

Central Bank MiCAR Authorisation and Supervisory Expectations for CASPs

July 24, 2024



On 18 July 2024, the Central Bank of Ireland (Central Bank) held an industry briefing and discussion on MiCAR, the Central Bank’s regulatory approach to crypto, and the authorisation of crypto-asset service providers (CASPs).

Central Bank Deputy Governor Derville Rowland highlighted that one purpose of the event was to outline the Central Bank’s approach to implementing the Markets in Crypto Assets Regulation (MiCAR) and to provide greater clarity and transparency on the crypto industry’s next steps.

Mary-Elizabeth McMunn, Director of Banking, Payments, and Credit Union Supervision at the Central Bank, also set out the Central Bank’s authorisation and supervisory expectations regarding MiCAR.

MiCAR Risk Appetite

The Central Bank has a MiCAR risk appetite, which guides its approach to authorisation and supervision of CASPs under MiCAR. It is informed by the following four principles:

Utility and Customer Base – The Central Bank is sceptical of CASP business models

in which unbacked crypto-assets are heavily marketed, offered and distributed to retail investors for speculative investment purposes.

Firm Failure – While MiCAR will introduce some guardrails for consumers and investors, it does not eliminate the possibility of firms failing. A zero-failure risk appetite is not feasible.

Transparency – The Central Bank expects applicant firms to be fully transparent about all activities they intend to undertake, including whether their intent is to enter new markets.

No Predetermined Authorisation Assessments – Firms currently providing crypto services in Ireland will need to clearly demonstrate to the Central Bank that they meet all the new regulatory requirements under the MiCAR regime.

MiCAR Engagement Principles

Transparency – Firms must act fully transparently and openly regarding their MiCAR global and EU strategy, both from day one and in the medium to long term.

Supervisability – If the Central Bank identifies obstacles to an applicant firm operating independently and autonomously that would inhibit its supervision by the Central Bank, it will not be authorised.

Preparedness – Firms must be resourced to engage with the Central Bank robustly and in a timely manner on all aspects of an application throughout the authorisation process.

Consumer Focus – Securing customer interests, particularly in retail-facing business models, needs to be at the centre of a firm's application.

The Central Bank has also reiterated that where it has existing regulatory relationships with firms, its supervisory knowledge and its existing risk assessment of the firm will be considered.

Central Bank MiCAR Authorisation and Supervisory Expectations

Governance and Accountability – Firms are expected to demonstrate substance and autonomy in Ireland and be led by a local crypto-competent executive and board with a strong grasp of the local regulatory environment. Firms must maintain robust local governance and risk management arrangements.

Conflicts of Interest – Firms must ensure that no risks are posed to customer interests through conflicts of interest. They must also ensure a robust system is in

place that can proactively identify and remedy any conflicts in a timely manner.

Client Assets – The local firm must have full control of all client assets with robust segregation, reconciliation and prompt access to the reserve of assets to meet redemption demands.

Ownership – A full, transparent, and corroborated view of the identity of direct and indirect shareholders and any party that can exercise significant influence over the firm must be provided. Ownership and operating structures must be designed to achieve maximum transparency and clarity regarding the firm’s ownership.

Business Model and Financial Resilience – Firms must maintain a board-approved business strategy that demonstrates the viability and sustainability of the business model and fully reflects the vulnerabilities stemming from the product offering.

Anti-Money Laundering/Countering Terrorist Financing – Firms must demonstrate strong risk management practices and internal controls to maintain compliance with Irish legislation.

Operational Resilience – Firms should ensure continuity and regularity in the performance of their services (including DLT/Blockchain).

Crisis Management – Firms must maintain detailed plans appropriate to support an orderly wind-down of their activities and timely redemption of customer funds without causing undue economic harm to their customers.

Conduct and Transparency – Firms are expected to demonstrate how customer interests are secured and how the suitability of their product offering is being proactively assessed in accordance with the customer’s risk tolerance.

MiCAR Application Process

Pre-Application Engagement Phase

Introductory meeting

The Central Bank confirmed that it is already open to potential applicants for authorisation as a CASP. Early engagement with the Central Bank is encouraged as it supports firms in entering the formal process and preparing their application. Early engagement involves the following steps:

Initial contact by the firm seeking engagement with the Central Bank is to be made to their existing Central Bank supervisory contacts (for firms which are already authorized or registered by the Central Bank) or to the Central Bank Innovation Hub

(for firms which are already authorized or registered by the Central Bank).

An introductory meeting is held at which the firm has an opportunity to present a slide deck providing an overview of its business model and the Central Bank presents its authorisation and supervisory expectations.

Preparation/submission of Key Facts Document and structured pre-application meeting

Following any initial engagement, a more structured pre-application meeting with the Central Bank may be arranged. The Central Bank confirmed that it is proposing to publish a template Key Facts Document in the coming weeks. In advance of the structured pre-application meeting, the applicant will be required to prepare and submit a completed Key Facts Document to the Central Bank to facilitate the Central Bank to understand its business model and to form an initial assessment of how it aligns with the Central Bank's authorisation and supervisory expectations and to identify any key issues which the applicant would need to consider before submitting a formal application for authorisation. At the structured pre-application meeting, the applicant will present its Key Facts Document to the Central Bank and be questioned about it and the applicant will have an opportunity to raise any questions on which it is seeking clarification from the Central Bank.

Formal Application Phase

At this stage, the full formal application is submitted to the Central Bank. The assessment of the application will be guided by the process and timelines for assessment of applications for authorisation as a CASP set out in MiCAR and applicable regulatory service standards.

For further articles and briefings on MiCAR and authorisation as a CASP in Ireland please visit our dedicated MiCAR hub [here](#).

How we can help

Our Financial Regulation team is already supporting several firms who will be applying for authorisation as a CASP under MiCAR and has extensive experience of securing the registration of VASPs and the authorisation of electronic money institutions, payment institutions and other regulated Fintechs successfully. For example, William Fry acted for one-third of the electronic money institutions which have been granted authorisation in Ireland to date. If you are considering applying for authorisation under the MiCAR regime, please contact Shane Kelleher, Louise McNabola or your usual William Fry contact.