



flow briefing



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Topic

Digital assets

Date

13 November 2024

The role of MiCAR in shaping the market for digital assets in Europe

As crypto assets continue to garner attention across Europe – both from a retail and institutional perspective – there is a growing appreciation that while the underlying blockchain technology enables new opportunities, they also bring inherent risks. One longstanding challenge in this regard has been the regulatory uncertainty associated with crypto asset governance.

To mitigate potential risks to financial stability – and introduce stricter protections for consumers and investors – the European commission identified the need for a harmonised European Union (EU) regulation for the crypto market and its participants. This came in the form of the Markets in Crypto-Assets Regulation (MiCAR).

On 9 June 2023, MiCAR has been published in the EU Official Journal, entering into force 20 days later. Since 30 June 2024, regulations around electronic money tokens (EMT) and asset-referenced tokens (ART) have become effective. And on 30 December 2024, with the implementation of the third consultation phase, the new, uniform market rules for crypto assets in the EU are set to come into full effect across 27 EU member states.

This marks the beginning of an 18-month transitional period (see Figure 1), which includes a ‘grandfathering’ for entities that were providing crypto asset services in accordance with national applicable laws before 30 December 2024, to continue their operations until 1 July 2026, or until they are either granted or denied a MiCAR authorisation.

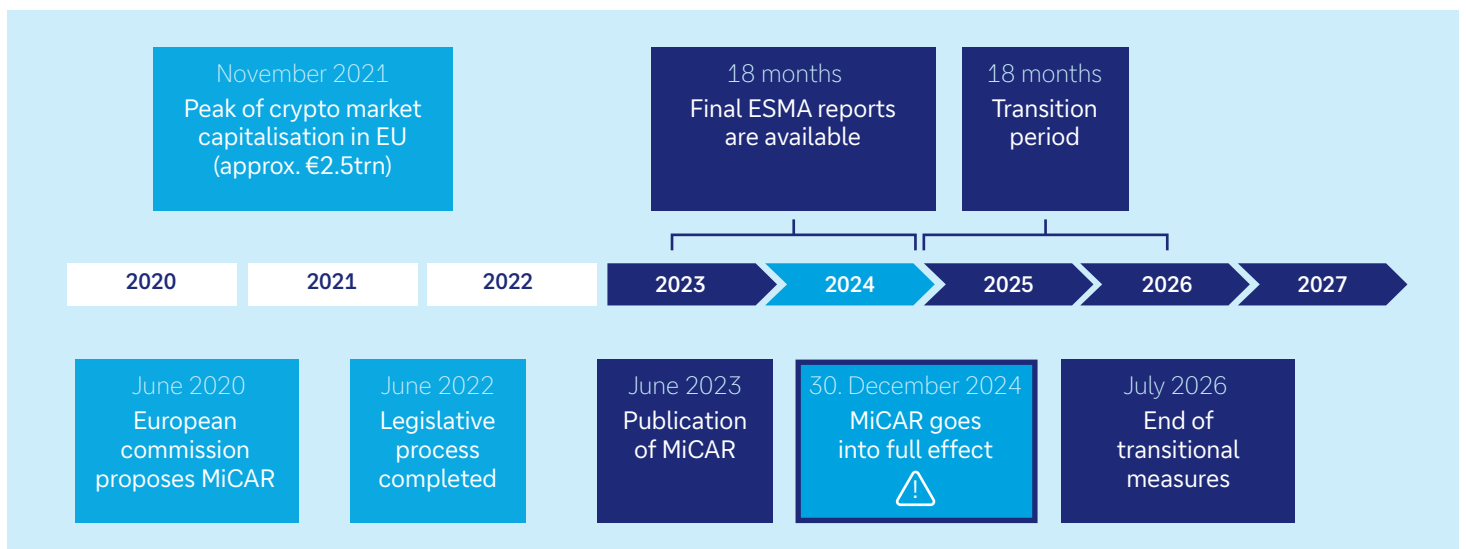


Figure 1: MiCAR roll out timeline

Source: Deutsche Bank

An innovative crypto landscape

This comprehensive and coordinated framework for crypto-asset markets will foster legal certainty, ensure fair treatment of crypto asset issuers and service providers to expand their business across borders, and deliver a more trusted and stable market:

- **Legal certainty.** As the first EU-wide harmonised regulatory framework, MiCAR aims to provide unified legal certainty for crypto assets – replacing individual national regulation and filling regulatory gaps.
- **Foster competition.** MiCAR aims to support innovation and fair competition by removing the barriers to the EU market – allowing for the passporting of crypto assets primary and secondary market activities.
- **Strengthening trust.** To promote appropriate consumer and investor protections, MiCAR is focused on fostering trust among market participants.
- **Drive financial stability.** MiCAR will drive financial stability by introducing additional obligations and disclosure requirements (e.g. pricing, cost, fee policies, information on the environmental impact) for crypto asset service providers (CASPs) and issuers of crypto assets.

The multiple dimensions of MiCAR

The new regulation encompasses various aspects, including stringent requirements for CASPs and issuers of crypto assets. It also provides clear definitions for different types of crypto assets and the associated services that fall within its scope.

1. Crypto asset service providers

1.a Requirements

MiCAR outlines numerous authorisation and notification conditions for CASPs. CASPs may need to apply for an authorisation at their national competent authority (NCA) in the EU Member State of their establishment – and need to have a registered office in an EU member state where they carry out at least part of their crypto asset services, with at least one director that is an EU resident.

For credit institutions or banks, central securities depositories, investment firms, electronic money institutions (EMI), Undertakings for the Collective Investment in Transferable Securities (UCITS) managers or Alternative Investment Fund Managers Directive (AIFMD) managers and market operators, notifications have been made available as a replacement for the full authorisation process under MiCAR. In the notification, the financial entity must provide an information pack containing key details, such as documentation about internal controls, risk assessment and business continuity, among others, to its home state regulator.

CASPs may provide crypto asset services if they notify their home regulator with the required information at least 40 working days before providing those services for the first time; they can only begin offering the crypto asset services if the submitted documentation is deemed complete by the regulator. CASPs that intend to provide crypto asset services in more than one EU member state will need to submit a separate information package to the home member state. 15 calendar days after the submission of the package, the

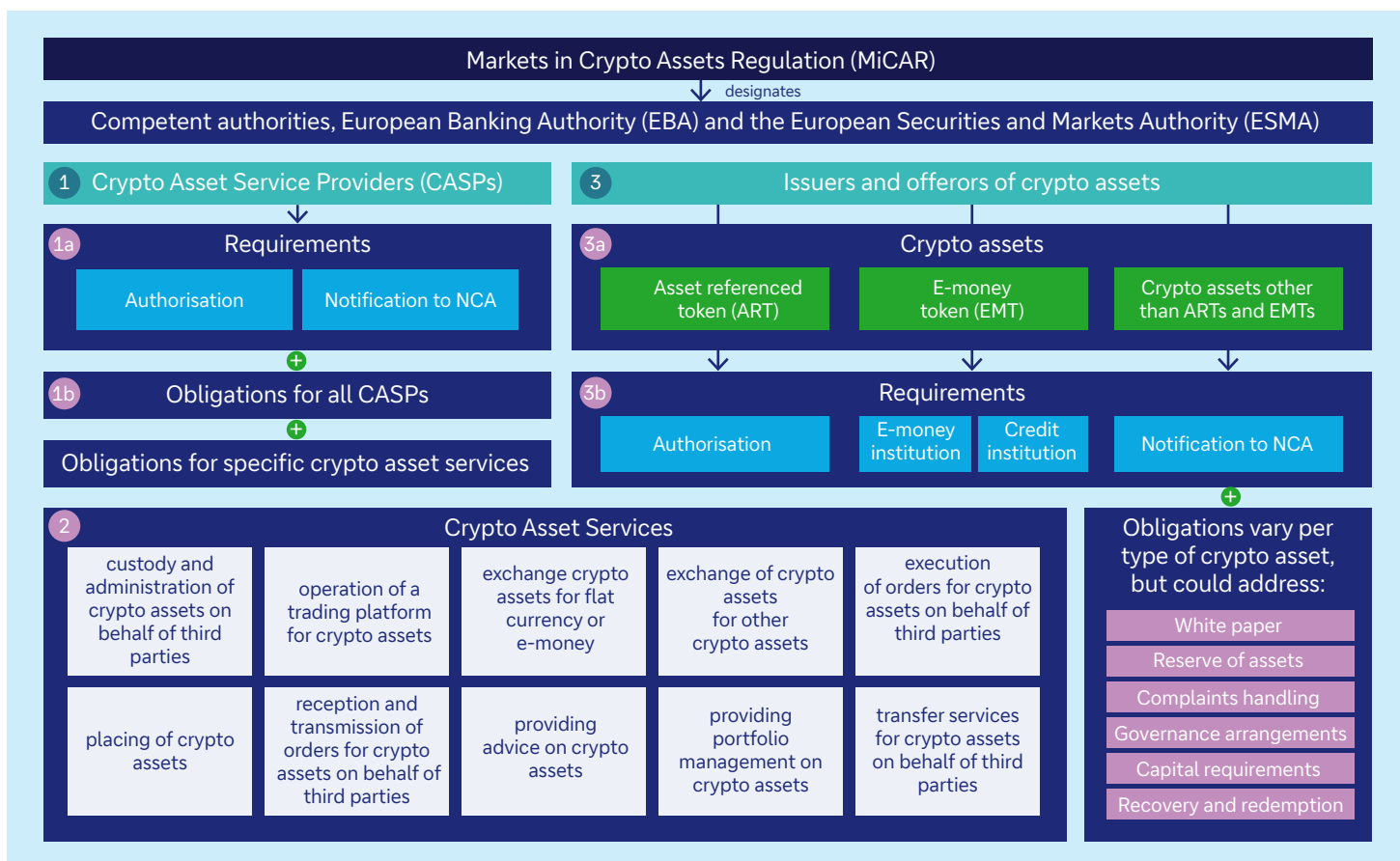


Figure 2: The multiple dimensions of MiCAR

Source: Deutsche Bank



authorised CASPs can provide crypto asset services in the countries they specified, but in principle in all countries of the European Economic Area (EEA).

1.b Obligations for all CASPs

MiCAR introduces obligations that will apply to all CASPs. This includes, for instance, prudential requirements that ensure CASPs have financial safeguards in place depending on their activities, governance arrangements, including having the appropriate knowledge, skills and experience in place, and a set of other general requirements (e.g. complaints-handling procedures, disclosure of conflicts of interests, orderly wind-down).

2. Crypto asset services

MiCAR outlines the different types of crypto asset services that are in-scope of the regulation. They are outlined in Figure 2.

3. Issuers and offerors of crypto assets

3.a Crypto assets

According to MiCAR, a crypto asset refers to “a 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”. Although the majority of crypto assets will fall under MiCAR, certain crypto assets, such as non-fungible tokens (NFTs), are out of scope. In scope crypto assets are defined under three categories:

- **Asset-referenced (ART).** Designed to maintain a stable value by referencing multiple assets, such as a combination of currencies, commodities, or other assets.
- **E-money token (EMT).** Purports to maintain a stable value by referencing the value of one official fiat currency. Payment tokens would fall under this category.
- **Crypto assets other than ARTs or EMTs.** Covers a wide array of crypto assets, such as those that grant holders access to a product, application, or service, or are necessary for engaging with a blockchain ecosystem. Utility tokens would fall under this category.

3.b Requirements and obligations for issuers and offerors of crypto assets

- **Issuers of ARTs** must be authorised by the respective NCA. While financial entities such as credit institutions may already be authorised, they could still be subject

to specific notification requirements when issuing ARTs. Additionally, issuers of ARTs are required to draft and publish a white paper, maintain sufficient reserves and liquidity, and implement robust governance frameworks.

- **Issuers of EMTs** must be authorised as EMIs or credit institutions. These issuers must prepare and release a comprehensive white paper detailing the EMT and its reference currency. Additionally, they must ensure they have adequate reserves and liquidity to back the tokens and establish strong governance structures to manage risks and operations effectively.
- **Offerors of crypto assets other than ARTs or EMTs** do not require separate authorisation but a notification at the respective NCA. Offerors must draft and publish a white paper, ensure fair and clear marketing communications, and comply with operational and transparency standards.

Impact of MiCAR

MiCAR may have a threefold impact on the EU digital assets market and its participants. At a market level, the new regulation will encourage the development of a reliable and trustworthy network of crypto market participants, while enhancing consumer trust and protection through transparency obligations. Greater trust and transparency will, in turn, drive technological innovation – accelerating value creation by unlocking the benefits of blockchain technology (real-time processing, immutability, programmability) and enhancing interoperable systems that could in time replace legacy systems.

All this comes with a broader impact from an organisational and operational standpoint. To ensure adherence to the comprehensive set of governance rules and standards introduced by MiCAR, participants in the crypto asset space will have to adjust their business models and realign processes accordingly. To get this right, participants should act now – ensuring they have the right internal resources in place to meet their obligations and take full advantage of the benefits introduced by the regulation.

¹ https://finance.ec.europa.eu/digital-finance/crypto-assets_en

² https://www.esma.europa.eu/sites/default/files/2024-01/ESMA75-453128700-52_MiCA_Consultation_Paper_-_Guidelines_on_the_qualification_of_crypto-assets_as_financial_instruments.pdf

³ Exemptions, e.g. based on materiality thresholds of issued assets, may apply.

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