

ANNERTON

BERLIN  
FRANKFURT A. M.  
LUXEMBOURG  
MUNICH

Annerton's Guide  
of  
the Markets in  
Crypto-Assets Regulation  
(MiCAR)

Published June 2024

[annerton.com](https://annerton.com)

## CONTENT

I.	Introduction.....	3
II.	MiCAR timetable and implementation .....	3
III.	Delegated acts, technical standards and additional guidelines .....	4
IV.	The scope of the application of MiCAR .....	10
V.	Crypto-assets under MiCAR .....	11
1.	Definition.....	11
2.	Covered crypto-assets .....	12
3.	Excluded crypto-assets .....	12
4.	Non-Fungible Tokens .....	13
4.1.	“Classical” NFTs.....	13
4.2.	Fractional NFTs.....	14
VI.	How to offer/issue crypto-assets under MiCAR .....	14
1.	Personal scope.....	14
2.	Requirements.....	15
3.	White paper .....	16
VII.	Crypto-asset service providers .....	18
1.	Authorization.....	18
2.	Simplified authorization procedure.....	22
3.	Notification procedure .....	22
VIII.	Reverse solicitation.....	23
IX.	Outlook .....	24

## I. Introduction

The Markets in Crypto-Assets Regulation (MiCAR) aims to promote an innovative crypto ecosystem across the EU by regulating selected crypto-assets and crypto-assets service providers, while also establishing legal certainty and financial stability for consumers and potential investors.

The established harmonized rules cover crypto-assets not addressed by current EU financial regulation. MiCAR will apply to issuers of crypto-assets, regulating their public offerings and admission to trading, as well as to providers of crypto-asset services.

In the future, any natural or legal persons, as well as certain other undertakings, engaged in issuing or offering crypto-assets to the public, facilitating admission to trading of crypto-assets, or planning to provide services related to them within the EU, should meet MiCAR requirements.

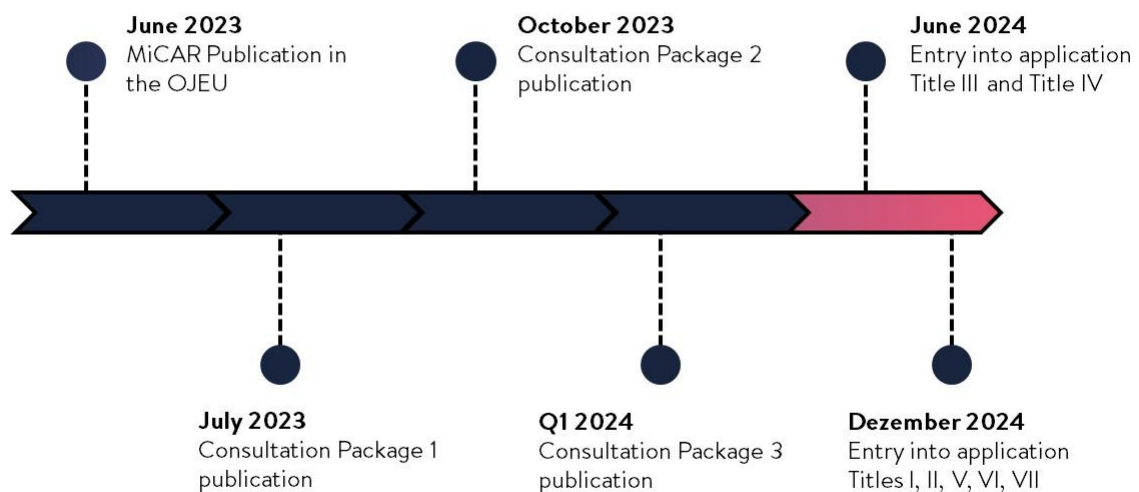
It is important to mention that MiCAR requirements will be applicable not only to companies operating within the EU, but also to every natural and legal person who directs their crypto-assets services and related activities toward the EU market regardless of the location of their registered office.

## II. MiCAR timetable and implementation

MiCAR entered into force on 29 June 2023. Titles III and IV of the regulation will enter into application in June 2024 (these are provisions related to asset-referenced tokens (ARTs) and electronic money tokens (EMTs)), and Titles I, II, V, VI, and VII in December 2024.

MiCAR will be binding in its entirety and directly applicable in all Member States.

## Markets in Crypto-Assets Regulation – MiCAR



ANNERTON

Source: ESMA Website

### III. Delegated acts, technical standards and additional guidelines

The European Commission is conferred with the power to adopt delegated acts related to various provisions of MiCAR for a period of 36 months from 29 June 2023. Commission has already adopted the following delegated acts on 22 February of 2024:

- Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the European Banking Authority on issuers of significant asset-referenced tokens and issuers of significant e-money tokens
- Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant
- Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 by specifying the fees charged by the European Banking Authority to issuers of significant asset-referenced tokens and issuers of significant e-money tokens
- Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 by specifying the criteria and factors to be taken into account by the European Securities and Markets Authority, the European Banking Authority and competent authorities in relation to their intervention powers

# ANNERTON

Additionally, the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) develops regulatory technical standards (RTS), Implementing Technical Standards (ITS) and guidelines for MiCAR.

The development of these standards and guidelines takes place as follows:

Author	Date	Title	Topics covered
ESMA	From 12/07/2023 to 20/09/2023	<a href="#"><u>Consultation on the Technical Standards specifying certain requirements of MiCA (1st package)</u></a>	<ul style="list-style-type: none"> <li>o RTS on the notification by certain financial entities of their intention to provide crypto-asset services</li> <li>o ITS on standard forms, templates and procedures for the notification by certain financial entities of their intention to provide crypto-asset services</li> <li>o RTS on authorization of crypto-asset service providers</li> <li>o ITS on standard forms, templates and procedures for authorization of crypto-asset service providers</li> <li>o RTS on complaints handling by crypto-asset service providers</li> <li>o RTS on identification, prevention, management and disclosure regarding conflicts of interest</li> <li>o RTS on the proposed acquisition of a qualifying holding in a crypto-asset service provider</li> </ul>
EBA	13/07/2023	<a href="#"><u>Consultation paper on technical standards specifying information for ARTs authorization</u></a>	<ul style="list-style-type: none"> <li>o RTS on information about the application for authorization to offer to the public or to seek admission to trade of asset-referenced tokens under Article 18(6) of Regulation (EU) 2023/1114</li> <li>o ITS on information to be included in an application for authorization to offer to the public or to seek admission to trading of asset-referenced tokens under Article 18(7) of Regulation (EU) 2023/1114</li> </ul>
EBA	12/07/2023	<a href="#"><u>Consultation paper on information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of ARTs</u></a>	<ul style="list-style-type: none"> <li>o RTS on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42(4) of Regulation (EU) 2023/1114.</li> </ul>

EBA	12/07/2023	<u>Regulatory Technical Standards on complaints handling procedures for issuers of ARTs</u>	<ul style="list-style-type: none"> <li>o RTS to specify the requirements, templates and procedures for handling complaints under Article 31 of the Regulation (EU) 2023/1114 on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCAR)</li> </ul>
ESMA	From 05/10/2023 to 14/12/2023	<u>Second Consultation on the Technical Standards specifying certain requirements of Markets in Crypto Assets Regulation (MiCAR)</u>	<ul style="list-style-type: none"> <li>o RTS on content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment</li> <li>o RTS on measures that crypto-asset service providers must take to ensure continuity and regularity in the performance of services</li> <li>o RTS on trade transparency</li> <li>o RTS on content and format of order book records</li> <li>o RTS on record-keeping by crypto-asset service providers</li> <li>o RTS on the data necessary for the classification of white papers</li> <li>o ITS on standard forms and templates for the crypto-asset white paper</li> <li>o ITS on technical means for appropriate public disclosure of inside information</li> </ul>
EBA/ESMA	From 20/10/2023 to 22/01/2024	<u>Consultation on joint EBA and ESMA Guidelines on the suitability assessment under MiCAR</u>	<ul style="list-style-type: none"> <li>o suitability assessment concerning members of management body, as well as issuers of asset-referenced tokens and of crypto-asset service providers, and</li> <li>o suitability assessment of shareholders and members, whether direct or indirect, with qualifying holdings in issuers of asset-referenced tokens and in crypto-asset service providers</li> </ul>
EBA	From 20/10/2023 to 22/01/2024	<u>Regulatory Technical Standards on the procedure for the approval of white papers of ARTs issued by credit institutions</u>	<ul style="list-style-type: none"> <li>o RTS on the approval process for white papers for ARTs issued by credit institutions under Article 17(8) of Regulation (EU) 2023/1114</li> </ul>

<p>EBA</p>	<p>From 20/10/2023 to 22/01/2024</p> <p>The final report was published on 06.06.2024</p>	<p><u>Regulatory Technical Standards on the minimum content of the governance arrangements on the remuneration policy under MiCAR</u></p>	<ul style="list-style-type: none"> <li>o (RTS) on the minimum content of the governance arrangements on the remuneration policy under the Market in crypto-assets Regulation (MiCAR).</li> <li>o RTS covers main governance processes regarding the adoption, implementation and maintenance of the remuneration policy and the main policy elements that should be included in it.</li> </ul>
<p>EBA</p>	<p>From 20/10/2023 to 22/01/2024</p> <p>The final report was published on 06/06/2024</p>	<p><u>Guidelines on internal governance arrangements for issuers of ARTs under MiCAR</u></p>	<ul style="list-style-type: none"> <li>o Guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens</li> <li>o These Guidelines include governance provisions that issuers of ARTs should comply with, provisions on risk-managements, on consumers and investors protection, etc.</li> </ul>
<p>EBA</p>	<p>From 07/11/2023 &amp; 08/11/2023 to 08/02/2024</p> <p>The final report was published on 19/06/2024</p>	<ul style="list-style-type: none"> <li>• <u>Consultation on RTS to specify the highly liquid financial instruments in the reserve of assets under MiCAR</u></li> <li>• <u>Consultation on RTS further specifying the liquidity requirements of the reserve of assets under MiCAR</u></li> <li>• <u>Consultation on RTS to specify the minimum contents of</u></li> </ul>	<ul style="list-style-type: none"> <li>o RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of Regulation (EU) 2023/1114</li> <li>o RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of Regulation (EU) 2023/1114</li> <li>o RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of Regulation (EU) 2023/1114</li> <li>o Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) Regulation (EU) 2023/1114</li> <li>o RTS to specify the adjustment of own funds requirements and stress testing of issuers of asset-referenced tokens and of e-money tokens subject to the requirements in Article 35 of Regulation (EU) 2023/1114 on markets in crypto-assets</li> </ul>

		<p><u>the liquidity management policy and procedures under MiCAR</u></p> <ul style="list-style-type: none"> <li>• <u>Consultation on Guidelines liquidity stress testing under MiCAR</u></li> <li>• <u>Consultation on the adjustment of own funds requirements and design of stress testing programs for issuers under MiCAR</u></li> <li>• <u>Consultation on RTS on procedure and timeframe to adjust its own funds requirements for issuers of significant asset-referenced tokens or of e-money tokens under MiCAR</u></li> <li>• <u>Consultation on Guidelines on recovery plans under MiCAR</u></li> <li>• <u>Consultation on Regulatory Technical Standards on the use of ARTs and EMTs</u></li> </ul>	<ul style="list-style-type: none"> <li>o RTS to specify the procedure and timeframe to adjust its own funds requirements for issuers of significant asset-referenced tokens or of e-money tokens subject to the requirements set out in Article 45(5) of Regulation (EU) 2023/1114 on markets in crypto-assets</li> <li>o Guidelines on recovery plans under Articles 46 and 55 of the Regulation (EU) 2023/1114</li> <li>o RTS on the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens as a means of exchange under Article 22(6) of Regulation (EU) No 2023/1114 (MiCAR) and of e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation</li> <li>o ITS on the reporting on asset-referenced tokens under Article 22(7) of Regulation (EU) No 2023/1114 (MiCAR) and on e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of that Regulation</li> <li>o RTS on supervisory colleges under Article 119(8) of Regulation (EU) No 2023/1114 (MiCAR)</li> </ul>
--	--	--	--



		<p><u>denominated in a non-EU currency as a means of exchange</u></p> <ul style="list-style-type: none"> <li>• <u>Consultation on ITS on the reporting on ARTs and EMTs denominated in a non-EU currency</u></li> <li>• <u>Consultation on Regulatory Technical Standards on supervisory colleges under MiCAR</u></li> </ul>	
EBA	<p>From 07/12/2023 to 07/03/2024</p> <p>The final report was published on 06.06.2024</p>	<p><u>Consultation on draft RTS regarding the requirements for policies and procedures on conflicts of interest for issuers of ARTs under MiCAR</u></p>	<ul style="list-style-type: none"> <li>o RTS specifying the requirements for policies and procedures on conflicts of interest for issuers of asset-referenced tokens under Article 32(5) of Regulation (EU) 2023/1114</li> </ul>
EBA	<p>From 08/13/2024 to 10/06/2024</p>	<p><u>Consultation on Guidelines on redemption plans under MiCAR</u></p>	<ul style="list-style-type: none"> <li>o Guidelines on redemption plans under Articles 47 and 55 of Regulation (EU) 2023/1114</li> </ul>
ESMA	<p>From 29/01/2024 to 29/04/2024</p>	<p><u>Consultation on reverse solicitation and classification of crypto assets as financial instruments under MiCAR</u></p>	<ul style="list-style-type: none"> <li>o conditions of application of the reverse solicitation exemption and the supervision practices that National Competent Authorities (NCAs) may take to prevent its circumvention</li> </ul>

ESMA	From 29/01/2024 to 29/04/2024	<u>Consultation Paper about the draft Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments</u>	<ul style="list-style-type: none"> <li>o clear conditions and criteria for the qualification of crypto-assets as financial instruments</li> </ul>
ESMA	From 25/03/2024 to 25/06/2024	<u>Consultation on the Technical Standards specifying certain requirements of MiCAR (3rd package)</u>	<ul style="list-style-type: none"> <li>o Detection and reporting of suspected market abuse in crypto-assets (RTS).</li> <li>o Policies and procedures, including the rights of clients, for crypto-asset transfer services (Guidelines).</li> <li>o Suitability requirements for certain crypto-asset services and format of the periodic statement for portfolio management (Guidelines).</li> <li>o ICT operational resilience for certain entities under MiCAR (Guidelines).</li> </ul>

Currently, some of the mentioned supplementary acts of MiCAR are still undergoing consultation and implementing the feedback received from various stakeholders. The publication of the final reports can be expected in Q4 2024.

#### IV. The scope of the application of MiCAR

MiCAR provides the first legal framework for the crypto-asset ecosystem within the EU that applies to persons that participate in the issuance, offering and admission to trading of crypto-assets or provide crypto-asset services defined in the regulation.

It should be noted that, the scope of the application of MiCAR does not cover the crypto-asset services that are provided in a fully decentralised manner without any intermediary – e.g.,

classical decentralised finance (DeFi). Only partially decentralised DeFi activities fall under the regulation and the most relevant feature for the decentralised nature of DeFi services is the existence of identifiable natural or legal persons or certain other undertakings that (at least partially) govern provided DeFi services.

The personal scope of application of MiCAR includes some exceptions:

- persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies;
- a liquidator or an administrator acting in the course of an insolvency procedure, except for the purposes of Article 47 of MiCAR.
- the ECB, central banks of the Member States when acting in their capacity as monetary authorities, or other public authorities of the Member States;
- the European Investment Bank and its subsidiaries;
- the European Financial Stability Facility and the European Stability Mechanism;
- public international organisations.

MiCAR also provides for certain exemptions with regard to companies already regulated in the EEA: e.g. already authorized credit institutions, central securities depositories or investment firms are not subject of all provisions of the authorization requirements.

## V. Crypto-assets under MiCAR

### 1. Definition

MiCAR defines crypto assets as

*“digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology”.*

This is the first standardised legal definition of crypto-assets for the EEA.

The definition can be seen as very broad - as it also includes the embodiment of rights without restriction - and is only negatively delimited in that certain crypto-assets that are already regulated under other regulatory provisions.

The core of the definition is the reference to distributed ledger technology (DLT). The reference to "a similar technology" is imprecise and is already being criticised in the market.

# ANNERTON

Overall, MiCAR has created a new independent definition of crypto-assets, which differs in part from already established understandings of crypto-assets.

## 2. Covered crypto-assets

MiCAR covers three types of crypto-assets:

Asset-referenced token (ARTs)	Electronic money token (EMTs)	Another crypto-assets that are not ARTs and EMTs
<p>A type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies (e.g. stablecoins).</p> <p><i>+ significant ARTs (issuers should fulfill more requirements)</i></p>	<p>These are crypto-assets that purport to maintain a stable value by referencing the value of one official currency.</p> <p><i>+ significant EMTs (issuers should fulfill more requirements)</i></p>	<p>All “other” crypto-assets so-called „catch all category“</p> <p>Among them:</p> <p><u>Utility tokens</u></p> <p>(These are crypto-assets which are only intended to provide access to a good or a service supplied by the issuer of that tokens.)</p>

## 3. Excluded crypto-assets

MiCAR generally will not apply to the crypto-assets that qualify as

- financial instruments;
- deposits, including structured deposits;
- funds, except if they qualify as e-money tokens;
- securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402;
- non-life or life insurance products falling within the classes of insurance listed in Annexes I and II to Directive 2009/138/EC of the European Parliament and of the Council (27) or reinsurance and retrocession contracts referred to in that Directive;

# ANNERTON

- pension products that, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and that entitle the investor to certain benefits;
- officially recognised occupational pension schemes falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council (28) or Directive 2009/138/EC;
- individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;
- a pan-European Personal Pension Product as defined in Article 2, point (2), of Regulation (EU) 2019/1238 of the European Parliament and of the Council (29);
- social security schemes covered by Regulations (EC) No 883/2004 (30) and (EC) No 987/2009 of the European Parliament and of the Council (31).

## 4. Non-Fungible Tokens

### 4.1. “Classical” NFTs

According to the Recital 10 MiCAR, “regulation should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles. The value of such unique and non-fungible crypto-assets is attributable to each crypto-asset’s unique characteristics and the utility it gives to the holder of the token.” Similarly, it does not apply to crypto-assets that represent services or physical assets that are unique and non-fungible, such as product guarantees or real estate.

This means that “classical” non-fungible tokens (NFTs) fall outside the scope of this regulation.

Besides, legislator states that “while unique and non-fungible crypto-assets might be traded on the marketplace and be accumulated speculatively, they are **not readily interchangeable** and the relative value of one such crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features **limit the extent to which those crypto-assets can have a financial use**, thus limiting risks to holders and the financial system and justifying their exclusion from the scope of this Regulation.”

## 4.2. Fractional NFTs

Fractional NFTs (FNFTs - i.e., a single NFT technically divided into multiple pieces) fall under the scope of the MiCAR.

According to Recital 11 MiCAR, fractions of NFTs are not considered unique. Furthermore, the legislator views the issuance of NFTs in large series or collections as an indication of their fungibility.

Moreover, MiCAR stipulates that for the classification of a token as unique or non-fungible, merely assigning a unique identifier is not sufficient: the assets or rights represented by those crypto-assets must also be unique and non-fungible.

Additionally, MiCAR will apply to such crypto-assets that appear unique and non-fungible at first glance, but whose *de facto* features or whose features that are linked to their *de facto* uses, would make them either fungible or not unique.

In practice, when assessing and classifying crypto-assets, competent authorities will adopt a substance over form approach, that means that the features of the crypto-asset in question will determine the classification and not its designation by the issuer.

## VI. How to offer/issue crypto-assets under MiCAR

### 1. Personal scope

Firstly, "issuers/offerors of crypto-assets" means legal entities that not only offer crypto-assets to the public for the first time, but also those that apply for the admission of crypto-assets on a trading platform for crypto-assets. The Regulation defines

- issuers as a natural or legal person, or other undertaking, who issues crypto-assets;
- and
- offerors as a natural or legal person, or other undertaking, or the issuer, who offers crypto-assets to the public;

If issuers wish to offer crypto-assets to the public within the EU or apply for the admission of crypto-assets on a trading platform for crypto-assets, they must fulfil certain cumulative requirements (Art. 4 (1) MiCAR). Namely, a person should:

- be a legal person;
- have drawn up a crypto-asset white paper;
- have notified the crypto-asset white paper;
- have published the crypto-asset white paper;

# ANNERTON

- have drafted the marketing communications, if any, in respect of that crypto-asset;
- have published the marketing communications, if any, in respect of that crypto-asset;
- comply with the requirements for offerors laid down in MiCAR.

However, issuers would be exempt from the obligations (legislator does not offer such exceptions for offeror that seeks admission of the crypto-assets on a trading platform), if the public offer would fall under one of the following constellations (Art. 4 (2) MiCAR), if:

- the crypto-assets are offered to **fewer than 150 natural or legal persons per Member State** where such persons are acting on their own account;
- the crypto-assets are **offered over a period of 12 months**, starting with the beginning of the offer, the total consideration of an offer to the public of a crypto-asset in the Union does not exceed EUR 1 000 000, or the equivalent amount in another official currency or in crypto-assets;
- an offer of a crypto-asset **addressed solely to qualified investors** where the crypto-asset can only be held by such qualified investors.

Moreover, MiCAR-offeror obligations typically will not apply under the following circumstances:

- the crypto-asset is **offered for free**;
- the crypto-asset is **automatically created as a reward** for the maintenance of the distributed ledger or the validation of transactions;
- the offer **concerns a utility token** providing access to a good or service that exists or is in operation;
- the holder of the crypto-asset has the right to use it only in exchange for goods and services in a **limited network of merchants** with contractual arrangements with the offeror.

## 2. Requirements

Issuers of crypto-assets must comply with various requirements depending on the type of crypto-assets they intend to issue.

Generally, According to the MiCAR they should

- be authorized under MiCAR (except of credit institutions)
- draft, publish and notify the whitepaper for the purpose of consumer protection
- draft and publish MiCAR-compliant marketing communications and submit it to the regulatory authority of the home Member State accordingly
- meet good conduct requirements:

# ANNERTON

- *act honestly, fairly and professionally;*
- *communicate with crypto-asset holders in a fair, clear and non-misleading manner;*
- *avoid, identify and regulate potential conflicts of interest and disclose them;*
- *maintain their systems and protocols to ensure access security in accordance with the relevant European Union standards.*

- shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints
- shall implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest
- shall have robust governance arrangements
- meet to the own funds requirements under MiCAR
- have a reserve of assets, and composition and management of such reserve of assets
- shall establish, maintain and implement custody policies, procedures and contractual arrangements
- (issuers of asset-referenced tokens that invest a part of the reserve of assets) shall only invest those assets in highly liquid financial instruments with minimal market risk, credit risk and concentration risk.
- guarantee right of redemption for crypto-asset holders, etc.

### 3. White paper

Generally, issuers of crypto-assets and persons/operators seeking admission to trading crypto-assets should create, notify their competent authority, and publish white paper.

ESMA has already published consultation package that refers to the data necessary for classification of white papers and standard forms and templates for them. Persons drawing up a crypto-asset white paper should take introduced templates and forms into consideration.

What will change for crypto ecosystem is the fact, that only in MiCAR specified content and no additional information will be needed to be included in MiCAR white papers. If CASPs/issuers still decide to publish such information, this additional information can be included in marketing communications using any format. It should be noted, that while publishing this additional information in marketing communications specific provisions related to marketing communications under MiCAR should be taken into consideration. Additionally, such e.g., PDF file should in any case contain a statement that document has not been reviewed or approved by an EU competent authority, etc.

#### Specific Content of MiCAR-white paper

- MiCAR-White paper shall cover the following specific information (Art. 6 and Annex I, II and III MiCAR):
  - Information about the offeror/person seeking trading-admission/issuer (if different from them) and about the operator;



	<p>if different person prepares white paper – his identity/reason why he prepared it; This specific information includes e.g., legal form, registered address, registration date, head office, recent financial condition, etc.;</p> <ul style="list-style-type: none"> <li>o Crypto-asset project description (a brief description, details of all natural and legal persons who are involved in the implementation of the project (e.g., details of advisors, development team, service providers, etc.);</li> <li>o Information about the offer/crypto-assets admission to trading; Reasons for Public Offer and/or Admission to trading; Fundraising Target, etc.;</li> <li>o Rights and obligations attached to the crypto-assets (their description; procedure/conditions for their exercise/modification, etc.);</li> <li>o Description of crypto-assets (their types, characteristics, functionality, Planned Application of Functionalities, etc.);</li> <li>o Plans for the tokens;</li> <li>o Information on the underlying technology (description of DLT/Protocols/Used Technical standards/Consensus Mechanisms/Incentive mechanisms and applicable fees/Audit, etc.);</li> <li>o Information on risks (offer/issuer-related risks, crypto-asset related risks, technology risks, mitigation measures, etc.);</li> <li>o Description of the environmental/climate related impact of the used consensus mechanism;</li> <li>o Information on the sustainability indicators in relation to adverse impact on the climate and other environment-related adverse impacts.</li> </ul> <ul style="list-style-type: none"> <li>▪ Information provided in MiCAR-White paper shall be fair, clear and not misleading.</li> <li>▪ Information shall not contain material omissions and shall have a concise/comprehensible form;</li> <li>▪ The crypto-asset white paper shall not contain any assertions as regards the future value of the crypto-asset;</li> <li>▪ Statement requirement:             <ul style="list-style-type: none"> <li>o <i>The first page</i> of the white paper shall include the following statement:  <i>‘This crypto-asset white paper has not been approved by any competent authority in any Member State of the European Union. The offeror of the crypto-asset is solely responsible for the content of this crypto-asset white paper.’</i></li> </ul> </li> </ul>
<p>Some additional white paper requirements</p>	<ul style="list-style-type: none"> <li>▪ The crypto-asset white papers of <i>asset-referenced tokens</i> shall provide information on the stabilisation mechanism/investment policy of the reserve assets/custody arrangements for the reserve assets and the rights provided to holders;</li> <li>▪ The issuers of <i>electronic money tokens</i> shall provide clear statement, in case it also issued other crypto assets/has other relative activities to</li> </ul>

	<p>them; they also shall provide information on their financial condition over the past three years, etc.</p>
Risk Statements/Statement of Management body	<ul style="list-style-type: none"> <li>▪ White paper shall include a clear/unambiguous statement that crypto-assets can lose their value; that their transferability/liquidity cannot always be guaranteed etc. (Art. 6 (5) MiCAR);</li> <li>▪ White paper shall include statement of management body of the offeror/person seeking admission/operator that confirms that white paper is compliant with MiCAR requirements (Art. 6 (6) MiCAR).</li> </ul>
Summary	<ul style="list-style-type: none"> <li>▪ White paper shall provide summary of the key information – using brief/non-technical language (Art. 6 (7) MiCAR).</li> </ul>
Date of notification	<ul style="list-style-type: none"> <li>▪ The date of notification should be included in the white paper (Art. 6 (8) MiCAR).</li> </ul>
Language of white paper	<ul style="list-style-type: none"> <li>▪ White paper language shall be an official language of the home (or where applicable host) Member State or a language customary in the sphere of international finance (Art. 6 (9) MiCAR).</li> </ul>
Format	<ul style="list-style-type: none"> <li>▪ Human/machine readable format.</li> </ul>
Where to publish	<ul style="list-style-type: none"> <li>▪ Whitepaper shall be published on the website of the issuer.</li> </ul>

Source: Authors, paytechlaw.com

## VII. Crypto-asset service providers

### 1. Authorization

MiCAR obliges stakeholders seeking to operate as CASPs in the EU to comply with newly introduced harmonised authorization requirements.

Generally, the national competent authorities (NCAs) will have power to grant/refuse/withdrawn authorization to the potential CASPs and to supervise their CASP-activities within the Union. To obtain authorization as CASP and profit with MiCAR benefits, prospective CASPs should carefully draw their application and comply with specific information

# ANNERTON

requirements and standards provided in MiCAR, as well as in RTS and ITS-standards issued by EBA and ESMA. It should be outlined, that the gained CASP-Authorization will be valid for the entire Union.

Firstly, personal scope of the CASP-authorization should be defined.

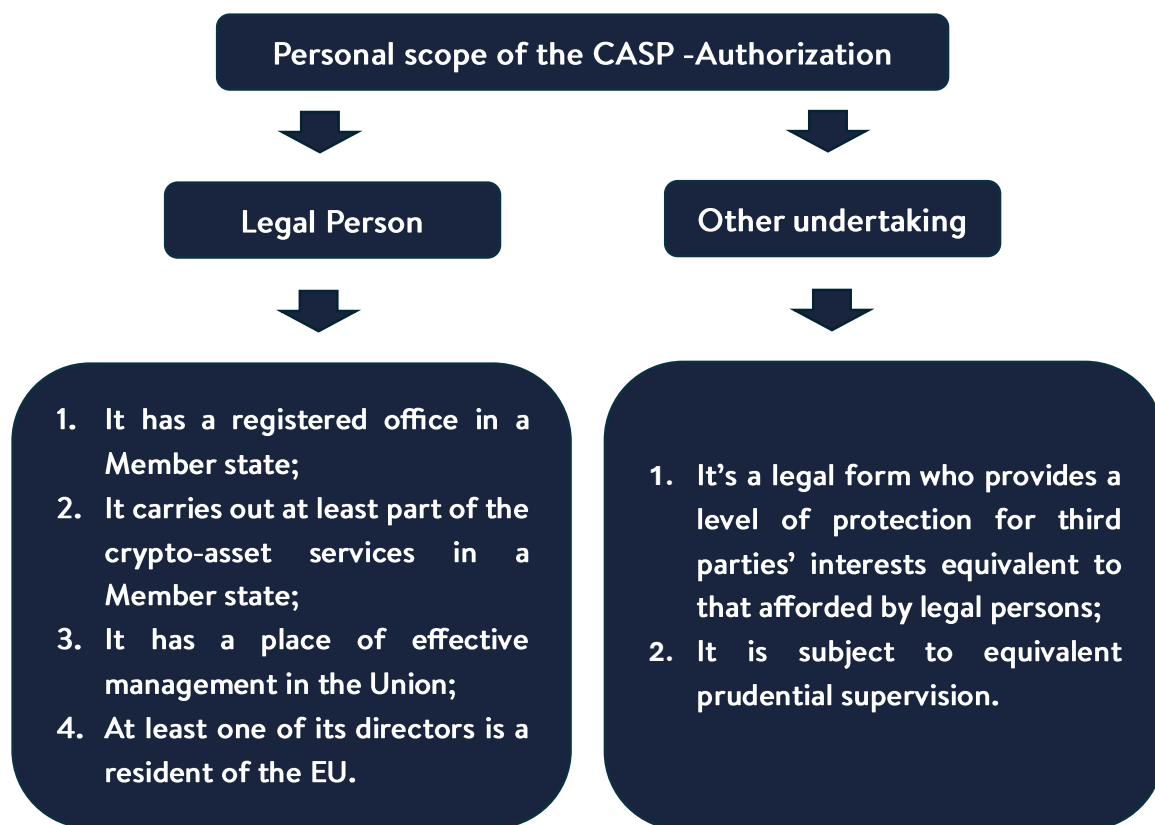
Specifically, legal persons or other undertaking that plan to provide the following crypto-asset services and activities within the EU are required to be authorized as a CASP under MiCAR:

Providing custody and administration of crypto-assets on behalf of clients	The safekeeping or controlling on behalf of clients, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic key.
Operation of a trading platform for crypto-assets	The management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets.
Exchange of crypto-assets for funds	The conclusion of purchase or sale contracts concerning crypto-assets with clients for funds by using proprietary capital.
Exchange of crypto-assets for other crypto-assets	The conclusion of purchase or sale contracts concerning crypto-assets with clients for other crypto-assets by using proprietary capital.
Execution of orders for crypto-assets on behalf of clients	The conclusion of purchase or sale contracts concerning crypto-assets with clients for other crypto-assets by using proprietary capital.
Placing of crypto-assets	The marketing, on behalf of or for the account of the offeror or a party related to the offeror, of crypto-assets to purchasers.

<p>Reception and transmission of orders for crypto-assets on behalf of clients</p>	<p>The reception from a person of an order to purchase or sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution.</p>
<p>Providing advice on crypto-assets</p>	<p>Offering, giving or agreeing to give personalised recommendations to a client, either at the client’s request or on the initiative of the crypto-asset service provider providing the advice, in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services.</p>
<p>Providing portfolio management on crypto-assets</p>	<p>Managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets.</p>
<p>Providing transfer services for crypto-assets on behalf of clients</p>	<p>Providing services of transfer, on behalf of a natural or legal person, of crypto-assets from one distributed ledger address or account to another.</p>

It should be mentioned that the legal person or other undertaking can provide one or more crypto-asset services under MiCAR. Supervisory authorities will specify the crypto-asset services that CASPs can provide while granting the authorization.

Furthermore, potential CASPs need to have a registered office in a Member State and carry out at least part of the crypto-asset services there. In addition, CASPs need to have their place of effective management (place of the key management and commercial decisions) in the Union and at least one of the directors should be resident of the Union. According to MiCAR, this will help “to enable effective supervision and to eliminate possibility of evading or circumventing supervision” (Recital 74 MiCAR).



Besides, CASP authorization is not limited to legal persons. Other undertakings that provide similar level of protection for their parties' interest equivalent to that afforded by legal persons and are subject to equivalent prudential supervision can also gain CASP-application under MiCAR. It should be outlined, that MiCAR does not provide the exact list of the entities that can fall under the term "other undertaking". But Recital 74 MiCAR mentions, that under such "undertakings" can e.g., fall commercial partnerships.

CASP must always fulfil the long list of the requirements for their authorization, that includes general and specific obligations for them.

MiCAR outlines, that CASPs should act honest, fair and professional in accordance with the best interests of their clients and potential clients. Providers must also comply with information requirements: their clients should get fair, clear and not misleading information of any crypto-assets and be informed about risks of crypto-assets transactions and climate-related information.

Additionally, prudential, governance, safekeeping requirements of clients' crypto-assets and funds, requirements about complaint handling procedure, provisions on identification,

# ANNERTON

prevention, management and disclosure about conflicts of interest and outsourcing; requirements related to the orderly wind-down of providers should be fulfilled by CASPs.

## 2. Simplified authorization procedure

According to the Art. 143 (6) MiCAR Member States may apply a simplified procedure for applications regarding an authorization that are submitted between 30 December 2024 and 1 July 2026 by entities that on 30 December 2024, were authorized under national law to provide crypto-asset services. The competent authorities shall ensure that Chapters 2 and 3 of Title V are complied with before granting authorization pursuant to such simplified procedures.

In case of the simplified authorization procedure competent authorities will examine whether crypto-asset service providers are compliant with the list of the general and specific requirements of MiCAR.

This procedure was initiated by a legislator, to speed up expedite the utilization of MiCAR-benefits.

It's important to note, that every Member State can decide at its own discretion whether it uses this procedure.

Additionally, it's crucial to highlight that entities will no longer be able to initiate the simplified authorization procedure after July 1, 2026.

## 3. Notification procedure

Certain financial entities, that wish to provide crypto-asset services and are already regulated at EU level can use the benefits of the notification procedure (Art. 60 MiCAR).

MiCAR gives the opportunity of the application of the notification procedure to

- credit institutions
- central securities depositories
- investment firms
- electronic money institutions
- UCITS management companies
- alternative investment fund managers
- market operators.

If these companies want to provide crypto-asset services under MiCAR, they need to notify competent authority about intended activities 40 working days before commencing operations and submit information accordingly. The competent authority shall within 20

# ANNERTON

working days of receipt notification, assess whether notification is complete and all necessary information has been provided. Where additional information will be needed competent authority will set a deadline for notifying entity for submitting missing documents. Without complete notification, the crypto-asset service providers cannot begin providing the intended MiCAR-activities (Art. 60 MiCAR). It should be noted, that these entities still need to comply with most of the general and specific obligations of CASPs listed in MiCAR.

## VIII. Reverse solicitation

Similarly to MiFID II, third-country firms do not need to be authorized under MiCAR when a client established or situated in the Union initiates, at its own exclusive initiative, the provision of a crypto-asset service or activity (*reverse solicitation*).

ESMA has already published drafts of the guideline on reverse solicitation that describe details of this principle and how supervisory authorities most likely will apply it.

According to the ESMA “the solicitation of clients by third-country firms should be construed broadly and, in a technology neutral way”.<sup>1</sup> Additionally, ESMA defines that all facts and circumstances of the case are important while assessing whether third-country firms solicit EU clients. A website in an official language of the EU can be seen as a strong indication that firm is soliciting EU clients, while geo-blocking for EU clients could be an indication that there is no solicitation of clients in the Union.

ESMA defines that “solicitation may be carried out either by the third-country firm itself or by any other person acting explicitly or implicitly on behalf of the third-country firm or having close links to it”.<sup>2</sup> Under this definition can fall e.g. so-called influencer that direct the audience to the third-country firm’s website.

As mentioned, if the crypto-asset service or activity is offered solely at the client's own initiative, a firm should not be considered to be soliciting them. According to the ESMA, the client’s own exclusive initiative should be construed narrowly. Provided draft guidelines states that time of the request from the client and of the offering, promotion or advertisement of other crypto-asset services or activities is important: “*for instance, if the client contacts the third*

---

<sup>1</sup> ESMA Consultation Paper on the draft guidelines on reverse solicitation under MiCA, p. 18, [https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619\\_Consultation\\_Paper\\_on\\_the\\_draft\\_guidelines\\_on\\_reverse\\_solicitation\\_under\\_MiCA.pdf](https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619_Consultation_Paper_on_the_draft_guidelines_on_reverse_solicitation_under_MiCA.pdf) (last accessed on: 13.06.2024).

<sup>2</sup> ESMA Consultation Paper on the draft guidelines on reverse solicitation under MiCA, p. 18, [https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619\\_Consultation\\_Paper\\_on\\_the\\_draft\\_guidelines\\_on\\_reverse\\_solicitation\\_under\\_MiCA.pdf](https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619_Consultation_Paper_on_the_draft_guidelines_on_reverse_solicitation_under_MiCA.pdf) (last accessed on: 13.06.2024).

# ANNERTON

*country firm to buy crypto-asset X, the firm may – at this point in time – market to the clients crypto-assets of the same type. However, the third-country firm would not be entitled to market further crypto-asset X transactions or transactions in similar crypto-assets to the client a month later.”<sup>3</sup>*

Furthermore, third-country firms should provide client records tracking. Additionally, ESMA outlines that the scope of the application of MiCAR cannot be excluded based on contractual arrangement.

Lastly, the reverse solicitation regime can be applied in case of third-country firm markets crypto-assets or crypto-asset services or activities of the same type. ESMA draft guidelines provided a non-exhaustive list of pairs of crypto-assets which should not be considered as belonging to the same type of crypto-assets:

- utility tokens, asset-referenced tokens or electronic money tokens;
- crypto-assets not stored or transferred using the same technology;
- electronic money tokens not referencing the same official currency;
- asset-referenced tokens based mostly on FIAT currencies and asset-referenced tokens having significant crypto-currency ponderations;
- liquid and illiquid crypto-assets;
- crypto-assets other than asset-reference tokens and electronic money tokens with a non-identifiable-offeror and crypto-assets other than asset-reference tokens and electronic money tokens with an identifiable offeror.

## IX. Outlook

The harmonized legal framework for crypto-assets provided by MiCAR will most likely have a positive impact on the crypto ecosystem within the Union. In the future, market players won't be confronted with diversified and complex national crypto regulations. Although there are still some open questions, especially regarding DeFi under MiCAR, the safeguards provided by MiCAR will ensure legal certainty for market players, consumers and investors. However, the real effectiveness of the regulation will be seen in (upcoming) practice when assessing crypto-asset projects under the introduced regulation.

---

<sup>3</sup> ESMA Consultation Paper on the draft guidelines on reverse solicitation under MiCA, p. 19, [https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619\\_Consultation\\_Paper\\_on\\_the\\_draft\\_guidelines\\_on\\_reverse\\_solicitation\\_under\\_MiCA.pdf](https://www.esma.europa.eu/sites/default/files/2024-01/ESMA35-1872330276-1619_Consultation_Paper_on_the_draft_guidelines_on_reverse_solicitation_under_MiCA.pdf) (last accessed on: 13.06.2024).



# ANNERTON

## AUTOREN



**Alireza Siadat, M.J.I.**  
Partner, Germany  
[asiadat@annerton.com](mailto:asiadat@annerton.com)



**Tamari Asatiani, LL.M., M.Sc.**  
Research Associate, Germany  
[tasatiani@annerton.com](mailto:tasatiani@annerton.com)

## BERLIN

Annerton  
Rechtsanwalts-gesellschaft mbH

Köthener Straße 2 – 3  
10963 Berlin

T +49 30 863 21 88 -0  
F +49 30 863 21 88 -21

[berlin@annerton.com](mailto:berlin@annerton.com)

## FRANKFURT A. M.

Annerton  
Rechtsanwalts-gesellschaft mbH

Wöhlerstraße 5  
60323 Frankfurt a. M.

T +49 69 2043 689 -0  
F +49 69 2043 689 -99

[frankfurt@annerton.com](mailto:frankfurt@annerton.com)

## MÜNCHEN

Annerton  
Rechtsanwalts-gesellschaft mbH

Wagmüllerstraße 23  
80538 München

T +49 89 306 683 -0  
F +49 89 306 683 -211

[munich@annerton.com](mailto:munich@annerton.com)

## LUXEMBURG

Annerton S.A.

94, rue du Golf  
L-1638 Senningerberg  
Luxemburg

T +352 2868 9181  
F +352 2868 7181

[luxembourg@annerton.com](mailto:luxembourg@annerton.com)