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The EU's Markets in Crypto-Assets (MiCA) regulation – sustainability disclosures

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The Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114) (MiCA) is an EU regulation intended to harmonise market rules for crypto-assets which are not otherwise regulated by existing financial services legislation across the EU. It sets out provisions for those issuing and trading crypto-assets, covering transparency, disclosure, authorisation and supervision of transactions. In this briefing, we highlight the sustainability disclosure requirements for firms issuing and trading in crypto-assets under MiCA, some of which apply from as early as 30 June 2024.

MiCA harmonises rules for crypto-assets across the EU

The [Markets in Crypto-Assets Regulation](#) (Regulation (EU) 2023/1114) (MiCA) entered into force in June 2023. It is intended to harmonise market rules for crypto-assets which are not otherwise regulated by existing financial services legislation across the EU. As part of the regulatory regime for authorisation and supervision of the (non-MiFID II regulated) crypto-asset market, MiCA is intended to support market integrity and financial stability by ensuring that consumers have reliable information to help them make informed decisions and risk assessments. This will include certain sustainability-related information, with the first obligations becoming applicable from 30 June 2024.

We have previously written about the implications of MiCA becoming fully applicable by 30 December 2024 for firms in the crypto-asset sector [here](#). This briefing provides more detail on the sustainability disclosure aspects of the new rules.

In Recital (7) of MiCA, the European Commission acknowledges the adverse impacts that different consensus mechanisms can have on the environment. By introducing reporting requirements for both (i) those issuing and offering crypto-assets and (ii) crypto-asset service providers (CASPs), it seeks to encourage the deployment of more environmentally friendly solutions and to ensure that consumers are aware of the environmental impacts of different crypto-assets they are engaging with. For crypto-asset users who have their own onward reporting obligations, this data is also going to be key.

On 3 July 2024, the European Securities and Markets Authority (ESMA) published its [Final Report: Draft Technical Standards specifying certain requirements of the Markets in Crypto Assets Regulation \(MiCA\) – second package](#) setting out, amongst other things, (i) white paper disclosure requirements relating to key

sustainability indicators in respect of climate and other environment-related adverse impacts and (ii) website disclosure requirements for CASPs. The draft RTS is set out in Annex IV to the Final Report (the **SD RTS**).

MiCA applies to issuers of crypto-assets and crypto-asset service providers

MiCA applies to persons issuing crypto-assets and/or offering crypto assets to the public (including asset-referenced tokens (**ARTs**) and e-money tokens (**EMTs**)) or providing services related to crypto-assets in the EU (CASPs). This includes persons based in non-EU countries providing services in the EU.

MiCA does not apply to security-style crypto-assets, such as tokenised bonds, which qualify as financial instruments under MiFID II or other financial services regulation, or to non-fungible tokens – see this [ESMA flowchart](#) which clarifies the scope of MiCA.

MiCA's sustainability disclosure requirements

Article 4 of the SD RTS sets out details in relation to the requirements under Articles 19(1), 51(1) and 6(1) of MiCA, whereby parties responsible for drawing up crypto-asset whitepapers in respect of ARTs, EMTs, and crypto-assets other than ARTs and EMTs are required to disclose information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-assets.

Article 5 of the SD RTS sets out similar details in relation to the requirement under Article 66(5) of MiCA on CASPs to disclose information on their websites about all crypto-assets for which they provide crypto-asset services, including information on the consensus mechanism, certain mandatory “key indicator” information related to energy consumption (further detail is set out in the table below) and sources of disclosure content (whether through white papers, third parties or other). Additionally, Article 3 of the SD RTS sets out general principles relating to the presentation of information by CASPs (e.g. language requirements).

Note that the provisions under MiCA outlined above which relate to ARTs and EMTs apply from 30 June 2024, while the remaining provisions (e.g. relating to crypto-assets other than ARTs and EMTs and CASPs) apply from 30 December 2024, although Article 143 of MiCA sets out some transitional measures for crypto-assets other than ARTs and EMTs – see further details below.

The [SD RTS](#) (pursuant to Article 6(12), 19(11), 51(15) & 66(6) of MiCA) sets out mandatory sustainability disclosure indicators for ARTs, EMTs, crypto-assets other than ARTs and EMTs and CASPs, as summarised below:

Entity	Basic disclosure	Enhanced disclosure (where consensus mechanism for crypto-asset consumes exceeds 500 000 kWh per year)
Persons drafting crypto-asset white paper (Article 4)	<p>One mandatory key indicator: energy consumption in kWh and sources and methodologies to calculate it – providing information contained in Table 2 of the Annex to the SD RTS (Table 2)</p> <p>* Optional disclosures of information in Table 3 and Table 4 of the Annex to the SD RTS</p>	<p>Basic disclosure set out in Table 2 plus five mandatory supplementary key indicators (information contained in Table 3 of the Annex to the SD RTS):</p> <ul style="list-style-type: none"> • Renewable energy consumption (S.10) • Energy intensity (S.11) • Scope 1 GHG commissions – controlled (S.12) • Scope 2 GHG emissions- purchased (S.13) • GHG intensity (S.14), <p>together with sources and methodologies for calculating S.10 to S.14) (Table 3).</p> <p>* Optional disclosures of information in Table 4 of the Annex to the SD RTS</p>
CASPs providing services other than those in (a) to (c) below (Article 5(1))	<p>One mandatory key indicator for crypto-assets: energy consumption in kWh and sources and methodologies to calculate it – information contained in Table 2</p> <p>* Optional disclosures of information in Table 3 and Table 4 of the Annex to the SD RTS</p>	
CASPs providing one or more of the following services (Article 5(2)): <ol style="list-style-type: none"> a. Operating a trading platform b. Exchanging crypto-assets for funds c. Exchanging crypto-assets for other crypto-assets 	<p>One mandatory key indicator for crypto-assets: energy consumption in kWh and sources and methodologies to calculate it – information contained in Table 2</p> <p>* Optional disclosures of information in Table 3 and Table 4 of the Annex to the SD RTS</p>	<p>Basic disclosure set out in Table 2 plus one mandatory key indicator and five supplementary key indicators for crypto-assets, together with sources and methodologies as per the above (Table 3)</p> <p>* Optional disclosures of information in Table 4 of the Annex to the SD RTS</p>

In all there are fewer mandatory key indicators than originally suggested by ESMA in the previous draft RTS. However, as mentioned in the above these are optional supplementary information disclosures included in Table 4 of the Annex. As a result, entities may also choose to disclose energy mix, energy use reduction, Scope 3 GHG emissions (and targets/commitments), waste (including electrical waste), impact on natural resources (and targets/commitments) and water. We note that some “methodologies” information is included but the SD RTS also refers crypto-asset issuers and CASPs to the European Sustainability Reporting Standards (ESRS) for guidance on the calculation of many of the key indicators.

Disclosure information should in plain language and website publications need to be publicly available, free of charge and in a downloadable format. The information should be regularly updated (at least annually) and clear on its face the date of its last review or update. CASPs may use information from crypto-asset white papers to comply with their disclosure requirements (pursuant to Article 66(5) of MiCA), but the preparing party has to be identified as a source. If there has been any verification of the information by third parties, then this also needs to be indicated.

Sequencing issues and sanctions for non-compliance

CASPs need to comply with the SD RTS regarding website disclosures from 30 December 2024.

Regarding whitepapers, although the crypto-asset white paper disclosure requirements relating crypto-assets other than AMTs and ARTs apply from 30 December 2024, some transitional provisions (as mentioned above). Accordingly, in respect of crypto-assets (other than ARTs and EMTs):

- offered to the public (and such offer has ended) before 30 December 2024, the requirement to draw up and publish MiCA-complaint white papers will not apply; and
- admitted to trading before 30 December 2024 and continue to be offered to the public, operators of trading platforms will have until 31 December 2027 to ensure that MiCA-complaint white papers have been drawn up, notified and published in accordance with the relevant requirements under MiCA.

These carve outs result in a potential lack of information available for CASPs to comply with their own website disclosure obligations which apply from 30 December 2024. Wide scale voluntary co-operation between CASPs has been suggested as a solution to this issue, but it remains to be seen how CASPs will deal with this timing issue.

Crypto-asset offerors, issuers and service providers face administrative sanctions, including fines and reputational damage if they fail to comply with MiCA (these are set out in Chapter 3 of MiCA).

Next steps

CASPs need to put a plan in place to comply with MiCA sustainability disclosure requirements by the end of the year (especially in relation to crypto-assets which are not ARTs or EMTs, as such information may not be available in relevant crypto-asset whitepapers until a later date). Persons issuing, offering to the public, or seeking admission to trading of ARTs and EMTs should be complying with MiCA disclosure requirements in respect of new products from 30 June 2024, and so such persons in particular need to be cognisant of these requirements now.

The draft RTS have been submitted to the European Commission for adoption. The European Commission will then decide whether to adopt them within three months. The regulation will enter into force following final publication in Official Journal.

Our Sustainable Finance & Investment practice brings together a multidisciplinary global team to support our clients in this mission-critical area. We are focussed on sustainability requirements for digital assets and are following this important development very closely so please get in touch if you would like to

discuss sustainability in this context or how to implement the requirements of MiCA into your business and strategy and prepare for future requirements.

This note is intended to be a general guide and covers questions of law and practice. It does not constitute legal advice.

Authored by Emily Julier, Bryony Widdup and Christina Wu.

Hogan Lovells (Luxembourg) LLP is registered with the Luxembourg bar.