

MiCAR: ***UTILITY TOKEN***

by:

Raffaele Battaglini, LL.M.

Selen Ekinci, LL.M.

1. INTRODUCTION

The regulation of Crypto-assets and related services is becoming standardised across the European Union (EU) through the Markets in Crypto-assets Regulation (Regulation (EU) No 2023/1114 dated 31 May 2023), also known as **MiCAR**.

MiCAR is a comprehensive regulatory framework that governs: the issuance, offerings to the public, admission to trading of Crypto-assets, and services related to Crypto-assets within the EU. As such, MiCAR lays down a comprehensive set of requirements for issuers, offerors, and crypto-asset service providers. Within this framework, a Crypto-asset is “*a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology*” (“**Crypto-asset**”).

MiCAR divides Crypto-assets into the following subcategories:

- Asset-Referenced Tokens (“**ART**”): “*a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies*”;
- Electronic Money Tokens or E-Money Tokens (“**EMT**”): “*a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency*”;
- Crypto-assets other than asset-referenced tokens and e-money tokens.

The last subcategory mentioned above includes “utility tokens” which are “*a type of crypto-Asset that is only intended to provide access to a good or a service supplied by its issuer*” (“**Utility Token**”).

MiCAR entered into force on 29 June 2023 and will be applicable in all EU member states by 30 December 2024. However, rules regarding ARTs and EMTs will apply from 30 June 2024.

This Monograph is the fifth of a **series** dedicated to MiCAR.

This document shall not be considered legal, tax, or investment advice. It may only be used for informative and educational purposes

2. THE CONCEPT OF UTILITY TOKEN

2.1 Understanding Utility Tokens

Utility Tokens are a specific type of Crypto-assets other than ARTs or EMTs that offer a unique function within the world of distributed ledger technologies (“**DLT**”). These tokens are designed to provide holders with special access to a product, service, or application within a specific DLT ecosystem, and their acceptance is limited to the token issuer. Unlike ARTs or EMTs, which may act as mediums of exchange or stores of value, Utility Tokens are integrally tied to the functionality within their native ecosystems. The rights afforded by a Utility Token can vary significantly, depending on the diverse business models and infrastructures of various DLT projects. For instance, a Utility Token might grant access to a decentralised file storage network or unlock premium features within a digital platform.

2.2 Utility Tokens vs. Financial Instruments

Utility Tokens are generally not classified as securities or financial instruments under the Markets in Financial Instruments Directive II (**MiFID II**). This is because Utility Tokens are primarily used to enable functionality within a specific DLT ecosystem, rather than for investment purposes. Although some Utility Tokens may grant governance rights, such as voting on protocol updates or ecosystem changes, they do not provide financial rights similar to traditional financial instruments. For example, they do not give holders a share in a company's profits, capital, or liquidation proceeds, nor do they bestow any form of ownership or control over the issuer. The main characteristic of Utility Tokens is that Utility Tokens are intended to support the operational aspects of DLT-based applications, rather than serve as investment vehicles.

2.3 Utility Tokens vs. NFTs

MiCAR does not apply to unique and non-fungible Crypto-assets. However, simply assigning a unique identifier to a Crypto-asset, meaning adopting the non-fungible token (NFT) standard, does not turn it into a unique and non-fungible Crypto-asset. Its uniqueness should derive from the value or rights it represents. In some scenarios, ownership of an NFT can provide access to exclusive events or benefits. In these cases, the specific attributes of the NFT may become less crucial than the utility it affords, making different NFTs functionally interchangeable for practical use. Therefore, such Crypto-assets could be classified as Utility Tokens.

3. OFFERS TO THE PUBLIC OR ADMISSION TO TRADING OF UTILITY TOKEN

3.1 Main Rules

If a legal person wishes to make an offer to the public or seeks admission to trading of Utility Tokens, such person must:

- draw up, notify, and publish a Crypto-asset white paper (the “**White Paper**”);
- draft and publish the marketing communications regarding that Utility Token;
- act honestly, fairly, and professionally¹;
- communicate with holders and prospective holders of the Utility Token in a fair, clear and not misleading manner;
- identify, prevent, manage, and disclose any conflicts of interest that might arise;
- maintain all of their systems and security access protocols in conformity with the appropriate EU standards.

Upon fulfilling the required obligations, the offerors will be considered authorised to offer Utility Tokens throughout the EU. In addition, these Utility Tokens may be admitted to trading on a Crypto-assets platform in the EU without the need for any additional public offer information or trading admission requirements.

Attention

When a Utility Token is admitted to trading on the initiative of the operator of a trading platform and the White Paper has not been published in accordance with MiCAR, the operator of that trading platform is required to comply with the obligations set out above.

A person seeking admission to trading Utility Tokens and the respective operator of the trading platform may agree, in writing, that it will be the operator of the trading platform who is required to comply with all or part of the aforementioned obligations.

3.2 Exemptions for Offers to the Public and for Admission to Trading

Exemption

No requirements of MiCAR should apply to offers to the public of Utility Tokens that are providing access to a good or service that exists or is in operation. In other words, MiCAR is applicable to the offer to the public of the Utility Token that provides access to goods and services that do not yet exist or are not yet in operation.

¹ They must act in the best interest of the holders of such Utility Token and must treat them equally; unless any preferential treatment of specific holders and the reasons for that preferential treatment are disclosed in the White Paper.

This exemption is not valid when the offeror, or another person acting on the offeror's behalf, communicates the offeror's intention of seeking admission to trading or the exempted Crypto-assets are admitted to trading.

Since the Utility Token falls under the category of Crypto-assets other than ARTs or EMTs, all exemptions applicable to this category also apply to the Utility Token. For a deeper analysis of the exemptions, see our monograph [MiCAR: Crypto-assets other than ARTs or EMTs](#).

4. WHITE PAPER AND MARKETING COMMUNICATIONS

4.1 Drafting the White Paper

All information in the White Paper must be fair, clear, not misleading, and must not contain material omissions. It must be made available in a machine-readable, concise, and comprehensible format. It must be written in the official language of the home and host Member State or in a language commonly used in international finance.

When the offered Utility Token provides access to goods and services that do not yet exist or are not yet in operation, the duration of the offer to the public, as described in the White Paper, must not exceed 12 months from the date of publication of the White Paper. That limitation on the duration of the offer to the public is unrelated to when the goods or services come into existence or become operational and can be used by the holder of a Utility Token after the expiry of the offer to the public.

In particular, the White Paper must contain certain information, declarations, a non-technical summary, the date of its notification, and a table of contents.

Information The White Paper must include the following general information:

- offeror or the person seeking admission to trading;
- issuer (if different from the offeror or person seeking admission to trading);
- operator of the trading platform if the operator was the one who prepared the White Paper;
- identity of the person who prepared the White Paper and the reason why that particular person wrote it (in cases where the White Paper is not created by the offeror, the person seeking admission to trading, the issuer, or the operator of the trading platform);
- Utility Token project;

Attention Provide information about the key features of the goods or services to be developed:

- The offer of the Utility Token to the public or its admission to trading;
- Utility Token;
- rights and obligations attached to the Utility Token;

Attention Provide information about the quality and quantity of goods or services to which the Utility Tokens give access.

Explain how the Utility Tokens can be redeemed for goods or services to which they relate.

- underlying technology;

- risks;
- principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the Utility Token;
- right of withdrawal.

Declarations The White Paper must include a clear and unambiguous statement that:

The Utility Token may not be exchangeable against the good or service promised in the White Paper, especially in the case of a failure or discontinuation of the Utility Token project.

Since the Utility Token falls under the category of Crypto-assets other than ARTs or EMTs, all declarations applicable to this category also apply to the Utility Token. For a deeper analysis of the declarations, see our monograph MiCAR: Crypto-assets other than ARTs or EMTs.

Summary The White Paper must include a summary, which must be in brief and non-technical language, and provide key information about the Utility Token offer to the public or the intended admission to trading; to help prospective holders of the Utility Token make an informed decision. The summary must be easily understandable, presented, and laid out in a clear and comprehensive format, using characters of readable size.

4.2 Notification, Publication, and Amendment of the White Paper

Offerors, persons seeking admission to trading, or operators of trading platforms must notify their White Paper to the competent authority of their home Member State² at least 20 working days before the date of publication of the White Paper.

Offerors and persons seeking admission to trading Utility Tokens must publish the White Paper on their website, which must be publicly accessible at a reasonable time before the start date of the Utility Tokens offer to the public or the admission to trading of the Utility Tokens.

Offerors, persons seeking admission to trading, or operators of a trading platform for Utility Tokens must modify their published White Papers whenever there is a significant new factor, or material mistake or inaccuracy that is capable of affecting the assessment of the Utility Tokens.

Attention The changes made in the modified White Paper must not extend the time limit of 12 months described in 4.1.

For a deeper analysis of the notification, publication, and amendment of the White Paper see our monograph MiCAR: Crypto-assets other than ARTs or EMTs.

² If the offerors, persons seeking admission to trading, or operators of trading platforms are established in a third country, they have to notify the competent authority of the Member State in which they intend to offer the Utility Tokens (the host Member State).

4.3 Liability of Issuers for the Information Given in the White Paper

When an offeror, a person seeking admission to trading or operator of a trading platform, has infringed upon MiCAR by providing in its White Paper or in a modified White Paper information that is not complete, fair, clear or that is misleading, that offeror, the person seeking admission to trading or operator of a trading platform and the members of its administrative, management or supervisory body will be liable to a holder of the Utility Tokens for any loss incurred due to that infringement.

The offeror, person seeking admission to trading or operator of the trading platform, and the members of its administrative, management, or supervisory body will not be liable to a holder of Utility Tokens for loss incurred as a result of reliance on the information provided in a summary, including any translation thereof, except where the summary:

- is misleading, inaccurate or inconsistent when read together with the other parts of the White Paper; or
- does not provide, when read together with the other parts of the White Paper, key information in order to aid prospective holders of the Utility Token when considering whether to purchase such Utility Token.

4.4 Marketing Communications

Marketing communications must be identifiable, with the information being fair, clear, and not misleading. Furthermore, the information must be consistent with what is provided in the White Paper and provide that the White Paper has been published. Additionally, it must clearly indicate the website address of the offeror, the person seeking admission to trading or the operator of the trading platform for the Utility Token, as well as a telephone number and an email address to contact that legal person.

The marketing communications must include the following clear and prominent statement:

'This Crypto-asset marketing communication has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the Crypto-asset is solely responsible for the content of this Crypto-asset marketing communication.'

Attention

The changes made in the marketing communications (where applicable) must not extend the time limit of 12 months described in 4.1.

For a deeper analysis of the marketing communications rules, see our monograph [MiCAR: Marketing Rules for Crypto-assets](#).

5. SAFEGUARDING ARRANGEMENTS

5.1 Result of the offer to the public and safeguarding arrangements

Offerors of Utility Tokens that set a time limit on their Utility Token offer to the public must publish on their website the result of the offer to the public within 20 working days of the end of the subscription period.

They must have effective arrangements in place to monitor and safeguard the funds or different Utility Tokens raised during the offer to the public. The offerors must ensure that the funds or Utility Tokens collected during the offer to the public are kept in custody by one or both of the following:

- a credit institution, where funds are raised during the offer to the public;
- a crypto-assets service provider providing custody and administration of Utility Tokens on behalf of clients.

Offerors of Utility Tokens that do not set a time limit on their Utility Token offer to the public must publish on their website on an ongoing basis, at least monthly, the number of Utility Tokens units in circulation. In this case, offerors are still required to comply with the effective arrangements to monitor and safeguard the funds or Utility Token raised until the retail holder's right of withdrawal expires.

Attention

Where a Utility Token offer to the public is cancelled, offerors of such Utility Token must ensure that any funds collected from holders or prospective holders are duly returned no later than 25 calendar days after the date of cancellation.

6. RIGHT OF WITHDRAWAL

Retail holders who purchase Utility Tokens either directly from an offeror or from a crypto-asset service provider placing Utility Tokens on behalf of that offeror must have a right to withdraw.

Retail holders have a period of 14 calendar days to withdraw from their agreement to purchase Utility Token without incurring any fees or costs and without being required to give a reason. The period of withdrawal begins from the date of the agreement the retail holder decides to purchase those Utility Tokens.

Any payments received from a retail holder, including applicable charges, must be reimbursed promptly and no later than 14 days from the date the offeror or the crypto-asset service provider is informed of the retail holder's decision to withdraw from the agreement to purchase those Utility Tokens. The same payment method used for the initial transaction should be used for the reimbursement, unless the retail holder agrees otherwise.

Exemption The right of withdrawal will not apply where the Utility Tokens has been admitted to trading prior to the purchase by the retail holder.

Attention Where offerors have set a time limit on their Utility Tokens offer to the public, the right of withdrawal shall not be exercised after the end of the subscription period.

7. CONCLUSIONS

Understanding the nature of Utility Tokens and their place within the MiCAR and wider financial regulations is crucial for entities planning to issue, offer, or trade such assets. Utility Tokens, while not typically classified as securities or financial instruments, still need to adhere to specific rules and standards set out in the MiCAR.

Utility Tokens, by design, provide access to goods or services within a specific DLT ecosystem, distinguishing themselves from ARTs and EMTs. The careful regulation of these tokens under MiCAR highlights the EU's commitment to fostering innovation while ensuring consumer protection, market integrity, and the mitigation of systemic risks.

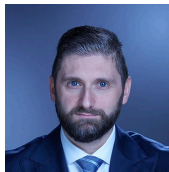
The regulatory obligations for the offering and trading of Utility Tokens, as outlined in the MiCAR, including the drafting, notification, and publication of a White Paper, the adherence to marketing communication standards, and the establishment of safeguarding arrangements are critical for maintaining transparency and trust in the digital economy. These provisions, coupled with the exemptions and rights of withdrawal for retail holders, balance the promotion of technological advancement with the safeguarding of investor interests.

In conclusion, MiCAR provides a comprehensive framework that addresses the unique characteristics and challenges of Utility Tokens. Therefore, staying informed and compliant with the current regulatory requirements is key to successfully navigating the world of Utility Tokens.

Previous monographs in this series



Authors



Raffaele Battaglini

CEO

Legal advisor to tech companies for M&A deals and adoption of new technologies with a particular focus on blockchain and tokenization.



Selen Ekinci

Next Law Lawyer

Focused on private international law and contract law, she deals with contract drafting in the technological field.

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Futura Law Firm S.t.a.r.l. S.B.

Via Davide Bertolotti n. 7
10121 **Torino** | +39 011 08 66 155
info@futura.legal | futura.legal

