

Final draft agreed for the Markets in Crypto-Assets Regulation

On 5 October 2022, the European Permanent Representatives Committee approved the final draft of the Markets in Crypto-Assets Regulation (“MiCAR”). This regulation aims to create a dedicated and harmonised EU framework for crypto-assets which are currently outside the scope of existing EU financial regulations (especially Directive 2014/65/EU, as amended). This would establish legal certainty across Europe and would also enable a larger number of investors to be active in the area.

Background

The continued rise of blockchain technology and crypto markets in recent years offers opportunities for additional innovation in financial markets. As crypto markets have grown and diversified, however, the risks of market manipulation and fraud have also increased. The regulation of crypto-assets and related services has not been treated uniformly in the European Union and each Member State has instead created its own regulatory system for transactions relating to crypto-assets. The objective of MiCAR is to support innovation and fair competition in order to promote the development of crypto-assets, while also ensuring that financial stability in the EU is guaranteed in the process and provide for a harmonised pan-European regulatory system for related services.

Content of MiCAR

MiCAR is to apply to all persons who want to issue crypto-assets or provide services related to crypto-assets in the European Union. Crypto-assets are defined in the regulation as digital representations of a value or right that can be traded via a distributed ledger. Examples of crypto-assets which will fall within the scope of MiCAR include e-money tokens, asset-referenced tokens and utility tokens. The regulation provides the following:-

- Rules on transparency and disclosure requirements for the issuance, offer to the public and the admission to trading of crypto-assets;
- Rules on the authorisation and supervision of crypto-asset service providers and their issuers;
- Investor protection rules for the issuance, trading, exchange and custody of crypto-assets;

- Consumer protection for the issuance, trading, exchange and custody of digital assets; and
- Measures to prevent market abuse, insider trading, money laundering and the financing of terrorism in order to ensure the integrity of the crypto-assets market.

Entry into Force

Now that the final draft of the MiCAR has been agreed, the formal adoption procedure can be initiated. European Supervisory Authorities (ESAs) will soon start developing detailed technical standards for implementing the new rules. Market participants will also be consulted on these standards, and they are advised to follow these developments closely. The entry into application of MiCAR was initially expected by mid-2023. It is, however, likely to be delayed to 2024 as an 18-month period is foreseen to allow level 2 measures to be adopted prior to the application of MiCAR. As a regulation, MiCAR will apply directly across the European Union without any need for national implementation laws.

Rapid developments in crypto markets make it essential to continue evaluating, tightening and expanding regulations. Further regulation in the area of financial services offered decentrally through blockchain technology – also known as Decentralised Finance (DeFi) – is likely going forward.

Crypto at Clerkin Lynch

Clerkin Lynch advise on a range of blockchain and crypto related projects, including obtaining Virtual Asset Service Provider (VASP) authorisation in Ireland. Mark Browne lectures on related matters at the Law Society of Ireland.



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