

# Virtual assets: CSSF and ESMA positions

## 1. ESMA FAQ on AIFMD: investment in crypto-assets

In the November 2021 update of its [FAQ on AIFMD](#), ESMA answered the question of whether the managers of undertakings investing in crypto-assets are subject to AIFMD.

In its analysis, ESMA recalls the importance (i) of assessing on a case-by-case basis the conditions to be fulfilled in order to qualify as an 'AIF' and (ii) of considering the guidance provided by ESMA in the Guidelines on key concepts of the AIFMD ([ESMA/2013/611](#)).

On that basis, ESMA states that (i) collective investment undertakings which (ii) raise capital (iii) from a number of investors to invest in crypto-assets (iv) in accordance with a defined investment policy for the benefit of those investors, will qualify as 'AIF' and as the AIFMD does not provide for a list of eligible or non-eligible assets, AIFs may in principle invest in any traditional or alternative assets (i.e. including in crypto-assets).

ESMA, however, also insists on the specific investment and risk diversification requirements and the limitations regarding the target investors that may exist at national level for AIFs investing in crypto-assets. A joint ESMA, EBA and EIOPA warning statement on the high risks involved in investments in crypto-assets was also published in February 2018 ([ESMA50-164-1284](#)).

According to ESMA, market participants and investors should be alert to the high risks of buying and/or holding these assets, including the possibility of losing their investment entirely.

## 2. CSSF FAQ on virtual assets

In November 2021, the CSSF addressed the possibility for UCIs to invest in virtual assets and published an [FAQ](#) on virtual assets providing guidance in relation thereto.

In this FAQ, which was updated in January 2022, the CSSF notably states that:

- UCITS are not allowed to invest directly or indirectly in virtual assets as defined in Article 1 (20b) of the AML Law<sup>1</sup> (which does not cover virtual assets fulfilling the conditions of financial instruments within the meaning of MiFID<sup>2</sup>) (as per the previous CSSF position). Any assets qualifying as financial instruments under MiFID

may therefore potentially be eligible for UCITS, such as shares of companies active in the virtual asset ecosystem; and

- AIFs are authorised to invest in virtual assets under certain circumstances.

For more details on the CSSF's position on this topic, please read [here](#).

- **1. AML Law** refers to the **Law of 12 November 2004**, on the fight against money laundering and terrorist financing, as amended.
- **2. MiFID** refers to **Directive 2014/65/EU of 15 May 2014**, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

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