capital markets.
 - Information on the financial instruments to be issued for the funding of the proposed holding, at least specifying the underwriting of such instruments and their maturities, terms and conditions, security interests and guarantees.
- Information on whether the applicant, for the funding of the proposed holding has entered into any kind of financial relationship with other shareholders (or future shareholders) of the target MiCAR licence holder, at least specifying maturities, terms, pledges and guarantees.
 - Information on the extent to which the applicant's assets or those of the MiCAR licence holder are to be sold in the short term, at least specifying conditions of sale, price and valuation, and details on their characteristics.

De Nederlandsche Bank N.V.
PO Box 98, 1000 AB Amsterdam
+31 (0)20 524 91 11
www.dnb.nl/en

Follow us on:



DeNederlandscheBank

EUROSYSTEM