

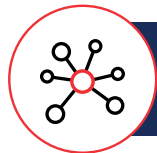
┌ MiCAR Compliance Toolkit A Brief Overview └

Regulation (EU) 2023/1114 on markets in cryptoassets (MiCAR) establishes the first comprehensive, pan-EU regulatory regime for the regulation of cryptoassets, including the regulation of cryptoasset issuance activities and cryptoasset service providers (CASPs). MiCAR entered into force on 29 June 2023, with key provisions set to apply in stages beginning in the summer of 2024.

Among other things, firms are required to be authorized to issue specific types of tokens or provide cryptoasset services in the EU. MiCAR also provides for a passport across the EU for: (a) an issuer to offer tokens for which it has been authorized or seek an admission to trading of that token; or (b) a CASP to operate across the EU.

In this series of guides, we set out practical steps to navigate the authorization requirements and regulatory implications of the MiCAR authorization process, and the criteria that apply to different types of firms in respect of the provision of cryptoasset services and the issuance of tokens.

What does MiCAR cover?



In-scope cryptoassets

MiCAR applies to a wide range of cryptoassets, in line with the following categories of tokens:

- **e-money tokens (EMTs), which are referenced to the value of one official currency;**
- **asset-referenced tokens (ARTs), which are not EMTs and are referenced to any other value or right or a combination thereof, including one or more official currencies; and**
- **other cryptoassets, which is a broad category of tokens that are not EMTs or ARTs (primarily captures utility tokens).**

Certain cryptoassets are excluded from scope. These include those that fall under existing EU financial services legislation (such as cryptoassets that qualify as financial instruments under the Markets in Financial Instruments Directive (MiFID)) and central bank digital currencies (CBDCs).

Cryptoassets that are unique and not fungible (i.e. NFTs) are also excluded from MiCAR. However, MiCAR makes clear that this exclusion will not apply to all NFTs, and firms will need to take care to ensure that NFTs which are intended to be excluded satisfy the criteria set out in MiCAR.



Issuers

MiCAR imposes requirements relating to the issuance of cryptoassets – where cryptoassets are offered to the public in the EU or admitted to trading on a platform in the EU, a relevant person (e.g. issuer, offeror, or platform operator) needs to ensure that a white paper is published and notified as required to the relevant competent authority, as well as comply with other regulatory obligations.

The regulatory requirements imposed by MiCAR on issuers of ARTs and EMTs are more stringent than those imposed on issuers of other cryptoassets.

- **ART issuers must be established and authorized in the EU. Exemptions are available.**
- **EMTs are deemed to be electronic money for the purposes of the Second E-Money Directive (EMD2) and EMT issuers must be authorized as a credit institution or as an e-money institution (EMI) under EMD2.**
- **Additional regulatory requirements apply to ARTs and EMTs classed as significant.**

A lighter touch transparency and disclosure regime applies for offers and marketing of cryptoassets that are not ARTs or EMTs, taking into account the lower regulatory risk associated with these tokens.



CASPs

Firms that carry on business in the provision of one or more cryptoasset services to third parties on a professional basis must be registered and authorized in the EU and comply with operating and conduct obligations, unless exemptions apply.

A regulated cryptoasset service means:

- **providing custody and administration of cryptoassets on behalf of clients;**
- **operation of a trading platform for cryptoassets;**
- **exchange of cryptoassets for funds;**
- **exchange of cryptoassets for other cryptoassets;**
- **execution of orders for cryptoassets on behalf of clients;**
- **placing of cryptoassets;**
- **reception and transmission of orders for cryptoassets on behalf of clients;**
- **providing advice on cryptoassets;**
- **providing portfolio management on cryptoassets; and**
- **providing transfer services for cryptoassets on behalf of clients.**

Third-country (non-EU) CASPs are permitted to provide cryptoasset services in the EU on a reverse solicitation basis, where the services are provided at the own initiative of the EU client. However, this is interpreted narrowly and whether reverse solicitation can be legitimately relied on requires a detailed review of the firm's profile within the EU, its marketing strategy, and relationships with third parties who may carry out activities on their behalf.

Grandfathering may be available for entities that currently provide cryptoasset services in accordance with existing national cryptoassets regulatory frameworks, until their application for authorization under MiCAR has been granted or refused. This will vary by Member State – it is important that CASPs carefully check provisions in each Member State in which they currently operate to check whether grandfathering provisions apply.

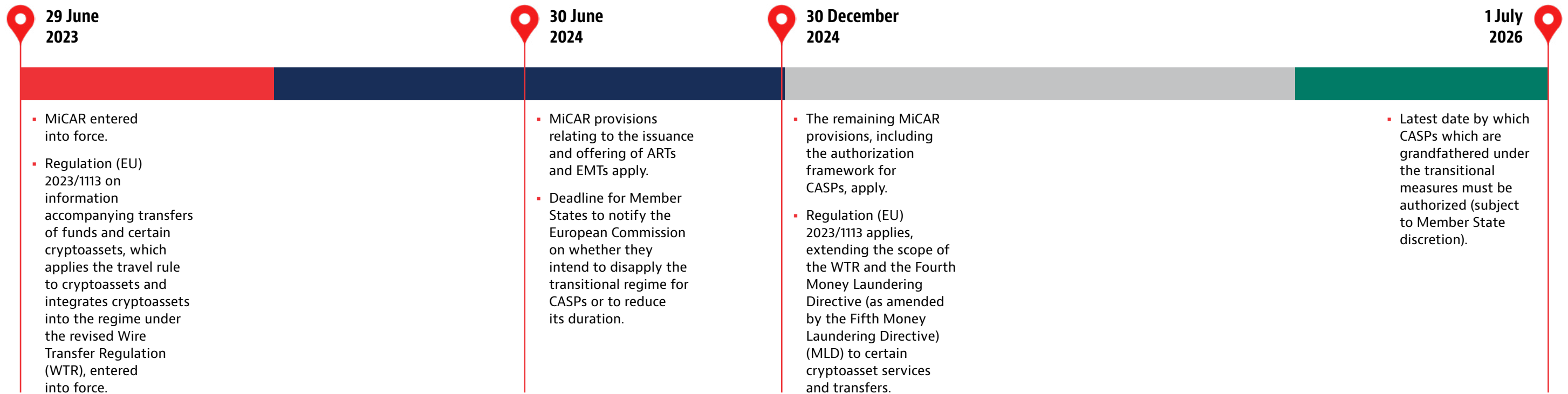


Existing authorized financial institutions

Certain institutions that are already authorized under existing financial services legislation – including credit institutions, central securities depositories (CSDs), investment firms, market operators, EMIs, UCITS management companies, or alternative investment fund managers (AIFMs) – are not subject to authorization under MiCAR (depending on the cryptoasset services proposed to be carried out).

However, these institutions may be required to comply with certain notification obligations.

Key milestones



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