

MiCAR: EU Level 2 and 3 Measures Move Forward

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As the Regulation on Markets in Crypto Assets (MiCAR) approaches its first major implementation milestone (on 30 June 2024, when relevant provisions on stablecoins begin to apply), William Fry's Financial Regulation team examines some recent updates regarding Level 2 and Level 3 measures under MiCAR.

As a regulation, MiCAR is a directly effective EU Level 1 legislative measure which will introduce and harmonise the EU regulatory framework for issuers and offerors of crypto-assets and crypto-asset service providers (**CASPs**), not otherwise captured under existing EU financial services regimes.

MiCAR implementation requires many EU Level 2 legislative measures such as Regulatory Technical Standards (**RTS**) and Implementing Technical Standards (**ITS**), and EU Level 3 measures (**Guidelines**).

In this regard, MiCAR empowers the European Commission to produce certain delegated acts on its own initiative. The regulation also mandates the European Banking Authority (**EBA**) and European Securities and Markets Authority (**ESMA**) (in some cases in co-operation with the European Central Bank (**ECB**)) to produce RTS and ITS with a view to adoption by the European Commission. MiCAR further mandates the EBA and ESMA to produce Guidelines on certain matters.

European Commission Delegated Regulations

On 30 May 2024, EU Commission Delegated Regulations supplementing MiCAR were published in the Official Journal of the European Union. They include:

- Commission Delegated Regulation (EU) 2024/1503 specifying the fees charged by the EBA to issuers of significant asset-referenced tokens (**ARTs**) and issuers of significant e-money tokens (**EMTs**).
- Commission Delegated Regulation (EU) 2024/1504 specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant ARTs and issuers of significant EMTs.
- Commission Delegated Regulation (EU) 2024/1506 specifying certain criteria for classifying ARTs and EMTs as significant.
- Commission Delegated Regulation (EU) 2024/1507 specifying the criteria and factors to be considered by the ESMA, the EBA and competent authorities (e.g. the Central Bank of Ireland) in relation to their intervention powers.

The European Commission adopted the Delegated Regulations in February 2024. They will enter into force on 19 June 2024 (20 days after their publication in the Official Journal). For further information on this topic, please see our article [here](#).

ESMA Final Reports

On 25 March 2024, ESMA published its first Final Report on MiCAR. The report, aims to foster clarity and predictability, promote fair competition between CASPs and a safer environment for investors across the EU. It includes proposals on information regarding:

- CASP authorisation.
- Financial entities notifying their intent to provide crypto asset services.
- Assessment of the intended acquisition of a qualifying holding in a CASP.
- CASPs addressing complaints.

On 31 May 2024, ESMA published its second Final Report on MiCAR. This report concerns the rules on conflicts of interest for CASPs under MiCAR and contains RTS. The report aims to clarify matters regarding the vertical integration of CASPs and correspond with the draft EBA rules applicable to issuers of ARTs.

The RTS also contain updates on:

- requirements for the policies and procedures for the identification, prevention, management, and disclosure of conflicts of interest, considering the scale, nature and range of crypto-asset services provided; and
- details and methodology for the content of the disclosures of conflicts of interest.

ESMA has sent these final reports to the European Commission and will provide further advice and technical guidance in this area if the Commission requests it.

EBA Final Reports

On 7 May 2024, the EBA published four final reports on regulating access to the EU market by applicant issuers of ARTs and persons intending to exercise significant influence on these undertakings via the acquisition of qualifying holdings. The package of EBA regulatory products includes draft:

- **RTS on information required for applicants seeking authorisation to offer and trade ARTs.** These RTS set out the requirements to be included in an application for authorisation to offer to the public or seek admission to trading of ARTs. Following the public consultation, the scope of the authorisation has been amended to clarify that: a) the applicant issuer may only be a legal person or undertaking established in the EU, and b) whilst the issuance is not subject to authorisation, which only covers the public offer or the admission to trading, an application may only be submitted by an applicant issuer, therefore only an issuer may be granted authorisation.
- **ITS on information required for authorisation application.** These ITS set out further information requirements, including standard forms, templates, and procedures.
- **RTS on information for assessment of a proposed acquisition of qualifying holdings in issuers of ARTs.** These RTS set out the information requirements in the case of a proposed acquisition of an issuer of ARTs. For example, requirements may cover information on the identity, past convictions, financial soundness of the persons intending to acquire the holding, and the good repute, knowledge, skill and experience of the members of the proposed acquirer's management body.
- **RTS on the approval process for white paper of ARTs issued by credit institutions.** These RTS aim to harmonise the different steps and timeframes of the approval process for these white papers.

On 6 June 2024, the EBA published three final reports on governance, conflicts of interest and remuneration under MiCAR. The package of EBA regulatory products includes draft:

- **Guidelines on the minimum content of the governance arrangements for issuers of ARTs** that specify further the various governance provisions in MiCAR, taking into account the principle of proportionality. The Guidelines aim to clarify the tasks, responsibilities, and functioning of the management body and the organisational arrangements of ART issuers including sound risk management (e.g., in respect of money laundering/terrorist financing risks, operational risks, including fraud, cyber, and

compliance risks), across all three lines of defence. These provisions also aim to ensure appropriate consumer and investor protection.

- **RTS on the minimum content of the governance arrangements on the remuneration policy applicable to issuers of significant ARTs and electronic money institutions issuing significant EMTs**, and, where Member States apply Article 45(1) MiCAR, to issuers of non-significant EMTs. These RTS set out the main governance processes regarding the adoption and maintenance of the remuneration policy and the main policy elements that should be adopted by the issuer as part of the remuneration policy. They also aim to promote effective risk management among issuers and ensure cross-sectoral consistency.
- **RTS relating to the requirements for policies and procedures to identify, prevent, manage and disclose conflicts of interest for issuers of ARTs**. The RTS emphasise that particular attention should be paid to conflicts of interest that could arise in relation to the reserve of assets. They also provide that where an issuer of ARTs is a member of a group, its policies and procedures must consider the structure and activities of other entities within the group. The draft RTS highlight the key role of the issuer's management body in defining, adopting, and implementing conflicts of interest policies and procedures. The provisions of the draft RTS are similar to the framework on conflicts of interest under Directive 2014/65/EU (**MIFID**) and Directive 2013/36/EU (**CRD**) but are tailored to the particular business model of issuers of ARTs.

On 13 June 2024, the EBA published six further final reports containing five sets of draft RTS and one set of draft guidelines covering own funds, liquidity and recovery plans under MiCAR. This package of EBA regulatory products includes draft:

- **Guidelines on recovery plans**. These guidelines specify the format of the recovery plan and the information it should include (e.g., a summary of the key elements, information on governance, a description of the applicable recovery options and a communication and disclosure plan).
- **RTS on the minimum content of the liquidity management policy and procedures**. For the development of these draft RTS, the EBA builds on the December 2022 Basel standards on the prudential treatment of crypto-assets exposures (**Basel Standards**), taking into account Article 86 of the CRD on liquidity risk and the EBA Guidelines on the internal liquidity adequacy assessment process (**ILAAP**), adapted to the crypto-activities of tokens issuers.
- **RTS specifying the highly liquid financial instruments with minimal market risk, credit risk and concentration risk**. For the development of these RTS, the EBA builds on the Basel Standards, new international regulatory developments, the UCITs Directive 2009/65 and the Commission Delegated Regulation (EU) 2015/61 (**LCR Delegated Regulation**) as envisaged in MiCAR.
- **RTS further specifying the liquidity requirements of the reserve of assets**. For the development of these RTS, the EBA builds on the Basel Standards, the 2023 Basel report on the definition of the reserve of assets (under work) as well as the UCITs Directive 2009/65 and the LCR Delegated Regulation as envisaged in MiCAR. The EBA has also taken into account the regulatory framework of money market funds under Regulation (EU) 2017/1131 and some reports published by the relevant authorities regarding cases of crisis related to crypto activities.
- **RTS on the procedure and timeframe to adjust the own funds requirements for issuers of significant ARTs or EMTs** subject to such requirements. One of the main purposes of these draft RTS is to provide the procedure and timeframe on how and when the issuers of ARTs should adjust their level of own funds to 3% of the average amount of the reserve assets when their ARTs are classified as significant ARTs, either based on the criteria set out in Article 43 of MiCAR or on a voluntary basis as envisaged in Article 44 of MiCAR. The draft RTS also apply to electronic money institutions issuing EMTs.

- **RTS on adjustment of own funds requirements and stress testing of issuers of ARTs and EMTs** subject to such requirements. One of the main purposes of these draft RTS is to specify how and when competent authorities shall assess whether to require an issuer of ARTs to increase the own funds amount by providing criteria on how to assess the possible 'higher risk' of an issuer of ARTs. The draft RTS also apply to electronic money institutions issuing EMTs.

The EBA's draft RTS will be submitted to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council of the EU before being published in the Official Journal of the European Union. They will come into force 20 days after publication in the Official Journal of the European Union.

The Guidelines will apply two months after the publication of all translations on the EBA website.

For further information on authorisation under MiCAR in Ireland, see our recent article [here](#). For further information on this and other MiCAR-related topics, please see our dedicated [MiCAR](#) web page.

How we can help

Our Financial Regulation team is already supporting firms who will be applying for authorisation under MiCAR and has extensive experience securing the registration of VASPs and the authorisation of electronic money institutions, payment institutions and other regulated Fintechs. For example, William Fry have 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.

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