

MiCA: An overview to the EU's new crypto regulations



Why markets in crypto-assets regulation (MiCA)?

On 9 June 2023, the Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (MiCA) was published in the Official Journal of the European Union and will apply from 30 December 2024, with parts of MiCA concerning the e-money tokens and the asset-referenced tokens anticipated to apply from 30 June 2024.

MiCA provides a harmonized framework for markets in crypto-assets at European Union level, to support technological advancements, while ensuring fair competition and preventing regulatory arbitrage. At the heart of MiCA is to ensure adequate investor protection, without compromise on the financial stability and the smooth operation of payment systems. At the same time, MiCA aims to address monetary policy concerns, since certain subcategories of crypto-assets may have a clear monetary substitution dimension (having regard to the three functions of money as a medium of exchange, store of value and unit of account) which, if unleashed, might affect both monetary policy transmission and monetary sovereignty.

MiCA does not regulate central bank digital currencies (CBDCs), the issuance of which is also contemplated by the European Central Bank and the national central banks of the Member States whose currency is the euro (as part of the Eurosystem) and is backed by a recent legislative proposal of the European Commission on the establishment of the digital euro (published on 28 June 2023).

MiCA Overview

MiCA lays down uniform rules in relation to:

- Definition and categorization of crypto-assets
- Issuance and admission to trading of crypto-assets
- Crypto-asset offers to the public and marketing communications
- Location and licensing requirements in relation to certain categories of crypto-assets issuers
- Licensing of crypto-asset service providers (CASPs)
- Requirements for the provision of crypto-asset services by other financial sector entities
- Offering of crypto-asset services by third country entities
- Legal form and governance requirements for CASPs
- Conduct of business rules for CASPs
- Prudential requirements applicable to crypto-asset issuers and CASPs, including minimum capital requirements
- Specific requirements applicable to individual crypto-asset services
- Regulation of significant stablecoins
- Consumer protection rules for the issuance, trading, exchange and custody of crypto-assets
- Liability of CASPs and crypto-asset issuers
- Prevention of market abuse in relation to crypto-assets that are admitted to trading or in respect of which an application for admission to trading has been made
- Powers and co-operation among competent authorities
- ESMA and EBA powers, including temporary intervention powers

Which crypto-assets are in scope?

Definition of crypto-asset: “a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology”. MiCA contains a wide, catch-all definition of crypto-asset.

Crypto-assets with no identifiable issuer fall within the scope of MiCA but some of its provisions are not applicable.

MiCA does not apply, among others, to:

- crypto-assets that cannot be transferred to other holders (e.g. loyalty schemes)
- crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles (NFTs)
- crypto-assets that qualify as financial instruments for the purposes of MiFID II
- crypto-assets that qualify as deposits, securitisation positions, insurance or pension products.

Crypto-assets that qualify as financial instruments fall within the scope of existing European Union acts on financial services, including MiFID II, MiFIR, EMIR, MAR and CSDR, regardless of the technology used for their issuance or their transfer. ESMA is expected to issue draft RTS in order to draw a clearer distinction between crypto-assets that may be characterised as financial instruments (falling under the scope of the MiFID II) and those which would fall under the scope of MiCA.

Who is MiCA relevant to?

- Any legal person engaging in issuing, offering or requesting an admission to trading of crypto-assets in the European Union
- Any legal person engaging in the provision of crypto-asset services in the European Union
- Any person, in respect of acts relating to crypto-assets that are admitted to trading, or for which a request for admission to trading on such a trading platform has been made.

Crypto-asset services in scope

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

MiCA is not applicable where crypto-asset services:

- are provided in a fully decentralised manner without any intermediary (DeFi)
- are provided exclusively for parent companies, for own subsidiaries or for other subsidiaries of parent companies

Asset-referenced tokens (ARTs)

- **Permitted issuers/Location and licensing requirements:** Persons engaged in issuing, offering or requesting an admission to trading of ARTs must be: 1) legal persons established in the European Union and authorized by the national competent authority as such under MiCA rules, or 2) credit institutions, under the condition that they have published a crypto-asset white paper and they have notified the competent national authority at least 90 days before issuing ARTs by providing all information set out in MiCA (incl. programme of operations, description of policies and governance arrangements, legal opinion that the crypto-asset does not qualify as EMTs or crypto-asset other than EMTs and ARTs etc). Authorisation may be refused, among others, if the applicant issuer's business model might pose a serious threat to market integrity, financial stability, smooth operation of payment systems (including on the basis of an ECB negative opinion), or poses serious risks of money laundering and terrorist financing.
- **No interest:** ART issuers (and CASPs) are prohibited from granting interest in relation to ARTs.
- **Redeemability:** ART holders have a right of redemption at all times against the ART issuer, and in respect of the reserve assets when the issuer is not able to meet its obligations. Upon request by an ART holder, the ART issuer must redeem it, at any time, either by paying an amount in funds, other than electronic money, equivalent to the market value of the assets referenced by the ART held, or by delivering the assets referenced by the ART. Subject to certain exemptions, ART redemption is not subject to a fee.
- **Offer to the public:** Subject to certain safe harbours, ART offers to the public are subject to ART issuer authorization and approval of "crypto-asset white paper" by the competent authority, which meets all relevant mandatory disclosure requirements set out in MiCA (incl. information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the ART) and publication of such white paper. ART issuer and its administrative, management and supervisory board (AMSB) members are liable for the information given in a crypto-asset white paper.
- **Own fund requirements:** ART Issuers must, at all times, have own funds equal to an amount of at least the highest of the following: (a) EUR 350,000; (b) 2 % of the average amount of the reserve of assets; (c) 25 % of the fixed overheads of the preceding year, subject to the powers of the competent authority to adjust, under conditions, such amount upwards or downwards.
- **Reserve of assets:** The reserve of assets backing the ART value are subject to strict requirements concerning composition, management, custody and investment of such reserve of assets.
- **Conduct of business rules:** ART issuers are required, among others, to act honestly, fairly and professionally and in the best interests of the holders of the ARTs, to have a clear complaint handling procedures, to provide information on an ongoing basis to holders of ARTs, to have in place a conflict of interest policy and procedures and to prepare recovery plan and plan for the orderly redemption of the tokens.
- **Restrictions on ART issuance:** Where the estimated quarterly average number and average aggregate value of transactions per day associated to its uses as a means of exchange within a single currency area is higher than 1 million transactions and EUR 200 million, respectively, the ART issuer must: (a) stop issuing that ART; and (b) submit a plan to the competent authority to ensure that the estimated quarterly average number and average aggregate value of those transactions per day is kept below 1 million transactions and EUR 200 million respectively.



Crypto-assets taxonomy

MiCA classifies crypto-assets into three categories:

- **E-money tokens:** crypto-assets (stablecoins) that purports to maintain a stable value by referencing the value of one official currency (EMTs). EMTs are explicitly characterized as “electronic money” as defined in Directive 2009/110/EC (EMI).
- **Asset-referenced tokens:** crypto-assets (stablecoins) that are not an EMTs and purport to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies (ARTs).
- **Crypto-assets other than EMTs and ARTs** (including utility tokens).

E-money tokens (EMTs)

- **Permitted issuers:** Persons engaged in issuing, offering or requesting an admission to trading of EMTs must qualify as credit institutions or electronic money institutions.
- **Issuance at par:** EMT issuance is required to be at par and on the receipt of funds.
- **No interest:** EMT issuers (and CASPs) are not permitted to grant interest to EMT holders.
- **Redeemability:** EMT holders have a claim against the EMT issuer. Upon request by an EMT holder, the issuer must redeem it, at any time and at par value, by paying in funds other than e-money. EMT redemption cannot be subject to a fee.
- **Offer to the public:** EMT offer to the public is subject to (i) notification of a “crypto-asset white paper” to the competent authority, which meets all relevant mandatory disclosure requirements set out in MiCA (incl. information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the EMT) and publication of such white paper and (ii) notification to the competent authority of that intention, at least 40 working days before the date on which it intends to offer to the public those EMTs or seek their admission to trading.
- **White paper liability:** EMT issuer and its AMSB members are liable for the information given in a crypto-asset white paper.
- **Other regulatory requirements:** EMT issuers are subject to prudential requirements and conduct of business rules under EMI. Additional requirements apply to marketing communications.
- **Restrictions on EMT issuance:** Significant EMTs are subject to issuance restrictions equivalent to the restrictions on ART issuance.

Crypto-assets other than EMTs and ARTs

Offerors and persons seeking admission to trading of crypto-assets other than ARTs or EMTs are subject to a lighter-touch set of rules:

- **Legal status requirement:** only legal persons.
- **Crypto-asset white paper:** A crypto-asset white paper needs to be drawn up, notified to the competent authority and published. Following publication of the crypto-asset white paper, crypto-assets other than EMTs and ARTs may be admitted to trading on a trading platform for crypto-assets in the European Union.
- **White paper liability:** The offeror, the person seeking admission to trading or the operator of a trading platform and their AMSB members are liable for the information given in a crypto-asset white paper.
- **Conduct of business rules:** Offerors and persons seeking admission to trading of crypto-assets other than ARTs or EMTs are required to act honestly, fairly and professionally, to communicate with holders and prospective holders of the crypto-assets in a fair, clear and not misleading manner, to identify, prevent, manage and disclose any conflicts of interest that might arise, to maintain all of their systems and security access protocols in conformity with the appropriate EU standards and to act in the best interests of the holders of such crypto-assets and treat them equally.
- **Right of withdrawal:** Retail holders of crypto-assets other than ARTs and EMTs acquiring such other crypto-assets from an offeror or a crypto-asset service provider placing crypto-assets on behalf of that offeror have a right of withdrawal within 14 calendar days, starting from entering into the relevant purchase agreement, without incurring any fees or costs and without being required to give reasons.

Significant EMTs and ARTs

EMTs and ARTs are classified by EBA as significant, if at least three of the following criteria are met:

- (a) number of holders > 10 million
- (b) value of the token issued, its market capitalisation or the size of the reserve of assets of the issuer of the token > EUR 5 billion
- (c) average number and average aggregate value of transactions in token per day > 2.5 million transactions and EUR 500 million respectively
- (d) issuer of the token: a provider of core platform services designated as a gatekeeper under Regulation (EU) 2022/1925
- (e) significance of the activities of the issuer of the token on an international scale, including the use of the token for payments and remittances
- (f) interconnectedness of the token or its issuers with the financial system
- (g) same issuer issues at least one additional token, and provides at least one crypto-asset service.

The supervisory responsibilities with respect to the issuer of significant EMTs and ARTs are transferred from the competent authority of the issuer's home Member State to EBA.



Provision of crypto-asset services

Permitted providers/ Authorisation	1) Legal persons authorized as CASPs in accordance with MiCA. 2) The following financial sector entities authorized under EU legal acts, following notification to the competent authority of their home member state at least 40 working days before providing crypto-asset services for the first time (incl. description of internal control, ICT systems, client asset segregation, category of crypto-assets etc): (a) credit institutions (b) CSDs for custody and administration of crypto-assets on behalf of clients (c) investment firms for the provision of crypto-assets services equivalent to the investment services for which it is authorized (d) e-money institutions for custody and administration of crypto-assets on behalf of clients and transfer services for crypto-assets on behalf of clients (e) UCITS managers or AIFMs for the provision of crypto-asset services equivalent to the management of portfolios of investment and non-core services for which it is authorized (f) MiFID II market operators for the operation of a trading platform for crypto-assets.
Legal form and location	CASPs must have a registered office and place of effective management in the European Union and at least one of its directors must be resident in the European Union. MiCA does not provide for a separate third country regime. Therefore, third country firms must be authorized as CASPs under MiCA or provide crypto-asset services exclusively on a reverse solicitation basis.
Cross-border provision of services	EU passport: provision of crypto-asset services throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services.
Minimum capital requirements	EUR 50,000 or EUR 125,000 or EUR 150,000, depending on the categories of the crypto-asset services provided.
Own funds	At all times, prudential safeguards equal to an amount of at least the higher of: (a) the amount of minimum capital requirements depending on the type of the crypto-asset services provided; (b) 25% of the fixed overheads of the preceding year, reviewed annually.
Other regulatory requirements	CASPs are under obligation to act honestly, fairly and professionally in the clients' best interest, to have in place governance arrangements, safekeeping arrangements safeguarding client's crypto-assets and funds (for CASPs that hold crypto-assets belonging to their clients), complaint handling procedures, conflict of interest policies and procedures, safeguards for outsourcing arrangements as well as plans to support orderly winding down of activities (including continuity or recovery of critical activities). Additional obligations apply to CASPs providing specific crypto-assets. CASPs must also make publicly available on their website information related to the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services.
Significant crypto-asset service providers	CASPs reaching the threshold of at least 15m active users, on average, in one calendar year in the European Union qualify as significant CASPs and must notify their competent authority to that respect.

Market abuse

MiCA lays down rules to prevent market abuse involving crypto-assets that are admitted to trading or in respect of which a request for the admission to trading has been made, by prohibiting insider dealing, unlawful disclosure of inside information and market manipulation.

MiCA also sets out additional measures which include the public disclosure of inside information as well as the adoption of arrangements, systems and procedures for the prevention and detection of market abuse by persons professionally arranging or executing transactions in crypto-assets.

Supervisory and intervention powers

Persons engaging in issuing, offering or requesting an admission to trading of crypto-assets and crypto-asset service providers are in principle subject to the supervisory powers of the national competent authority of their home member state. National competent authorities must cooperate with each other for the purposes of MiCA and render assistance to competent authorities of other member states, and to EBA and ESMA.

In case of cross-border activities in relation to crypto-assets, where the competent authority of a host member state suspects irregularities in the activities of an entity involved in issuing, offering or requesting an admission to trading of crypto-assets and provision of crypto-asset services, it can under conditions take appropriate precautionary measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders, after having notified the competent authority of the home member state and ESMA thereof and, under circumstances, also EBA.

Significant EMT and ART issuers are subject to direct supervision by EBA. Significant CASPs are supervised by the competent authorities but ESMA will have intervention powers to prohibit or restrict the provision of crypto-asset services by CASPs, if there are threats to market integrity, investor protection or financial stability.

ECB “veto” rights

ECB is consulted by the competent authorities and has the power to issue an opinion in several instances. For instance, the authorization of ART issuers may be refused or withdrawn or limited, if ECB opines that the ART might pose risks to financial stability, the smooth operation of payment systems, monetary policy transmission and monetary sovereignty.



Transition period

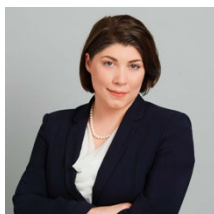
MiCA provides that: (1) CASPs offering their services in accordance with applicable laws before 30 December 2024, may continue to do so until 1 July 2026 or until a MiCA license is granted or denied, whichever is sooner. Member states may choose not to apply this transitional provision or limit its duration (we do not know whether Greece will use this option) (2) member states may apply a simplified procedure to an application for CASP authorisation submitted between 30 December 2024 and 1 July 2026 by entities already offering crypto-asset services in accordance with applicable laws on 30 December 2024 and (3) ART issuers other than credit institutions that issued ARTs in accordance with national applicable laws before 30 June 2024, may continue to do so until they are granted or refused an authorisation pursuant, provided that they apply for authorisation before 30 July 2024.

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