MiCA: Understanding the EU's crypto-asset law

2nd edition

XReg.Consulting

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Abbreviations

AML	Anti-money laundering
CASP	Crypto-asset service provider
CFT	Countering the financing of terrorism
DeFi	Decentralised finance
DLT	Distributed ledger technology
ECB	European Central Bank
EIB	European Investment Bank
E-money	Electronic money
EBA	European Banking Authority
EEA	European Economic Area (comprising the EU countries and also Iceland, Liechtenstein and Norway)
ESMA	European Securities and Markets Authority
EU	European Union (comprising Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden)
MiCA	Markets in Crypto-assets Regulation
MiFID II	Markets in Financial Instruments Directive
NCA	National Competent Authority

Introduction

In October 2022, the Council of the EU adopted a text of the Markets in Crypto-assets Regulation (**MiCA**), three months after the completion of the Trilogue negotiations with the European Parliament and the European Commission and more than two years after its introduction.

MiCA is a significant piece in the Digital Finance regulatory architecture of the EU and sets the scene for how crypto-assets will become part of the mainstream financial and payments systems in Europe. The Regulation harmonises the EU framework with the Financial Action Task Force's Recommendations through the alignment of definitions and scope of application, a step it considers crucial to tackle the risk of regulatory arbitrage.

As an EU Regulation with EEA applicability, MiCA will be both (a) directly applicable and (b) **in force across the EU's 27 Member States** (together with Norway, Iceland and Liechtenstein) without the need for nationally implemented legislation (though some countries might anyway choose to pass their own legislation to optimise MiCA's effectiveness and enforceability). MiCA will thereby **establish a common framework** and prevent anomalies resulting from different national interpretations. As such, references in this report to the EU can be understood as references to the EEA, unless otherwise noted.

Consumer and investor protection is MiCA's primary focus. In particular, requirements to increase transparency and regulatory oversight aim to **level the playing field** between the traditional and crypto-asset industries, although some provisions may unintentionally favour market incumbents. These measures should help protect consumers and investors from extensive **market manipulation and fraud** that has too often gone unchecked due to a lack of regulation. The protection of consumers and investors and the introduction of measures to ensure market integrity should help **build trust in crypto-assets** with both consumers and financial institutions. This may ultimately lead to more widespread use of crypto-assets and distributed ledger and blockchain technologies that underpin many of them.

MiCA is expected to have an impact well beyond the borders of the EU as other jurisdictions, including the United States, will be keeping an eye on the EU's approach to crypto-asset regulation.

This report aims to provide **an accurate summary of MiCA**. It is meant to be provisional and indicative rather than exhaustive. It sets out MiCA's most important requirements, providing an overview of each section or Title and some implications for the crypto-asset industry.

This report is not intended to and does not constitute legal advice and should not be relied upon as such. Further, it is based on the text as provisionally agreed by relevant EU institutions. Readers should be aware that this MiCA text remains subject to approval by the European Parliament. A vote for adoption is likely to happen in the early part of 2023.

Executive Summary

Comprising nine Titles and six Annexes in almost 400 pages of text, MiCA achieves a number of important policy goals. Specifically, it establishes:

a) transparency and disclosure requirements for the issuance, offering to the public and admission to trading of crypto-assets on crypto-asset trading platforms;

b) authorisation and supervision requirements for crypto-asset service providers (**CASPs**) and issuers of stablecoins (**ARTs** or **EMTs**);

c) requirements for the operation, organisation and governance of issuers;

d) protections for holders of crypto-assets in connection with the issuance, offering to the public and admission to trading of those crypto-assets;

e) protections for clients of CASPs; and

f) requirements for preventing insider dealing and unlawful disclosure of inside information and market manipulation related to crypto-assets.

In addition, **MiCA is limited in scope**, applicable to crypto-assets that do not meet existing qualifications under EU financial services legislation. It also **sets out important definitions** and provides for the European Commission to adopt delegated acts to specify technical elements of those definitions in order to ensure they capture market and technological developments.

MiCA regulates the issuance and distribution of stablecoins, which are defined as **electronic money tokens** (EMTs) or **asset-referenced tokens** (ARTs), and **crypto-assets that are neither ARTs or EMTs**. Authorisation rules sit across **Title II**, **Title III** and **Title IV**. A key across-the-board requirement is that all issuers must be **established as legal persons** and **produce a white paper** that sets out required information.

Also of note are the **criteria to determine whether ARTs and EMTs are 'significant'**, which include threshold values relating to customer base, value or market capitalisation, number or volume of transactions, and the international scale of activities of the issuer.

It also determines provisions on authorisation, operating conditions, liabilities and prudential responsibilities of CASPs in **Title V**. **Title VI** establishes the mechanisms that prevent market abuse in connection with crypto-assets.

The functions of the national competent authorities (**NCAs**), the European Banking Authority (**EBA**) and the European Securities and Markets Authority (**ESMA**) in relation to crypto-assets are set out in **Title VII**. Much of the responsibility of **supervising MiCA falls on the shoulders of the NCAs**. Member States must designate the NCAs responsible for carrying out the function and duties provided for in MiCA and inform the EBA and ESMA.

MiCA sets out the EBA's supervisory powers and competences on issuers of significant ARTs and significant EMTs. It also provides for a permanent EBA crypto-assets committee and the establishment of consultative supervisory colleges for issuers of significant ARTs and significant EMTs.

Title VIII comprises a series of 'house-keeping' provisions regarding the European Commission's power to adopt delegated acts and procedural matters around the hearing of persons affected by EBA decisions.

Finally, Title IX sets out transitional and final provisions that concern other EU institutions. The European Commission is obligated to **present a report** to the European Parliament and the Council **on the latest developments in crypto-assets** with particular regard to those areas not covered by MiCA. The results will be of interest to regulators and private-sector actors alike.

MiCA defers significant details on technical standards and practical issues to a later stage, during the process of adopting delegated acts (or what are referred to as Level 2 measures). With the participation of the pertinent European Supervisory Authorities (EBA, ESMA and ECB) and the NCAs, the **Level 2 measures will determine significant topics**, like more specific whitepaper requirements, authorisation and licensing details, environmental impact disclosure requirements, reporting processes and details around the investment of capital reserves for stablecoins.

We expect MiCA to be adopted by the European Parliament and then published in the Official Journal of the EU (OJ) in Q1 or early Q2 of 2023. If so, MiCA is expected to operate across the EU in 2024.

Title I: Subject Matter, Scope and Definitions

Subject Matter

Several cross-cutting, uniform requirements are established by MiCA to ensure broad application to the crypto-asset industry. These requirements cover the following areas under Article 1:

a) transparency and disclosure;

b) authorisation and supervision;

c) operation, organisation and governance;

d) consumer protection;

e) prevention of market abuse.

Transparency and disclosure requirements will apply to both the issuance and admission to trading of crypto-assets. These activities have been largely unregulated across the EU except in certain jurisdictions where legislation is in place for activities such as Initial Coin Offerings (**ICOs**), or where the crypto-asset meets the definition of a financial instrument under the current EU framework and is therefore outside MiCA's scope.

Requirements relating to **authorisation and supervision**, as well as to **operation, organisation and governance,** will apply to CASPs, issuers of ARTs and issuers of EMTs.

Wider requirements aimed at consumer protection, including requirements on transparency and disclosure, will apply to the issuance, trading, exchange, and custody of all crypto-assets, (i.e., crypto-assets other than ARTs and EMTs), thus aiming to establish a safer environment for consumers at each stage of their interactions with crypto-assets.

Further, MiCA introduces measures to ensure the **prevention of market abuse** in order to protect the integrity of crypto-asset markets, including requirements for CASPs to monitor, detect and report market abuse.

Scope

MiCA applies to natural and legal persons and other undertakings engaged in the issuance, offering to the public and admission to trading of crypto-assets and to the provision of services related to crypto-assets within the EU. It outlines certain exemptions to this broad scope of application.

First, under Article 2(2), various entities and persons are exempt from MiCA, including the **ECB** and **EIB**, **national central banks** when acting as monetary authorities, liquidators and administrators in specified circumstances and **CASPs serving their parent companies** exclusively.

Second, Article 2(3) lists those crypto-assets that fall within the scope of other legislation and are therefore **exempt from MiCA**:

a) **financial instruments** (as defined under the Markets in Financial Instruments Directive II[1] (MiFID II) Article 4(1)(15));

b) **deposits** (as defined under the Deposit Guarantee Schemes Directive[2] Article 2(1)(3));

[1] Directive 2014/65/EU.
[2] Directive 2014/49/EU.

c) **structured deposits** (as defined under MiFID II Article 4(1)(43));

d) **funds** (as defined by the PSD2 in Article 4 (25));

e) **securitisation** (as defined under the Securitisation Regulation[3] Article 2(1));

f) certain **insurance, pension, and social security products**.

However, these exemptions do not necessarily indicate that the relevant activity is unregulated but rather that the activity is caught by other EU financial services legislation.

Within 18 months of MiCA's entry into force, ESMA will issue **guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments.** This will help to clarify cases in which crypto-assets fall within scope of MiFID II.

Significantly, Article 2(2)a specifies that MiCA excludes from its scope crypto-assets that are unique and not fungible and therefore does not apply to non-fungible tokens (**NFTs**), including digital art and collectables.

However, MiCA's recitals are clear that MiCA will apply to crypto-assets that appear unique and not fungible, but whose actual characteristics and uses do in fact make them either fungible or not unique. MiCA also clarifies that fractionalised NFTs should not be considered unique and not fungible. In addition, **the issuance of NFTs in a large series or collection is considered an indicator of fungibility**.

Decentralised finance (**DeFi**), or the wide range of crypto-asset services administered through the use of distributed ledger technology and without the involvement of centralised intermediaries, **does not fall within the scope of MiCA**. However, MiCA will apply to persons or undertakings if only part of such activity or services is performed, provided or controlled (directly or indirectly) in a decentralised way.

Bitcoin and other crypto-assets based on fully decentralised protocols are explicitly excluded from the Regulation. Many crypto-asset issuers and service providers that are actually controlled by centralised authorities but are operating under the guise of decentralisation may be held accountable under MiCA.

Also noteworthy is that MiCA does not address lending and borrowing in crypto-assets, including e-money tokens, and is therefore without prejudice to applicable national law.

Definitions

MiCA provides an extensive list of definitions relating to crypto-assets under Article 3(1), including, most notably:

a) **crypto-asset:** a digital representation of value or rights which may be transferred and stored electronically using distributed ledger technology or similar technology. Note that digital

[3] Regulation (EU) 2017/2402.

assets that cannot be transferred to other holders do not fall within this definition. This means that digital assets which are only accepted by the issuer or the offeror are excluded from MiCA's scope. An example of such assets would include those awarded via loyalty schemes that can be exchanged for benefits only with the issuer or offeror of the points;

b) **ARTs:** a type of crypto-asset that is not an electronic money token (**EMT**) and that purports to maintain a stable value by referencing any other value or right or a combination thereof, including one or more official currencies;

c) **EMTs:** a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency;

d) **CASPs:** legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis, and who are allowed to provide crypto-asset services in accordance with Article 53;

e) **crypto-asset service:** any of the services and activities listed relating to any crypto-asset under Article 3(1)(9);

f) **issuer of crypto-assets:** any natural or legal person or other undertaking who issues the crypto-assets;

g) **offeror:** any natural or legal person or other undertaking (or the issuer) who offers crypto-assets to the public;

h) **offer to the public:** refers to communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable potential holders to decide whether or not to purchase those crypto-assets.

Crypto-asset services under Article 3(1)(9)

(a) the custody and administration of crypto-assets on behalf of third parties;
(b) the operation of a trading platform for crypto-assets;
(c) the exchange of crypto-assets for funds;
(d) the exchange of crypto-assets for other crypto-assets;
(e) the execution of orders for crypto-assets on behalf of third parties;
(f) placing of crypto-assets;
(g) providing transfer services for crypto-assets on behalf of third parties;
(h) the reception and transmission of orders for crypto-assets on behalf of third parties;
(i) providing advice on crypto-assets; and
(j) providing portfolio management on crypto-assets.

Article 3 also includes definitions of other important terms such as “custody and administration of crypto-assets on behalf of third parties”, “operation of a trading platform for crypto-assets”, “placing of crypto-assets”, “providing advice on crypto-assets”, “providing portfolio management on crypto-assets”, “execution of orders” or “exchange of crypto for funds” and “crypto to crypto”.

While crypto-asset terminology has often diverged across the EU, **MiCA’s definitions will support regulatory harmony in the EU crypto-asset industry**. For example, the alternative terms to 'crypto-asset' used in recent years include 'virtual asset', 'virtual currency', 'digital currency', and 'cryptocurrency'. Also, the term 'stablecoin' has frequently been used to refer to assets which constitute an ’ART’ or an 'EMT' under MiCA. Further, persons defined in MiCA as a ‘CASP’ have often been referred to as a 'crypto-asset business' or a 'virtual asset service provider' (**VASP**).

Under Article 3(2), the European Commission has the power to adopt delegated acts to adjust the definitions in line with market and technological developments. This ensures **MiCA will continue to be broadly and uniformly applicable**, including to new innovations in the crypto-asset sector. For example, the already lengthy list of crypto-asset services may be extended to include new types of services as they emerge.

MiCA’s comprehensive list of crypto-asset definitions and services will support the broad and uniform application of MiCA across the EU. Further, the flexibility for amendments to MiCA will be key in maintaining its widespread application in line with future industry developments.

Title II: Crypto-Assets other than ARTs or EMTs

To offer and market crypto-assets other than ARTs and EMTs (such as e.g., utility tokens) in the EU, issuers must be a legal person and must publish a white paper prepared in accordance with Article 5. Equivalent requirements apply for the admission of crypto-assets other than ARTs and EMTs to trading on a trading platform for crypto assets.

An offeror of these types of crypto-assets can take advantage of certain exemptions, including where:

(a) the crypto-assets are offered for free

(b) the crypto-assets are automatically created as a reward for the maintenance of the DLT or the validation of transactions

(ca) the offer concerns a utility token of a good or service which exists or is in operation

(cb) the holder of the crypto-asset has only the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.

Under Article 13(1), offerors and persons seeking admission to trading of crypto-assets, other than ARTs and EMTs are required to:

(a) act **honestly, fairly and professionally;**

(b) communicate with the holders of crypto-assets in a **fair, clear and not misleading manner**;

(c) prevent, identify, manage and disclose any **conflicts of interest** that may arise;

(d) maintain all of their **systems and security access protocols** to appropriate EU standards.

Further, there are a number of **consumer protection provisions** under MiCA, such as a requirement to act in the **best interests of the holders of crypto-assets**. This requirement further mandates that no purchaser of crypto-assets shall obtain **preferential treatment** as regards another, unless such preferential treatment is **disclosed in the white paper**.

This requirement will ensure that it is not possible to offer large discounts to early purchasers of tokens without publicly disclosing the terms of the offer. Many of the early initial coin offerings (ICOs) involved a private sale with a substantial discount to the initial (often institutional) backers of a project.

Under Article 9, offerors that set a **time limit** for their offer to the public must have effective arrangements in place to **monitor and safeguard the funds**, or other crypto-assets, raised during the offer. This means that the funds or other crypto-assets collected during the offer to the public must be **kept in custody** by either:

(a) a credit institution, where funds are raised during the offer to the public;

(b) a CASP authorised for the custody and administration of crypto-assets on behalf of third parties.

The requirement to keep funds raised in the custody of a credit institution or CASP would transform the way in which time-bound token sales are undertaken and might give rise to complexities if the funds raised cannot be held in self-custody or a smart contract deployed by the issuer.

Offerors who do not set a time limit for their offer to the public must publish the number of crypto-assets in circulation on their website on a monthly basis. Where an offering of crypto-assets is **cancelled** for any reason, it is necessary to ensure that any funds collected from the purchasers are **returned to them** no later than 25 days after the date of cancellation.

The white paper

A person seeking admission of a crypto-asset other than an ART or EMT to trading on a trading platform must draft and publish a crypto-asset white paper. A white paper needs to include fair, clear and concise information that is not misleading, as outlined under Article 5(1):

a) information about the offeror or the person seeking admission to trading;

b) information about the issuer, if different from the offeror or person seeking admission to trading;

c) information about the operator of the trading platform when it prepared the white paper;

d) if different from the persons referred to under a) to c), the identity of the person which prepared the crypto-asset white paper and the reason why that person prepared the crypto-asset white paper;

e) information about the crypto-asset project;

f) information about the offer to the public of crypto-assets or their admission to trading on a trading platform for crypto-assets;

g) information on the rights and obligations attached to the crypto-assets;

h) information on the underlying technology;

i) information on risks; and

j) information on principal adverse environmental and climate-related impact of the consensus mechanism used to issue the crypto-asset.

Additionally, the white paper must include the following statement, '*This crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset white paper.*'.

The white paper also needs to include a **summary** which should read as an introduction to the white paper and include a number of required statements, such as a confirmation that the white paper is not a prospectus and that the tokens issued are not financial instruments. Every white paper **must be dated**. It must also include a **statement** from the management body of the offeror, person seeking admission to trading of the crypto-assets or an operator of a trading platform **that**

confirms the white paper complies with the requirements of Title II, specifying that, to best of their knowledge, the information presented in the document is correct and **that there are no omissions** that make the white paper misleading.

The white paper must be written in **at least one of the official languages** of the home Member State or in a language customary in the sphere of international finance (effectively, English).

The white paper must be made available in **machine-readable formats**. ESMA, in cooperation with EBA, will develop technical standards to establish standard forms, formats and templates for the production of machine-readable white papers.

The full set of white paper requirements can be found in Article 5(1) to (11a) and Annex I.

Marketing

Rules for marketing include, under Article 6, that:

a) marketing communications are **clearly identifiable as such**;

b) the information is **fair, clear, and not misleading**;

c) the information contained in the marketing communications **is consistent with the information in the white paper**;

d) the marketing communications **clearly state that a white paper has been published** and indicate the **address of the website of the offeror** of the crypto-assets concerned;

e) there must be a clear and prominent statement to the effect that the marketing communication has not been approved by an NCA and that the offeror is solely responsible for its contents.

Notification requirements

Article 7 covers the **notification requirements** to **the NCA,** which include that:

a) NCAs will not be required to approve a white paper or any marketing communications. However, the white paper must be notified to the NCA twenty working days before publication.

b) An assessment must be provided explaining the reasons why the crypto-asset described in the white paper is not a financial instrument or other type of asset regulated under other EU legislation, a crypto-asset excluded from the scope of MiCA, or an ART.

c) The offeror or person seeking admission to trading will also inform the regulator of issuances planned in other Member States, as well as any planned listings on a trading platform which is not in its home Member State. The NCA will then need to inform the other NCAs where issuances or listings are planned within five working days.

Article 11 outlines the rules to modify the white paper (and, where applicable, promotional materials) following their initial publication.

Publication

Offerors and persons seeking admission to trading must publish all white papers on their website **no later than the starting date of the offering or admission to trading**. The published white paper

must **remain available on the offerors' or relevant persons' website** for as long as the crypto-assets are held by the public and be **identical to the version notified** to the relevant regulator.

Where a time limit is set on the public offering of crypto-assets, the results of the offering must be published within 16 working days from the end of the subscription period.

Passporting

Upon publication of the white paper under Articles 8 and/or 11, offerors and persons seeking admission to trading of crypto-assets other than ARTs and EMTs **may offer crypto-assets throughout the EU**, have them **admitted to trading in the EU** and are not subject to further information requirements.

Right of withdrawal

Article 12 provides that offerors of crypto-assets must offer a **right of withdrawal** to retail holders who purchase these crypto-assets either directly from the offeror or a CASP selling the crypto-assets on behalf of the offeror. Retail holders may exercise this right to **withdraw their crypto-asset purchase agreement** without incurring costs up to 14 days after their purchase. Information relating to this right must be included in the crypto-asset white paper.

The relevant **offeror or CASP** must **reimburse all payments** received by the retail holder without undue delay and **no later than 14 days after being informed** of the retail holder's withdrawal decision.

The right of withdrawal **does not apply where the crypto-assets are admitted to a trading platform and may not be exercised after the end of a public offering's subscription period.**

Currently, very few token issuances offer a right of withdrawal. Unless programmed into a smart contract which would allow customers to withdraw with little to no input by the offeror, this will require the implementation of procedures into the issuance process to allow for this right to be exercised.

Liability

Holders of crypto-assets other than ARTs and EMTs may **claim damages** from an offeror, operator of a trading platform or their management body for **breaches of the requirements** to provide detailed information in the white paper that is fair, clear, complete, and not misleading (under Article 5).

Title III: ARTs

Title III makes it clear that issuers of ARTs must be **authorised by the NCA** in their home Member State before offering tokens to the public or seeking admission of these tokens to trading on a trading platform. In order to obtain authorisation, issuers of ARTs must be **a legal person or other undertaking established in the EU** unless they are already a credit institution which complies with Article 15a or they are an undertaking which is not a legal person and meet certain specified requirements.

Additionally, authorisation will not be required where:

1) over a period of 12 months, the average outstanding value of all ARTs never exceeds EUR 5 million and the issuer is not linked to a network of issuers covered by this exemption or,
2) the offer of an ART is only made to, and may only be held by, qualified investors.

Despite these exemptions, **publication of a white paper is always required.** Entities authorised in a Member State will benefit from the right to passport, which means their authorisation will be valid across the EU.

Application for authorisation

When seeking authorisation as an issuer of ARTs, an entity must submit an **application** to the NCA in their home Member State. The application pack must include defined information including: a **business model** and **programme of operations**, a **legal opinion** confirming that the ARTs do not qualify as a crypto-asset excluded from the scope of MiCA under Article 2(3) or an e-money token, a detailed description of the **governance structure**, and the **white paper**.

Monitoring of ARTs

If an ART is issued with a value higher than EUR 100 million, the issuer will need to report the following to the NCA on a quarterly basis:

1) customer base,
2) value of ARTs issued and the size of the reserve assets,
3) average number and value of transaction per day, and
4) an estimation of the average number of transactions per day associated to uses as means of exchange within a single currency area.

NCAs have the discretion to require issuers that issue ARTs with a value lower than EUR 100 million to comply with the same reporting obligations.

Restrictions to issuing ARTs used widely as a means of exchange

Under Article 19b, when the **estimated quarterly average number** and **value of transactions per day** associated with use as means of exchange within a single currency area is **higher than 1 million and EUR 200 million, respectively**, the issuer is obliged to stop issuing the ART and present a plan to the NCA within 40 working days to ensure that the number and value of transactions will be kept below such thresholds. This provision prevents the widespread use of ARTs as a means of exchange within the EU and protects monetary sovereignty.

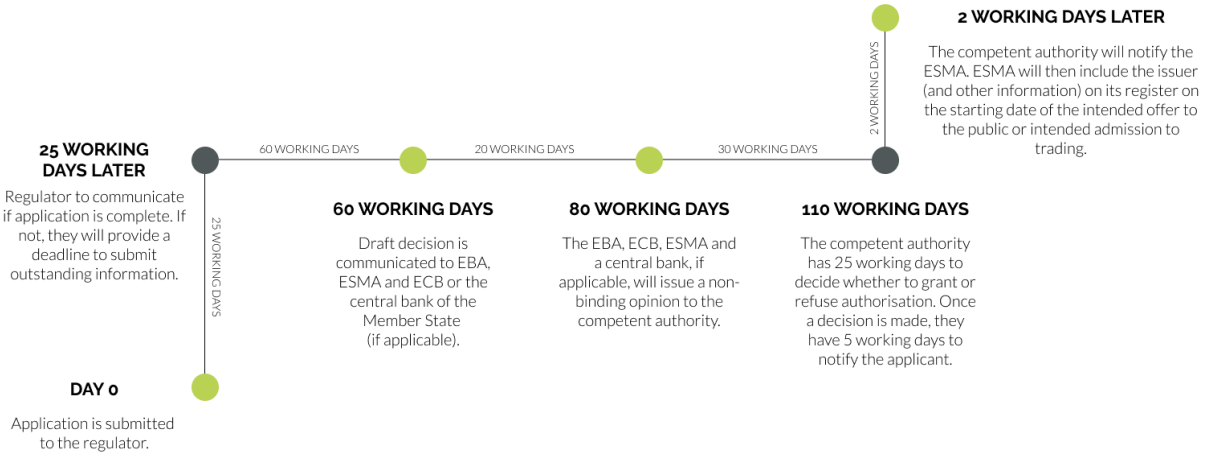
Crypto-asset white paper for ARTs

Crypto-asset white papers for ARTs must include all the information set out in Article 17. This includes information relating to the issuer, the ART, the offer to the public, the rights and obligations attached to the ART, the redemption rights, the underlying technology, the risks, the reserve assets and the environmental impact.

The white paper should also contain a clear and unambiguous statement that the ART may lose its value in part or in full, that it is not always transferable or liquid, that losses are not covered by investor compensation schemes and that there is no coverage by any deposit guarantee scheme.

Issuers of ARTs are held responsible for the information provided in the white paper.

Application timeline for ARTs



The above timeline reflects a scenario where the application process is not suspended. The application process may take longer if the NCA asks the applicant for further information when assessing whether the application is complete or complies with the applicable requirements. In both cases, the length of the delay will depend on how long the applicant takes to respond to the NCA's request for further information.

In any event, the NCA can only interrupt the application period once for a maximum period of 20 working days. This could work in an applicant's favour in that the NCA is not able to unreasonably delay the decision to grant or refuse an authorisation. On the other hand, it could be a potential disadvantage if the NCA is not satisfied with the information on hand but is nevertheless required to make a decision, it may decide to reject as opposed to accept.

Obligations of all issuers of ARTs

ART issuers will have to comply with **obligations similar to those for issuers of crypto-assets other than ARTs and EMTs** under Title II. In the case of ARTs, these are set out under chapter 2 of Title III and include, for example, the obligation to act **honestly, fairly and professionally** in the best interest of token holders, to comply with defined requirements on **marketing communications** and **complaint handling procedures,** and to have policies in place regarding **conflicts of interest.**

Ongoing information to holders of ARTs

Issuers of ARTs are required to provide certain information on an ongoing basis. For instance, the need to disclose on their website the **number of ARTs in circulation** and the **value and composition of the reserve assets** on a monthly basis. They are also required to disclose the **outcome of an audit of reserve assets**, which must be conducted every six months.

Currently, few stablecoin issuers make such public disclosures of reserves. Although the increased transparency will be welcomed by the industry, it will present an operational challenge for these firms.

The audit of reserve assets will present another challenge, as there are currently few audit firms which specialise in the audit of such assets. As such, the cost of these audits will make it difficult for smaller players to achieve and maintain compliance.

Governance arrangements

The management body of issuers of ARTs must be of good repute and must have the appropriate level of knowledge, skills, experience and, for certain positions, be suitably qualified to perform their duties. This is substantively equivalent to a 'fit and proper' test.

Issuers are also required to **maintain policies and procedures** that are sufficiently effective to ensure compliance with MiCA. These policies and procedures relate to, for example, the reserve assets and their custody or segregation, the rights or absence of rights granted to holders, the mechanism through which the tokens are issued, created, and destroyed, and the protocols for validating transactions and business continuity.

In addition, issuers of ARTs will need to implement systems and internal control mechanisms for security access protocols, risk assessment and management, data protection, and must be regularly audited by an independent auditor.

Own funds requirements

Issuers of ARTs must, at all times, have in place own funds equal to an amount of at least **the higher** of the following:

a) **EUR 350,000,**

b) **2% of the average amount of the reserve assets** referred to in Article 32, meaning the average amount of the reserve assets at the end of each calendar day, calculated over the preceding 6 months, or

c) a **quarter of the fixed overheads of the preceding year**, reviewed annually and calculated in accordance with Article 60(6).

Own funds must consist of the **Common Equity Tier 1 items and instruments** referred to in Articles 26 to 30 of the Capital Requirements Regulation[4].

NCAs of issuers of ARTs may require them to hold a number of their own funds **up to 20% higher** than the amount resulting from the application of the above point (b).

These capital requirements will make it challenging for some players to establish themselves as issuers of ARTs. On the other hand, prudential requirements will enhance consumer protection as issuers of ARTs will be better funded.

Obligation to have reserve of assets

ART issuers are required to **create and maintain a reserve of assets** that is operationally segregated from the issuer's estate and the reserve of assets of other tokens.

The reserve of assets must be composed and managed in such a way that the risks associated with the assets referenced by the ARTs are covered and that the liquidity risks associated with the permanent redemption rights of the holders are addressed.

Notably, issuers of ARTs must conduct stress-testing on a regular basis that considers severe but plausible financial stress scenarios (such as interest rate shocks) and non-financial stresses (such as operational risk). Based on the outcome of the stress-testing, NCAs may require issuers of ARTs to hold own funds between 20% and 40% higher than what would be ordinarily required.

It is left to the EBA, in close cooperation with ESMA and the ECB, to develop draft regulatory technical standards further specifying liquidity requirements that will consider various factors such as the size, complexity and nature of the reserve assets and the ART itself. The EBA will submit the draft regulatory technical standards twelve months from MiCA's entry into force.

Custody of reserve assets

Rules around the **custody of reserve assets** are broad and require that suitable policies, procedures, and contractual arrangements are established.

Several key requirements are:

a) reserve assets are not pledged as a financial collateral arrangement;

b) the issuers of ARTs have prompt access to the reserve assets to meet redemption requests from holders;

c) avoidance of concentration in the custodians of reserves; and

[4] 575/2013

d) avoidance of concentration risks in the reserves themselves.

Further, an issuer must produce a **separate custody policy for each reserve of assets** with respect to every issuance.

Reserve assets received in exchange for the ARTs are required to be held in custody **no later than 5 business days** after the issuance of the ARTs by either:

a) **a CASP** providing transfer services for crypto-assets on behalf of third parties;

b) **a credit institution** for all other types of reserve assets; or

c) **an investment firm** where the reserve assets take the form of financial instruments in connection with specified ancillary services.

This will be challenging for current providers that rely on crypto-assets to stabilise the token price relative to a reference asset. Assets such as DAI are stabilised by locking Ethereum in a smart contract in a collateralised debt position (CDP). A project such as this could require the assets to be stored by a third party, thus fundamentally changing the proposition.

Investment of the reserve assets

Reserve assets must only be invested in **highly liquid financial instruments** with **minimal market, credit and concentration risk** and must be capable of being **liquidated rapidly with minimal adverse price effects.**

All profits or losses, **including fluctuations in the value of the financial instruments** and any counterparty or operational risks that result from the investment of the reserve assets, are required to be borne by the issuer.

In cooperation with the ESMA and the ECB, the EBA will develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bear minimal credit and market risk.

Rights on issuers of ARTs

In the event the issuer of an ART cannot comply with its obligations, it must clearly communicate to token-holders their **redemption rights** and **rights to reserve assets**. Policies and procedures must be in place so that a holder of ARTs who requests redemption is able to do so. The issuer must redeem at any moment by paying in funds (other than e-money) the market value of the ARTs or by delivering the ARTs. The redemption of ARTs cannot be made subject to a fee.

The policies and procedures must include conditions, thresholds, periods, and timeframes for users to exercise rights, redemption mechanisms, valuation methodologies and fees.

Prohibition of interest

Issuers of ARTs must **not provide interest or any other benefit** related to the length of time during which investors hold such ARTs.

Classification of ARTs as significant

ARTs which meet at least the same three of the following criteria either in the first report following authorisation or in at least two consecutive reports, will be classified by the EBA as significant at the point of authorisation:

a) the number of holders of the ART is more than EUR 10 million;

b) the value of the ARTs issued, where applicable, their market capitalisation or the size of the reserve of assets of the issuer of the ARTs, is higher than EUR 5 billion;

c) the number and value of daily transactions is higher than EUR 2.5 million and EUR 500 million respectively;

d) the issuer of the ART is a provider of core platform services designed as gatekeeper in accordance with the Digital Markets Act[5];

e) the significance of the activities of the issuer of the ART on an international scale, including the use of the ART for payments and remittances;

f) the interconnectedness with the financial system;

g) whether the same legal person or other undertaking issues at least one more ART or EMT and provides at least one crypto-asset service.

If an ART is classified as significant, it will be re-assessed by regulators on at least a biannual basis and the **supervisory responsibilities on the issuer will be transferred to the EBA**.

Article 40 allows the issuer of an ART to voluntarily ask to be classified as significant during the authorisation process. In such a case, the NCA will inform the EBA, the ECB and the relevant central bank about the issuer's intention to be classified as significant. The EBA will then assess the request in a process that includes writing up a draft decision and inviting observations. The EBA takes a final decision within 60 working days after the initial notification of the issuer's request.

Additional obligations for issuers of significant ARTs

Requirements for issuers of significant ARTs will be more onerous than for non-significant token issuers given that the associated risks are significantly higher. Specific requirements for these types of issuers include:

A remuneration policy that promotes sound and effective risk management and that does not create incentives to relax risk standards.	Ensure that tokens can be held in **custody by different CASPs, including by CASPs not part of the same group**, on a fair, reasonable and non-discriminatory basis.	Establish **liquidity management policies and procedures. Conduct liquidity stress-testing on a regular basis;** the EBA may strengthen liquidity risk requirements as a result.	Capital requirement threshold shall be set at **3% of the average amount of the reserve assets** rather than 2% for those ARTs which are not significant.

[5] Regulation (EU) 2022/1925.

Recovery and orderly redemption

Under Article 41a, **an issuer of ARTs must draw up and maintain a recovery plan** under which it brings itself back into compliance with the requirements for reserve assets if it fails to comply with those requirements. The plan must include **provisions for the preservation of its services** related to the ARTs and its **fulfilment of operational obligations**.

More particularly, the recovery options need to include liquidity fees on redemptions, limits to the amount of ARTs to be redeemed on any working day and conditions for the suspension of redemptions. The NCA must be notified of the recovery plan within six months of authorisation or the date of the first issuance of the ART. The EBA will be issuing guidelines that specify the format of the recovery plan.

Article 42 requires issuers to draw up and maintain **an operational plan to support an orderly redemption of each ART**. The plan is to be implemented upon a decision by the NCA that the issuer is unable or likely unable to comply with its obligations, including in the case of insolvency, resolution or the withdrawal of authorisation of the issuer (without prejudice to the commencement of a crisis prevention measure or crisis management measure[6]).

[6] Directive 59/2014/EU or Regulation (EU) 2021/23).

Title IV: EMTs

EMTs are defined as a type of crypto-asset, the main purpose of which is **to be used as a means of payment or exchange**, and **that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender**.

Requirements

Issuers of EMTs will have to comply with two primary requirements:

1) to be **authorised as a bank or an e-money institution**; and
2) to **publish a white paper** notified to its NCA in accordance with Article 46.

In addition, Titles II and III of the Electronic Money Directive[7] apply to EMTs except as otherwise stated in Title IV of MiCA. For example, Title IV modifies some of the Electronic Money Directive's requirements around issuance and redeemability.

Notably, Article 43 deems EMTs to be electronic money (as defined in Article 2(2) of the Electronic Money Directive) and stipulates that an EMT that references an EU currency shall be deemed to be offered to the public in the EU.

Issuance and redeemability

This title requires issuers of EMTs to:

1) provide EMT holders with a **claim on the issuer** (any EMT that does not provide all holders with a claim is prohibited);
2) issue EMTs **at par value** on receipt of funds;
3) redeem, upon request of the holder, **at any moment and at par value**, the monetary value of the tokens held either **in cash or by credit transfer**; and
4) **state the conditions of redemption** prominently in the white paper.

Prohibition of interests

As with ARTs, issuers of EMTs must **not provide for interest or any other benefit** related to the length of time during which an investor holds the EMTs.

Content and form of the crypto-asset white paper for EMTs

The required **content and form of the white paper** for EMTs is similar to that required under **Title II** for offers or issuance of crypto-assets other than ARTs or EMTs. However, for EMTs there are a few additional requirements.

An EMT white paper must include **a contact telephone number** and **an email address of the issuer** and **a period of days during which an investor can contact the issuer and receive an answer**. Also, where applicable, **the total number of EMTs** being offered to the public or admitted to trading on a crypto-asset trading platform must be included as well as **information about technical requirements that a purchaser needs to fulfil to gain control over the EMT**.

[7] Directive 2009/110/EC

As with issuance of crypto-assets and ARTs under Title II and Title III respectively, there are provisions to give holders of EMTs the opportunity to **claim for damages** when there is an infringement of Article 46.

Marketing communications

Marketing communications are to be drawn up on the same basis as other issuances, with the additional requirement to contain **a clear and unambiguous statement** that all **holders of the EMTs have a redemption right at any time and at par value on the issuer**.

Investment of funds received in exchange for EMT issuers

Funds received by issuers of EMTs in exchange for EMTs and that are **invested in secure, low-risk assets**[8] must be **invested in assets denominated in the same currency** as the one referenced by the EMTs and deposited in a separate account in a credit institution. In any case, at least 30% of the funds received must always be deposited in a separate account in a credit institution.

Recovery and redemption plan

Following the methodology of issuers of ARTs, issuers of EMTs are also obliged to comply with Articles 41a and 42 and have in place a recovery and redemption plan.

Significant EMTs

The EBA **classifies EMTs as significant** using the **same criteria and on the same basis used to classify significant** ARTs, and where at least the same **three of the criteria** set out in Title III are met in the first report or in at least two consecutive reports. Where the token is considered significant, **the EBA will be the designated regulator of the issuer.** Issuers of EMTs, like issuers of ARTs, may volunteer for an EMT to be classified as significant.

Additional obligations

There are specific additional obligations for EMT issuers, such as the **obligation to have a reserve of assets**, and also regarding the **custody composition, management and investment of those reserves**. Further, the NCAs of a Member State may require **an e-money institution that issues non-significant EMTs** to comply with **specified requirements** necessary to address liquidity risks, operational risks, or risks arising from non-compliance with requirements for the management of reserve of assets.

There are also additional obligations applicable to EMTs **denominated in a currency that is not an official currency of an EU Member State**; for example, monitoring requirements for EMTs with a value issued higher than EUR 100 million, and various restrictions for EMTs widely used as a means of exchange.

This may limit market access for dollar-denominated stablecoins as their usage on EU CASPs will be significantly limited. Only EU currency-denominated EMTs will be widely used in European markets.

[8] In accordance with Article 7 of Directive 2009/110/EU.

Title V: Authorisation and operating conditions for CASPs

Any person providing, by way of business, any of the services defined in MiCA as crypto-asset services will be **categorised as a CASP** and will need to be **authorised as such to operate**.

CASPs seeking authorisation in the EU will need to demonstrate to their NCA that they have sufficient capital to prudently operate and to absorb losses; that they have effective governance arrangements and internal control systems; that they will act in their clients' best interests; and that they have systems in place to detect and prevent market abuse and market manipulation.

Authorisation of CASPs

The provision of crypto-asset services within the EU is restricted to: (1) MiCA-authorised CASPs (whether legal persons or other undertakings); and (2) credit institutions, central securities depositories, investment firms, market operators, e-money institutions, a management company of UCITS, or an alternative investment fund that is allowed to provide crypto-asset services under MiCA.

If a legal person is seeking authorisation under MiCA, **it will need to have a registered office in a Member State where they carry out at least part of their crypto-asset activities**. There should also be a place of effective management in the EU and at least one of the directors must reside in the EU.

As is currently the case with other types of financial services governed by European Directives and Regulations, MiCA will introduce **'passporting' rights**, which will allow **CASPs authorised in one Member State to provide crypto-asset services throughout the EU**, either by establishing a branch or some other form of physical presence or on the basis of the provision of services (i.e., remotely). CASPs looking to provide cross-border services would need to **notify their NCA**.

ESMA will be required to **maintain a public register of all CASPs authorised in the EU**.

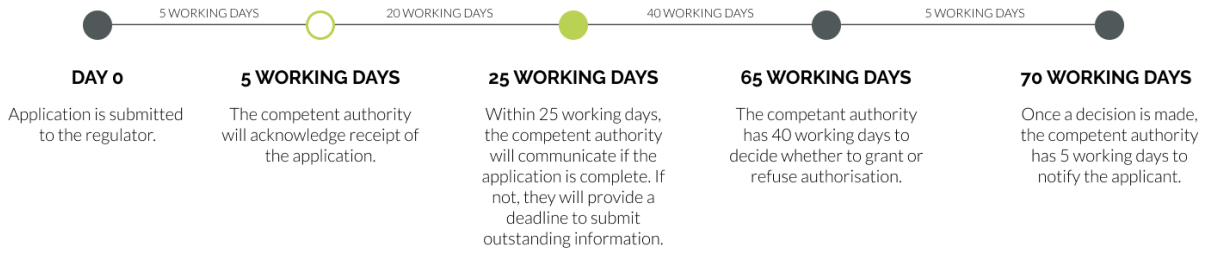
Legal persons seeking **authorisation as a CASP** will need to **submit an application** to the NCA in the Member State where they have their registered office. Article 54 of the Regulation provides a comprehensive list of the information that will need to be submitted as part of the application. The information required will include details of the legal entity, information on its policies and procedures, and its proposed programme of operations including governance arrangements, risk management, and a business continuity plan.

ESMA, in close cooperation with the EBA, will develop regulatory technical standards to specify the information that an application must contain, as well as standard forms, templates and procedures for the application.

Any CASP already operating in a Member State under an existing national crypto-asset regime will **not be required to resubmit any of the above information** as long as any information provided at the time of its authorisation is still up to date.

Regulators may refuse authorisation if they believe that authorising a CASP would pose a risk to consumers or the integrity of the market.

Application timeline for legal persons and other undertakings intending to provide crypto-asset services



Notably, to verify that an applicant has not been the subject of an investigation, NCAs may consult the AML/CFT competent authorities and relevant Financial Intelligence Unit before granting or refusing an authorisation to a CASP. An applicant CASP must also ensure that it complies with the high-risk third country requirements[9] insofar as the applicant relies on third parties established in such countries or operates establishments in such countries.

Prudential requirements

CASPs will need to **maintain sufficient prudential safeguards** which are equal to at least the higher of the following:

1) the minimum capital requirement prescribed in Annex IV, depending on the nature of the crypto-asset service which it provides; or
2) **one quarter of the fixed overheads of the previous year**, to be reviewed annually.

The prudential safeguards may take the form of own funds, an insurance policy covering the territories of the EU where crypto-asset services are provided, a comparable guarantee or a combination of these three forms.

Although this requirement will undoubtedly increase the cost and amount of capital needed to provide crypto-asset services across the EU, it should make firms become more resilient to market downturns and economic crises.

Additional requirements

Other requirements with which CASPs will need to comply include having in place procedures to handle **complaints** and manage **conflicts of interest**, as well as **provisions for outsourcing of certain activities.**

Organisational requirements

CASPs seeking authorisation in the EU will need to demonstrate to the NCA that their management body is **fit and proper** and that, collectively, they have an **appropriate level of knowledge, skills and experience** to perform their duties and comply with their regulatory obligations. Persons with qualifying holdings i.e., that own, directly or indirectly, more than 20% of

[9] Directive (EU) 2015/849.

the share capital or voting rights, or persons who exercise control of the CASP, will also need to demonstrate that they are fit and proper and are of sufficiently good repute.

Notably, all of the members of the applicant CASP's management body must provide proof of the absence of a criminal record in respect to convictions or the absence of relevant penalties under the relevant national rules in force in the fields of commercial law (including insolvency law, financial services legislation, AML/CFT legislation, fraud or professional liability). Further, to verify that the applicant has not been the subject of an investigation, NCAs may consult relevant AML/CFT authorities and the Financial Intelligence Unit before granting or refusing an application.

In order to obtain authorisation, **all CASPs must demonstrate that they meet the following key organisational requirements:**

 Employ personnel with the skills, knowledge and expertise necessary to discharge their responsibilities.	 Ensure continuity and regularity in the delivery of services to clients.	 Establish effective business continuity policies and disaster recovery plans.
 Have internal control mechanisms and effective procedures for risk assessment.	 Have systems and procedures to safeguard the security, integrity and confidentiality of information held.	 Keep records of all crypto-asset services, orders and transactions undertaken.
 Have systems and procedures in place to monitor and detect market abuse and be able to immediately report any suspicion to their NCA.		

ESMA will draft regulatory technical standards to specify the measures ensuring continuity and regularity in the performance of crypto-asset services and the way in which records of all crypto-asset services, orders and transactions undertaken are kept.

Safekeeping of clients' crypto-assets and funds

A CASP that is authorised to hold or access crypto-assets or fiat funds belonging to clients will need to **demonstrate it can safeguard** clients' ownership rights, especially in the event of insolvency, and to prevent the use of such assets for its own account.

Fiat funds belonging to clients will need to be held **separately from the CASPs' own funds,** either with a central bank or a credit institution.

Obligations for the provision of specific crypto-asset services

In addition to the general requirements that will apply to all CASPs, MiCA will introduce provisions designed to address risks inherent in certain activities, depending on the crypto-asset services provided. The specific requirements for each defined service are set out in the following sections.

Custody or access to crypto-assets on behalf of third parties

CASPs that provide **crypto-asset custody services** will need to demonstrate that they comply with the provisions set out in Article 67, designed to **minimise the risk of loss** of those assets.

They will need to have a **contract with each client** that clearly sets out the service being offered, the security system in place to protect the crypto-assets, and the fees and responsibilities of the CASP. CASPs will need to have a **custody policy** to ensure the safekeeping of crypto-assets and to maintain a register of all client positions.

MiCA requires **CASPs to keep any crypto-assets held in custody separate from their own holdings.**

CASPs will be held liable for any losses resulting from malfunctions or hacks, up to the market value of the crypto-assets lost.

Operation of a trading platform for crypto-assets

CASPs authorised to operate a trading platform will need to comply with the requirements set out in Article 68 and **establish operating rules**. The operating rules include minimum **due diligence and approval processes** for the admittance of crypto-assets, **policies and procedures** regarding fees and liquidity and requirements to ensure fair and orderly trading.

CASPs will be responsible for ensuring that **all listings comply with operating rules,** and that no crypto-asset should be admitted unless it has published **a white paper in line with MiCA**.

Crypto-assets with inherent anonymisation functions (such as 'privacy coins') can only be admitted onto a trading platform if the holders of the crypto-assets and their transaction history can be identified by the CASP or the relevant regulator.

This looks to be almost impossible to comply with and may result in most EU crypto-asset exchanges delisting privacy coins.

Fee structures must be transparent, fair and non-discriminatory and not create incentives that could lead to disorderly trading conditions or market abuse.

CASPs will need to ensure that their trading systems are resilient and have the capacity to operate under severe market stress.

Exchange of crypto-assets against fiat currency or other crypto-assets

CASPs authorised to exchange crypto-assets against fiat currency or other crypto-assets will need to establish a **non-discriminatory commercial policy** that indicates the type of clients they accept

and the conditions that must be met by those clients. They must publish a firm price for any crypto-assets exchanged or the method used to determine the price of such crypto-assets.

Execution of orders for crypto-assets on behalf of third parties

CASPs authorised to execute orders for crypto-assets must ensure that they **secure the best possible result for their clients,** taking into account best execution factors such as price, cost and speed, unless following explicit client instructions.

An **order execution policy** which seeks to prevent the misuse by employees of any information relating to client orders must be established.

Reception and transmission of orders on behalf of third parties

CASPs authorised to provide reception and transmission of orders are required to implement procedures and arrangements to ensure the **prompt and proper transmission** of clients' orders.

Also, **CASPs must not receive any remuneration** or other incentive for routing orders received from clients to a particular trading platform or to another CASP. In addition, they must not misuse any information held relating to pending clients' orders and must take reasonable steps to prevent the misuse of such information by any of their employees.

Placement of crypto-assets

When CASPs are authorised to place crypto-assets, they must communicate to the offeror, to the person seeking admission to trading or any third party acting on their behalf the **type of placement** considered, an indication of the **transaction fees** associated with the service, the considered **timing, process and price** for the proposed operation and **information about targeted purchasers**. They must also disclose any **conflicts of interests** (e.g., when the CASPs place the crypto-assets with their own clients).

Advice on crypto-assets

CASPs providing advice must **assess the compatibility of crypto-assets with the needs of their clients** and make recommendations only when this is in the interest of the client.

Similar to requirements for traditional investment advisors, CASPs will need to have in place **policies and procedures** requiring them to gather information about their clients' knowledge and experience in crypto-assets, investment objectives and financial situation, including the ability to bear losses and their understanding of the risks involved.

If a CASP determines that a **client has insufficient knowledge**, they must **issue a risk warning** and **provide advice** suggesting that crypto-assets might be inappropriate for them. That risk warning must clearly state the risk of losing the entirety of the money invested. Clients have to expressly acknowledge that they have received and understood the warning.

Before providing advice on crypto-assets, authorised CASPs must in good time inform potential clients whether the advice is provided on an independent basis and whether the advice is based on a broad or more restricted analysis of different crypto-assets. In particular, they must disclose whether the range is limited to crypto-assets issued or offered by **entities having close links** (such as contractual relationships) with the CASP and could therefore **pose a risk** of impairing the independent basis of the advice provided.

CASPs shall also provide potential clients with information on all costs and associated charges, including the **cost of advice** and, where relevant, **the cost of crypto-assets recommended** or marketed to the client and how the client is permitted to pay for those crypto-assets (also encompassing any third-party payments).

Transfer services on behalf of third parties

When CASPs are authorised to provide transfer services on behalf of third parties, they must enter into an **agreement with their clients** that must include information on the identity of the parties to the agreement, the modalities of the transfer provided and a description of that service, a description of the security systems used by the CASP, the charges applied by the CASP and the governing law of the agreement.

ESMA, in coordination with the EBA, will provide guidelines regarding procedures and policies for CASPs, including clients' rights in the context of crypto-asset transfer services.

Acquisition of CASPs

MiCA also includes provisions governing the acquisition of CASPs and sets out a process for NCAs to follow when assessing such acquisitions.

Significant CASPs

Article 75a sets out cases where a CASP would be considered to be significant. When a CASP has at least **15 million active users in the EU**, calculated as the average of the daily number of active users in one calendar year, then that CASP will be considered significant.

Under such circumstances, the CASP must notify its NCA within two months after the threshold is met and provide it with relevant information. The NCA then needs to notify ESMA. **The NCA remains responsible for the supervision of the significant CASP** but must update the ESMA Board of Supervisors once per year about key supervisory developments.

Orderly wind-down

CASPs engaged in providing services in connection with custody and administration, operation of a trading platform, or placing of crypto-assets must have in place **a plan that is appropriate to support an orderly wind-down of their activities** under relevant national law, including the continuity or recovery of any critical activities performed by the CASP.

Title VI: Prevention of Market Abuse involving crypto-assets

Rules concerning market abuse apply to any activity conducted by any person in relation to crypto-assets admitted to trading on a trading platform operated by an authorised CASP or for which a request to trade on such a trading platform has been made.

This title covers the **requirement to disclose inside information** to the public and sets out the following offences: unlawful disclosure of inside information, insider dealing, and market manipulation.

Inside information

Inside information is information of a precise nature that has not been made public, which relates, directly or indirectly, to one or more crypto-asset issuers or crypto-assets. If made public, it would be likely to **significantly impact the prices** of those crypto-assets. A crypto-asset issuer, offeror or person seeking admission to trading is **required to inform the public** of inside information as soon as possible, ensuring that the information reaches as many people as possible and allows for complete, correct and timely assessment by the public. However, they may delay the disclosure of inside information in certain circumstances.

Article 79 prohibits the **unlawful disclosure of inside information**. Inside information can only be disclosed in the normal exercise of an employment, a profession or duties.

Prohibition of insider dealing

Insider dealing takes place when a person possesses inside information and uses it by acquiring or disposing of crypto-assets to which the information relates. This may be done for the person's own account or that of a third party, directly or indirectly. Insider dealing and recommending or inducing another person to engage in insider dealing is prohibited.

Prohibition of market manipulation

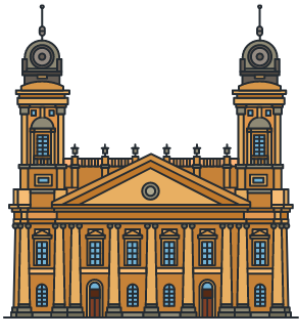
Under Article 80a, anyone professionally arranging or executing transactions in crypto-assets must have in place effective systems, procedures and arrangements to **monitor market manipulation** and abuse.

Title VII: Competent Authorities, the EBA and ESMA

Title VII is split into four chapters setting out:

1) the powers of and cooperation between NCAs, the EBA and ESMA;
2) administrative measures and penalties by NCAs;
3) supervisory responsibilities of the EBA on significant ARTs and significant EMTs, and details on the requirements to establish colleges of supervisors; and
4) the EBA's powers and competencies on issuers of significant ARTs and significant EMTs.

Member states shall:



- Designate the competent authorities responsible for carrying out the functions and duties under MiCA.
- When more than one, their respective tasks must be determined and one must be designated as the single point of contact for cross-border administrative cooperation between competent authorities, ESMA, and the EBA.
- A list of all designated competent authorities will be published on ESMA's website.

Key powers of NCAs

to require **information and documentation**
to **suspend or prohibit** activities or offers, including to order the immediate cessation of activities
to disclose or **require disclosure of all material information**
to make **failures to comply** with obligations **public**
to **transfer existing contracts** to **another service provider**
to take **appropriate administrative measures** and **sanctions** in relation to a minimum set of infringements
to carry out onsite **inspections or investigations**

Cooperation between NCAs

NCAs must **cooperate and exchange information** with each other, with authorities in other Member States and third countries and with the EBA and ESMA.

ESMA will develop regulatory technical standards to specify the information to be exchanged and establish forms, templates and procedures for the cooperation and exchange of information.

Complaint handling by NCAs

Regulators must have complaint handling procedures in place for complaints to be submitted regarding alleged infringements of MiCA by issuers and CASPs. Information on the procedure must be published on the NCA's website and communicated to the EBA and ESMA.

Administrative measures and sanctions

NCAs must have the **power to take appropriate administrative measures** and sanctions when MiCA is infringed. These measures and sanctions include public statements of the infringement(s), orders to cease conduct and administrative pecuniary sanctions.

Aggregate information on all administrative measures and penalties must be reported to ESMA and the EBA annually.

Supervision of significant ARTs and EMTs

To carry out its supervisory role concerning significant ARTs and significant EMTs, the EBA has the authority to request information related to the issuance, use or services.

The EBA also has **investigative powers** that include examining data, interviewing persons, conducting hearings, obtaining certified copies, requesting telephone and data traffic records, or summoning and asking issuers of significant ARTs and EMTs questions or requiring written explanations to be provided. The relevant NCA and the national judicial authorities are expected to facilitate the EBA's investigations. The EBA also has the right to carry out on-site inspections.

Article 112 provides a list of the **supervisory measures** that the EBA can take when dealing with significant ARTs and EMTs and specifies the ability to impose disciplinary measures, fines, suspend or prohibit offers, prohibit trading, remove a natural person from a management position or withdraw authorisation. The EBA may also impose periodic penalty payments and fines.

The EBA will charge supervisory fees to the issuers of significant ARTs and EMTs.

Additional supervisory measures

Additionally, the EBA and ESMA have **temporary intervention powers** to prohibit or restrict marketing and distribution as well as types of activities or practices in specified circumstances.

NCAs **can prohibit or restrict the marketing, distribution or sale of certain crypto-assets** or a type of crypto-asset activity or practice when there are significant investor protection concerns or when existing regulatory requirements under EU law do not sufficiently address identified risks.

Title VII requires that ESMA establishes **a public register of white papers for crypto-assets other than ARTs and EMTs, issuers of ARTs, issuers of EMTs and CASPs** that must be published online and regularly updated. ESMA is also required to establish a register of **CASPs that are non-compliant** with the authorisation requirements under MiCA.

Title VIII: Delegated acts and implementing acts

Under MiCA, the European Commission has the power to adopt delegated acts which amend or supplement MiCA, though the European Parliament or the Council may withdraw the delegation of powers or object to certain delegated acts in order to block their adoption.

At this stage, the European Commission is drafting the delegated acts and we expect the NCAs, ESMA, ECB and EBA, to start drafting the regulatory technical standards in the coming months. The process officially starts after the publication of MiCA in the Official Journal of the EU.

Title IX: Transitional and final provisions

Transition and grandfathering

Following MiCA's entry into force, there will be an **18-month transitional period for CASPs**, during which various measures will facilitate the transition to compliance with MiCA. However, for issuers of **EMTs and ARTs, the transitional period will be a shorter one of only 12 months**.

Of key importance are the **grandfathering periods** specified in Article 123(2), (2b) and (2c) that indicate as follows:

1) **CASPs** providing services in accordance with applicable **national law** before the end of the 18-month transitional period will benefit from an *additional* 18 months to provide those services. Member States may either decide not to apply this grandfathering measure or to reduce its duration should they elect to subject CASPs to stricter requirements than the ones specified by their national law;
2) **Credit institutions that have issued ARTs** in accordance with applicable national law before the end of the 12-month transitional period may continue to issue them, provided they notify their NCA and comply with applicable requirements under MiCA within a month after the end of that transitional period;
3) **Issuers of ARTs that are not credit institutions** that have issued ARTs in accordance with applicable law before the end of the 12-month transitional period may continue to issue them, provided they apply for authorisation within a month after the end of that transitional period.

Reports

Within 48 months from the date that MiCA comes into force, and after consultation with the EBA and ESMA, the European Commission will present a report to the European Parliament and the Council on the application of MiCA and, where appropriate, accompany that report with a legislative proposal (an interim report will be presented within 24 months).

This report will assess a range of areas including, most notably the following:

a) the number of **crypto-assets issued** and **white papers registered** in the EU;
b) a description of the possible divergences in regulatory approaches between the Member States;
c) an estimation of the users and investors of crypto-assets in the EU;
d) levels of **fraud, hacks and theft** of crypto-assets in the EU, and the number and nature of **complaints** made to CASPs and regulators;
e) number of **authorised issuers of ARTs and EMTs**, with evaluation of their **reserves** of assets and **transaction volumes**;
f) level of **consumer protection**, **market integrity** and **financial stability** provided by MiCA, and whether amendments to MiCA are necessary to achieve these objectives;
g) whether the **scope**, **definitions** and **exemptions** under MiCA require amendment;
h) a description of the developments in business models and technologies in the crypto-asset market.

12 months after MiCA's entry into force and every year after that, ESMA, in close cooperation with the EBA, will be responsible for generating an annual report on market developments.

After consulting the EBA and ESMA, the European Commission will produce a report within 18 months after MiCA enters into force to assess the necessity and feasibility of regulating DeFi systems, the lending and borrowing of crypto-assets and offerors of NFTs. The report will also cover an assessment of the treatment of services associated with the transfer of EMTs.

Conclusion

The publication of MiCA marks a seminal moment for crypto-assets. MiCA's scope is comprehensive. It will have profound and wide-reaching implications for everyone involved with crypto-assets and related services, both in the EU and across the world. Other jurisdictions may well use MiCA as a template for their own crypto-asset regimes, although some may choose to differentiate themselves in order to obtain a competitive advantage.

Given the recent turmoil in the crypto-asset market, the industry will likely welcome MiCA's efforts to bring much-needed legal and regulatory certainty, provide increased consumer and investor protection and ensure greater financial stability. All crypto-assets and crypto-asset services that meet MiCA definitions and criteria will be caught by the new legislation, including existing coins and tokens.

MiCA will also present significant challenges for an industry in which many activities have, until now, been unregulated. As such, the role of ESMA and the EBA in supporting MiCA's compliance through the publication of technical standards and guidance will be key. However, it remains to be seen how MiCA will evolve to address innovative decentralised projects, which may prove difficult to subject to regulatory requirements, especially considering that crypto-asset services provided in a fully decentralised manner, without any intermediary, do not fall within MiCA's current scope.

Significant resources will be needed to comply with MiCA, by both regulators and the regulated. Issuers, offerors, persons seeking admission to trading and CASPs operating in the EU or servicing EU clients should consider the strategic implications brought about by MiCA. To do this, however, businesses first need to understand the implications of this new crypto-asset law on their activities.

XReg Consulting is a team of policy and regulatory experts that helps governments formulate sound policy, regulators supervise effectively, public authorities build capacity, and crypto-asset businesses thrive and follow the rules. If you would like to discuss anything mentioned in this document or otherwise related to MiCA, feel free to contact Ernest Lima, Lloyd DeVincenzi or David Mazzucchi:

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