

***MiCAR:  
CRYPTO-ASSETS  
OTHER THAN  
ASSET-REFERENCED  
TOKENS OR E-MONEY  
TOKENS***

by:

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# 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.*”

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 fourth 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. OFFERS TO THE PUBLIC OR ADMISSION TO TRADING OF CRYPTO-ASSETS OTHER THAN ARTS OR EMTS

### 2.1 Main Rules

Title II of the MiCAR regulates Crypto-assets other than ARTs or EMTs (for simplicity, just “**Other Crypto-Assets**” from now on).

If a legal person wishes to make an offer to the public or seeks admission to trading of Other Crypto-Assets in the EU, such person must :

- draw up, notify, and publish a crypto-asset white paper (the “**White Paper**”);
- draft and publish the marketing communications regarding that Other Crypto-Assets;
- act honestly, fairly, and professionally<sup>1</sup>;
- communicate with holders and prospective holders of the Other Crypto-Assets 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 offerers will be considered authorised to offer Other Crypto-Assets throughout the EU. In addition, these Other Crypto-Assets may be admitted to trading on a Other Crypto-Assets platform in the EU without the need for any additional public offer information or trading admission requirements.

#### **Attention**

When a Other Crypto-Asset 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 has to comply with the obligations set out above.

A person seeking admission to trading Other Crypto-Assets 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.

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<sup>1</sup> They must act in the best interest of the holders of such Other Crypto-Assets 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.

## 2.2 Exemptions for Offers to the Public

**Exemption** The obligations specified under 2.1 do not apply to public offers of Other Crypto-Assets in the following cases:

- the Other Crypto-Assets is offered for free<sup>2</sup>;
- the Other Crypto-Assets is automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions;
- the offer concerns a utility token providing access to a good or service that exists or is in operation; or
- the holder has the right to use the Other Crypto-Assets only in exchange for goods and services in a limited network of merchants with arrangements with the offeror<sup>3</sup>.

**Exemption** Only the obligations of drawing up, notifying, and publishing a White Paper, and publishing the marketing communications do not apply to any of the following public offers:

- an offer to fewer than 150 natural or legal persons per member state where such persons are acting on their own account;
- over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of a Other Crypto-Asset in the EU does not exceed EUR 1.000.000,00 or the equivalent amount in another official currency or Other Crypto-Asset;
- an offer of Other Crypto-Assets addressed solely to qualified investors where the Other Crypto-Assets can only be held by such qualified investors.

**Attention** The above exemptions do not apply where the offeror, or another person acting on the offeror's behalf, makes known in any communication an intention to seek admission to trading the Other Crypto-Assets.

**Attention** If a Other Crypto-Asset offer to the public is exempt from the obligation to publish a White Paper and a White Paper is voluntarily prepared, all rules related to the White Paper will apply.

## 2.3 Exemptions for Admission to Trading

**Exemption** The obligations for drawing up, notifying, and publishing a White Paper do not apply when both of the following conditions are met:

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<sup>2</sup> It is not considered free where purchasers are required to provide or to undertake to provide, personal data to the offeror in exchange for that Other Crypto-Assets, or where the offeror of a Other Crypto-Assets receives from prospective CA holders any fees, commissions, monetary or non-monetary benefits in exchange for that Other Crypto-Assets.

<sup>3</sup> The limited network exemption should not apply to Other Crypto-Assets that are typically designed for a continuously growing network of service providers.

- the Other Crypto-Asset is already admitted to trading on another trading platform for Other Crypto-Assets in the EU;
- the White Paper is drawn up, updated in accordance with MiCAR and the person responsible for drawing up such White Paper consents to its use in writing.

## 3. WHITE PAPER AND MARKETING COMMUNICATIONS

### 3.1 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.

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 about the:

- offeror or the person seeking admission to trading;
- issuer (if different from the offeror or person seeking admission to trading);
- about the operator of the trading platform in cases where it draws up the White Paper;
- identity of the person who drew up the White Paper and the reason why that particular person drew it up (in cases where the White Paper is not drawn up by the offeror, the person seeking admission to trading, the issuer, or the operator of the trading platform);
- Other Crypto-Assets project;
- offer to the public of the Other Crypto-Assets or its admission to trading;
- Other Crypto-Assets;
- rights and obligations (attached to the Other Crypto-Assets);
- underlying technology;
- risks;
- principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the Other Crypto-Assets;
- right of withdrawal.

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

- the Other Crypto-Assets may lose its value in part or in full;
- the Other Crypto-Assets may not always be transferable;
- the Other Crypto-Assets may not be liquid;

- where the offer to the public concerns a utility token, that 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 Other Crypto-Assets project;
- the Other Crypto-Asset is not covered by the investor compensation schemes under Directive 97/9/EC;
- the Other Crypto-Asset is not covered by the deposit guarantee schemes under Directive 2014/49/EU.

The White Paper must not include any assertions in regards to the future value of the Other Crypto-Assets; other than the statements mentioned above.

The White Paper should include the following clear and prominent statement on the first page:

*‘This crypto-asset white paper has not been 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 white paper.’<sup>4</sup>*

The White Paper must include a statement from the management body of the offeror, the person seeking admission to trading, or the operator of the trading platform after the statement above confirming that (1) the White Paper complies with Title II of MiCAR and, (2) to the best of management’s knowledge, the information presented in the White Paper is fair, clear, and not misleading and the White Paper makes no omission likely to affect its meaning.

## Summary

The White Paper must include a summary, which must be in brief and non-technical language, and provide key information about the Other Crypto-Assets offer to the public or the intended admission to trading; to help prospective holders of the Other Crypto-Assets to 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.

### 3.2 Notification 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 State<sup>5</sup> at least 20 working days before the date of publication of the White Paper.

<sup>4</sup> Where the White Paper is drawn up by the person seeking admission to trading or by an operator of a trading platform, then, instead of ‘offeror’, a reference to ‘person seeking admission to trading’ or ‘operator of the trading platform’ must be included in the statement.

<sup>5</sup> 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 Other Crypto-Assets (the host Member State).

This notification must include:

- the reason why the Other Crypto-Assets described in the White Paper is not considered a Other Crypto-Assets excluded from the scope of MiCAR, an EMT, or an ART;
- a list of the host Member States, if any, where they intend to offer their Other Crypto-Assets to the public or intend to seek admission to trading;
- the starting date of the offer or trading admission, including any date changes.

**Attention** There is no need to obtain approval from the competent authority before publishing the White Paper.

### 3.3 Publication of the White Paper

Offerors and persons seeking admission to trading Other Crypto-Assets must publish the White Paper on their website, which must be publicly accessible at a reasonable time before the start date of the Other Crypto-Assets offer to the public or the admission to trading of the Other Crypto-Assets. The White Papers must remain available on the website of the offerors or persons seeking admission trading for as long as the Other Crypto-Assets is held by the public.

### 3.4 Amendments to the White Paper

Offerors, persons seeking admission to trading, or operators of a trading platform for Other Crypto-Assets must modify their published White Papers whenever there is a significant new factor, material mistake, or material inaccuracy that is capable of affecting the assessment of the Other Crypto-Assets. This modification must be notified to the competent authority of their home Member State at least 7 working days before publication, along with the intended publication date and reasons for the modification.

The modified White Paper, including the reasons for modification, must be published on their website and marked as the applicable version. All modified White Papers must remain available for the duration of the public offer or as long as the Other Crypto-Assets is admitted to trading.

**Attention** Where the offer to the public concerns a utility token providing access to goods and services that do not exist or are not in operation, changes made in the modified White Paper will not extend the time limit of 12 months from the date of publication of the modified White Paper.

### 3.5 Liability of Issuers for the Information Given in the White Paper

Where an offeror, person seeking admission to trading or operator of a trading platform, has infringed MiCAR by providing in its White Paper or in a modified White Paper information that is not complete, fair or clear or that is misleading, that offeror, person



seeking admission to trading or operator of a trading platform and the members of its administrative, management or supervisory body) must be liable to a holder of the Other Crypto-Assets 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 must not be liable to a holder of Other Crypto-Assets 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 Other Crypto-Assets when considering whether to purchase such Other Crypto-Assets.

### 3.6 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 being stated in the White Paper and state that the White Paper has been published. Additionally, it must clearly indicate the address of the website of the offeror, the person seeking admission to trading or the operator of the trading platform for the CA concerned) 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**

If a White Paper is required by MiCAR, no marketing communications will be disseminated prior to the publication of the White Paper.

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

## 4. SAFEGUARDING ARRANGEMENTS

### 4.1 Result of the offer to the public and safeguarding arrangements

Offerors of Other Crypto-Assets that set a time limit on their Other Crypto-Asset 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 Other Crypto-Assets raised during the offer to the public. The offerors must ensure that the funds or Other Crypto-Assets 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 Other Crypto-Assets on behalf of clients.

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

#### **Attention**

Where an Other Crypto-Asset offer to the public is cancelled, offerors of such Other Crypto-Assets 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.

## 5. RIGHT OF WITHDRAWAL

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

Retail holders must have a period of 14 calendar days to withdraw from their agreement to purchase Other Crypto-Assets without incurring any fees or costs and without being required to give a reason. The period of withdrawal must begin from the date of the agreement of the retail holder to purchase those Other Crypto-Assets.

Any payments received from a retail holder, including applicable charges, must be reimbursed promptly and in no event 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 Other Crypto-Assets. 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 Other Crypto-Assets has been admitted to trading prior to the purchase by the retail holder.

**Attention** Where offerors have set a time limit on their Other Crypto-Assets offer to the public, the right of withdrawal must not be exercised after the end of the subscription period.

## 6. CONCLUSIONS

MiCAR represents a pivotal step forward in the regulation of Crypto-assets across the EU. This comprehensive framework sets out to safeguard investors, maintain market integrity, and promote financial stability while accommodating the rapid evolution of the Crypto-assets sector.

Throughout this monograph, various facets of Crypto-assets have been explored, covering crucial areas such as public offers, trading admissions, white paper requisites, marketing communication guidelines, safeguarding arrangements, and retail holder withdrawal rights.

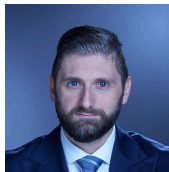
Our intention is to foster a comprehensive understanding of these regulations and facilitate compliance for all stakeholders involved, whether they are issuers, offerors, trading platforms, or investors. As the Crypto-asset market continues to grow and evolve, staying updated and compliant with regulations such as MiCAR will be crucial in ensuring a safe, fair, and stable Crypto-asset environment.

This might seem too troublesome for startups, but these rules should be interpreted in the best interest of the public.

## Previous monographs in this series



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