

MiCAR: CRYPTO-ASSET SERVICE PROVIDERS

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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, and admission to trading of Crypto-assets, as well as “Crypto-asset service providers” (“**CASPs**”), within the EU. As such, MiCAR lays down a comprehensive set of requirements for issuers, offerors and CASPs. 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 defines a CASP as “a legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services with authorisation”.

MiCAR divides Crypto-assets services into the following subcategories:

- **providing custody and administration of Crypto-assets on behalf of clients:** “the safekeeping or controlling, on behalf of clients, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys”;
- **operation of a trading platform for Crypto-assets:** “the management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets”;
- **exchange of Crypto-assets for funds:** “the conclusion of purchase or sale contracts concerning crypto-assets with clients for funds by using proprietary capital”;
- **exchange of Crypto-assets for other crypto-assets:** “the conclusion of purchase or sale contracts concerning crypto-assets with clients for other crypto-assets by using proprietary capital”;
- **execution of orders for Crypto-assets on behalf of clients:** “the conclusion of agreements, on behalf of clients, to purchase or sell one or more crypto-assets or the subscription on behalf of clients for one or more crypto-assets, and includes the conclusion of contracts to sell crypto-assets at the moment of their offer to the public or admission to trading”;
- **placing of Crypto-assets:** “the marketing, on behalf of or for the account of the offeror or a party related to the offeror, of crypto-assets to purchasers”;
- **reception and transmission of orders for Crypto-assets on behalf of clients:**

“the reception from a person of an order to purchase or sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution”;

- **providing advice on Crypto-assets:** *“offering, giving or agreeing to give personalised recommendations to a client, either at the client’s request or on the initiative of the crypto-asset service provider providing the advice, in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services”;*
- **providing portfolio management on Crypto-assets:** *“managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets”;*
- **providing transfer services for Crypto-assets on behalf of clients:** *“providing services of transfer, on behalf of a natural or legal person, of crypto-assets from one distributed ledger address or account to another”.*

MiCAR entered into force on 29 June 2023 with various rules being applicable in all EU Member States (“**Member State**”) asynchronously. Rules regarding CASPs will apply from 30 December 2024.

This Monograph is the sixth 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. AUTHORISATION FOR CRYPTO-ASSET SERVICE PROVIDERS

2.1 Eligibility to be a CASP

To provide Crypto-asset services within the EU, legal entities are required to have a registered office in a Member State and proper CASP authorization. These entities must have at least one director residing in the EU, and key management and commercial decisions must be taken within the EU. However, they can offer cross-border services without maintaining a physical presence in other Member States.

2.2 Authorization

Legal entities intending to provide Crypto-asset services are required to apply for CASP authorisation from the competent authority in the Member State where they are registered.

Once the authorization is granted, it is valid throughout the EU and specifies the services the CASP may provide. If a CASP seeks to expand its services, it must request an extension of its authorisation by updating its information.

Exemption Third-country firms are exempt from authorisation if services are provided at the client's initiative, without solicitation or promotion in the EU.

2.3 Application, Assessment and Granting of Authorization

To apply for CASP authorization, legal entities must provide information such as their legal form, article of association and contact details. They should also include their business plan, proof of meeting financial safeguards, and details on governance. Applicants must demonstrate that their management has the appropriate expertise and integrity to operate as a CASP. Additional information, consisting of but not limited to, risk management systems, security protocols, and complaints-handling procedures are required, depending on the services they intend to offer (e.g., custody, exchange, or advice).

Certain documentation may not be necessary if the competent authority has already received it under other EU regulations, as long as it remains up-to-date.

Once a complete application is submitted, the competent authority has 40 working days to review and decide whether to grant or refuse the authorization. The authority may request further information during this process, which may pause the review timeline (not exceeding 20 working days). Applications are refused if there are concerns about management competence, financial stability, or risks like money laundering.

Attention Authorization may be withdrawn if, among other reasons, the CASP does not use their authorization within 12 months, has not provided services for nine months, or has

obtained the authorization fraudulently. It can also be withdrawn if the CASP breaches regulations or fails to meet ongoing requirements.

In some cases, the withdrawal may be limited to specific services rather than the entire authorization.

2.4 Cross-Border Provision of Services

CASPs seeking to provide Crypto-asset services in multiple Member States must inform the competent authority in their home Member State. The information required includes a list of the Member States where services will be offered, the cross-border services to be provided, the intended start date, and a list any other activities it engages in that fall outside the scope of MiCAR.

Once this information is submitted, the CASP can begin offering services in other Member States either immediately after the competent authority has communicated with the relevant bodies, or within 15 days of submission, whichever comes first.

2.5 Obligations to Comply with the Travel Rule

All CASPs are subject to the regulations outlined in the Transfer of Funds Regulation (TFR). As such, to comply with the TFR, CASPs are required to ensure that accurate and necessary information about both the sender and receiver of Crypto-asset transactions is collected, retained, and transmitted during transfers.

These obligations apply to **all transfers**, regardless of the amount or whether the transaction is cross-border or domestic. However, for transactions exceeding € 1.000,00, CASPs are required to implement additional verification measures to further ensure compliance.

If a transaction lacks sufficient information or raises compliance concerns, CASPs may need to reject, suspend, or return the transfer until the necessary data is provided.

TFR obligations will enter into force in the EU on 30 December 2024.

3. RULES APPLICABLE TO ALL CRYPTO-ASSET SERVICE PROVIDERS

3.1 Obligation to Act Honestly and Fairly

All CASPs are required to act in the best interests of their clients, providing fair, clear and accurate information. They must avoid misleading clients about the potential advantages of Crypto-assets and must warn them of the potential risks. CASPs must also disclose their pricing, fees, and any environmental impacts of the Crypto-assets they deal with, making this information easily accessible on their websites.

Attention

CASP must provide their clients with hyperlinks to any White Papers for the Crypto-assets in relation to which they are providing those services when (i) operating a trading platform for Crypto-assets; (ii) exchanging Crypto-assets for funds or other Crypto-assets; (iii) providing advice on Crypto-assets; or (iv) providing portfolio management on Crypto-assets.

3.2 Prudential Requirements

CASPs must always maintain prudential safeguards equal to the higher of the following:

- the minimum capital requirement, ranging from € 50.000,00 to € 150.000,00, depending on the services provided;
- one quarter of the fixed overheads from the previous year, which are reviewed annually.

The prudential safeguards must take one of the following forms or a combination of both:

- own funds;¹
- an insurance policy covering the territories of the EU where Crypto-asset services are provided or a comparable guarantee.

Insurance Policy. The insurance policy must be publicly disclosed on their website and must meet the following criteria: it must have an initial term of at least one year, a cancellation notice period of no less than 90 days, and it must be issued by an insurance provider authorised under EU or national law. The policy must be provided by an independent third party and cover risks such as document loss, misrepresentation, breach of obligations, business disruptions, and liability for client losses.

¹ These consist of Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013# after the deductions in full, pursuant to Article 36 of that Regulation

3.3 Governance Arrangements

CASPs must adhere to strict organisational requirements to ensure the effective, sound, and prudent management of their operations. Members of the management body of CASPs must possess good repute, and the necessary knowledge, skills, and experience to perform their duties. Likewise, shareholders or members with qualifying holdings, whether direct or indirect, must also be of sufficiently good repute. These individuals, whether natural or legal persons, must not have been involved in any criminal activities, particularly crimes of money laundering or terrorist financing.

CASPs must adopt and regularly review effective policies to ensure MiCAR compliance and address deficiencies. They should employ management and staff with the necessary skills and expertise, and take reasonable steps to ensure business continuity, including having information and communications technology (“ICT”) plans in place for preserving essential data and services in case of disruptions. Additionally, they must allocate appropriate resources and secure ICT systems, implement risk management procedures in line with EU regulations, and safeguard the integrity and confidentiality of client data. CASPs are also required to keep comprehensive records of their activities and ensure they meet all obligations toward clients and the market.

3.4 Information to competent authorities

CASPs must promptly inform the competent authority of any changes to their management team before new members assume their roles, and provide the necessary information for the authority to assess whether the CASP remains in compliance with governance standards.

3.5 Safekeeping of Client Assets

Where Crypto-asset services involve holding clients' funds (excluding e-money tokens), they are required to deposit those funds either with (i) a credit institution or (ii) a central bank by the end of the business day following the receipt of the funds. CASPs must also ensure that these funds are kept in a separate, identifiable account, distinct from any accounts holding the CASP's own funds.

3.6 Complaints-Handling

CASPs must establish and maintain clear and effective procedures for handling client complaints in a prompt, fair, and consistent manner. These procedures should be publicly available and CASPs must inform clients that they can file complaints free of charge. Also, CASPs are required to provide a complaint filing template, keep records of all complaints received, and document any actions taken in response. Complaints should be investigated promptly and fairly, with the outcomes communicated to clients within a reasonable time.

3.7 Conflicts of Interest

CASPs must establish policies to identify, prevent, manage, and disclose conflicts of interest, whether arising from relationships with shareholders, management, or clients. They must disclose the nature and sources of conflicts to clients on their website, ensuring the information allows clients to make informed decisions. CASPs must review their conflict of interest policies annually and address any deficiencies.

3.8 Outsourcing

CASPs that outsource operational functions to third parties must take steps to avoid additional operational risk and remain fully responsible for meeting all MiCAR obligations. Outsourcing is not permitted for delegating CASP's responsibilities, changing the relationship with clients, or affecting the CASP's authorisation conditions. CASPs must have a written agreement outlining rights, obligations, termination conditions, and contingency plans and exit strategies. All relevant information must be available to authorities upon request.

3.9 Orderly Wind-Down

CASPs must have a plan, to ensure the continuity or recovery of critical services, for winding down their operations without causing significant harm to clients when such CASPs provide the following services: (i) providing custody and administration of Crypto-assets on behalf of clients; (ii) operation of a trading platform for Crypto-assets; (iii) exchange of Crypto-assets for funds or other Crypto-assets; and (iv) execution of orders for Crypto-assets on behalf of clients

4. OBLIGATIONS IN RESPECT OF PROVIDING CUSTODY AND ADMINISTRATION OF CRYPTO-ASSETS ON BEHALF OF CLIENTS

4.1 Minimum Capital Requirements

The minimum capital requirement for providing custody and administration of Crypto-assets on behalf of clients is € 125.000,00.

4.2 Client Agreement

CASPs are required to enter into an agreement with their clients that outlines the duties and responsibilities of both parties. This agreement should include key details such as the identity of the parties, the nature of the service, custody policy, security measures, communication methods, fees, and the applicable law.

If a CASP uses another CASP to facilitate that service, they may only do so through authorised CASPs and inform their clients thereof.

4.3 Maintaining Records and Custody Policy

CASPs maintain a register of each client's positions, detailing their rights to the Crypto-assets, and must record any movements in the register based on client instructions. The internal procedures must ensure that all movements affecting the registration of Crypto-assets are properly documented. CASPs must provide clients with a statement of their recorded Crypto-assets at least once every three months or upon client request.

Additionally, CASPs need to implement a custody policy that minimises the risk of loss due to fraud, cyber threats, or negligence.

4.4 Segregation of Assets and Liability

CASPs are required to ensure that Crypto-assets held on behalf of clients are not commingled. CASPs bear responsibility for any loss of Crypto-assets or access keys resulting from incidents attributable to them, such as internal failures or negligence. However, liability is capped at the market value of the lost Crypto-assets at the time the loss occurred. CASPs are not held responsible for events beyond their control, such as issues inherent to the distributed ledger itself.

5. OBLIGATIONS IN RESPECT OF OPERATION OF A TRADING PLATFORM FOR CRYPTO-ASSETS

5.1 Minimum Capital Requirements

The minimum capital requirement for operation of a trading platform for Crypto-assets is € 150.000,00.

5.2 Trading Platform Rules

CASPs are required to establish, maintain, and enforce clear and transparent operating rules for their platforms. This includes establishing approval processes for the admission of Crypto-assets, which must include customer due diligence. Any categories of Crypto-assets that are not eligible for trading must be clearly defined. Additionally, CASPs must outline the policies, procedures, and any applicable fees related to the admission of Crypto-assets for trading.

To ensure fair access, CASPs must implement objective and non-discriminatory rules that promote orderly trading. These rules should set criteria for the efficient execution of orders and the maintenance of liquidity, as well as conditions for suspending trading when necessary.

CASPs must also ensure that there are efficient settlement procedures for both Crypto-assets and funds, facilitating smooth and timely transactions.

Attention Crypto-assets can only be admitted for trading if a corresponding White Paper has been published as required by MiCAR.

Attention CASPs must not engage in transactions on their own account on the platform they operate. This includes situations where they provide the exchange of crypto-assets for funds or other Crypto-assets.

5.3 Monitoring, Compliance, and Transparency

CASPs must implement systems that allow them to continuously monitor trading activity. CASPs must have systems in place to prevent and detect market abuse, and notify authorities if such abuse is identified. CASPs, on a continuous basis, must make public bids and ask prices, along with the depth of trading interests. Transaction details, such as price, volume, and time, must also be disclosed in near real-time. CASPs are required to retain data relating to all orders for at least five years and grant the competent authority access to their order book for regulatory oversight.

CASPs must ensure the timely publication of transaction information, including bid and ask prices, trade volumes, and transaction times. This information must be accessible in near real-time and provided free of charge 15 minutes after publication. The settlement of Crypto-asset transactions must be initiated within 24 hours of execution, ensuring the swift finalisation of trades.

5.4 Matched Principal Trading and System Resilience

Matched principal trading (where the CASP acts as an intermediary in a transaction and buys and sells Crypto-assets on its own account solely for the purpose of completing a client transaction) is only permitted when the client has given explicit consent. CASPs engaging in such trading must provide the competent authority with detailed information about the use of matched principal trading on their platforms.

In addition, CASPs must ensure their trading systems are resilient and capable of handling peak order and message volumes. These systems must be able to function effectively under conditions of market stress and must reject any orders that exceed pre-determined volume and price thresholds or that are clearly erroneous. Platforms must be fully tested to meet these standards and have business continuity plans in place to ensure the uninterrupted operation of their services, even in the event of system failures.

6. OBLIGATIONS IN RESPECT OF EXCHANGE OF CRYPTO-ASSETS FOR FUNDS OR OTHER CRYPTO-ASSETS

6.1 Minimum Capital Requirements

The minimum capital requirement for exchange of Crypto-assets for funds or other Crypto-assets is € 125.000,00.

6.2 Freely Determined Pricing in Exchange

This service differs from merely executing orders on behalf of clients, as the price of such exchanges is freely determined by the CASP as a currency exchange. Nevertheless, when executing Crypto-asset orders on behalf of clients, the CASP should always ensure that it obtains the best possible result for its client.

6.3 Trading Policies, Pricing, and Transparency

CASPs must establish non-discriminatory trading policies. These policies must clearly define the types of clients they accept and the conditions under which trading will occur.

CASPs are required to publish a firm price for the Crypto-assets they propose to exchange, or a clear methodology for determining such prices, along with any limits on the amounts to be exchanged. Additionally, they are required to disclose relevant transaction details, including volumes and prices, ensuring transparency in their operations.

6.4 Own Funds Requirement

It is essential that CASPs carry out exchange activities using their own funds, rather than third-party funds, as this ensures they meet the MiCAR definition of exchanging Crypto-assets for funds or other Crypto-assets, rather than being classified under a different category (e.g., execution of crypto orders on behalf of clients).

7. OBLIGATIONS IN RESPECT OF EXECUTION OF ORDERS FOR CRYPTO-ASSETS ON BEHALF OF CLIENTS

7.1 Minimum Capital Requirements

The minimum capital requirement for execution orders for Crypto-assets on behalf of clients is € 50.000,00.

7.2 Best Execution Obligation

CASPs must take all necessary steps to ensure the best possible execution of client orders for Crypto-assets. This includes considering factors such as price, costs, speed, likelihood of execution and settlement, size, and nature of the Crypto-assets.

Exemption CASPs do not need to follow the best execution steps if they are acting on specific instructions provided by their clients.

7.3 Order Execution Policy and Monitoring

CASPs are required to implement a transparent order execution policy that ensures client orders are handled promptly, fairly, and efficiently, while preventing employees from misusing any order-related information. Clients must be informed of the order execution policy, and their prior consent must be obtained. Any significant changes to the policy must be communicated to clients with ongoing relationships.

CASPs are responsible for regularly monitoring and reviewing their order execution arrangements to identify and address any deficiencies.

Attention Where the execution policy allows for client orders to be executed outside a trading platform, CASPs must inform their clients of this possibility and obtain their explicit consent before proceeding.

8. OBLIGATIONS IN RESPECT OF PLACING OF CRYPTO-ASSETS

8.1 Minimum Capital Requirements

The minimum capital requirement for placing Crypto-assets is € 50.000,00.

8.2 Pre-Agreement Information

Before entering into any agreement to place Crypto-assets, CASPs must provide key information to the offeror, person seeking admission to trading, or any relevant third party. This information must include:

- Type of placement (whether a minimum purchase is guaranteed);
- Transaction fees;
- Expected timing, process, and pricing; and
- Information about target purchasers.

8.3 Managing Conflicts of Interest

CASPs must have procedures in place to identify and manage any conflicts of interest. Conflicts of interest can arise in situations where:

- CASPs place Crypto-assets with their own clients;
- The proposed price for the placement is over or underestimated;
- Incentives, either monetary or non-monetary, are provided by the offeror to the CASP.

9. OBLIGATIONS IN RESPECT OF RECEPTION AND TRANSMISSION OF ORDERS FOR CRYPTO-ASSETS ON BEHALF OF CLIENTS

9.1 Minimum Capital Requirements

The minimum capital requirement for reception and transmission of orders for Crypto-assets on behalf of clients is € 50.000,00.

9.2 Client Order Transmission

CASPs must implement procedures ensuring the prompt and proper transmission of client orders. These orders can be sent to a trading platform or another CASP for execution.

9.3 Prohibition on Undue Benefits

CASPs must not receive any monetary or non-monetary benefits, discounts, or remuneration in exchange for directing client orders to a specific trading platform or CASP.

9.4 Protection of Client Information

CASPs are responsible for safeguarding client order information. They are required to take reasonable steps to prevent the misuse of this information by employees or other involved parties.

10. OBLIGATIONS IN RESPECT OF PROVIDING ADVICE ON CRYPTO-ASSETS AND PROVIDING PORTFOLIO MANAGEMENT OF CRYPTO-ASSETS

10.1 Minimum Capital Requirements

The minimum capital requirement for providing advice and portfolio management of Crypto-assets is € 50.000,00.

10.2 Sustainability Assessment

CASPs must assess whether the Crypto-assets or services are suitable for their clients. This assessment must consider the client's knowledge, experience, investment objectives, risk tolerance, and financial situation.

If clients do not provide the necessary information or if the CASP deems the Crypto-assets unsuitable, services must not be provided. The suitability assessment must be reviewed at least every two years, and clients must receive an updated report detailing the advice given and how it aligns with their objectives and risk tolerance.

10.3 Advice Transparency

Before providing advice, CASPs must inform prospective clients whether the advice is independent or based on a restricted range of Crypto-assets.

If independent advice is given, the CASP must assess a diverse range of Crypto-assets and cannot receive fees or benefits from third parties in connection with the advice.

CASPs must also provide clients with clear and accurate information regarding the costs of advice and related services.

10.4 Conflict of Interest and Fees

CASPs must avoid conflicts of interest and cannot accept fees or incentives from third parties when offering portfolio management services. If non-independent advice is provided, CASPs may receive inducements only if they enhance the quality of service and do not compromise client interests.

10.5 Client Warnings

CASPs are required to warn clients about the potential risks of Crypto-assets, including value fluctuations, liquidity risks, partial or total losses, and the absence of coverage under investor compensation or deposit guarantee schemes.

11. OBLIGATIONS IN RESPECT OF PROVIDING TRANSFER SERVICES FOR CRYPTO-ASSETS ON BEHALF OF CLIENTS

11.1 Minimum Capital Requirements

The minimum capital requirement for providing transfer services for Crypto-assets on behalf of clients is € 50.000,00.

11.2 Client Agreement

CASPs are required to enter into a formal agreement with their clients that clearly outlines the duties and responsibilities of each party. This agreement must include, at a minimum:

- The identity of the parties;
- A description of the transfer service modalities;
- Details of the security systems used by the CASP to ensure safe transfers;
- Fees associated with the transfer services; and
- The applicable law governing the agreement.

12. CONCLUSIONS

MiCAR establishes a comprehensive framework for the regulation of CASPs within the EU, ensuring a harmonised approach to the provision of Crypto-asset services. By defining clear rules for authorisation, governance, and operational conduct, MiCAR aims to create a secure and transparent market for Crypto-assets while protecting the interests of clients and fostering innovation in the sector.

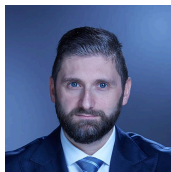
This monograph has explored the key obligations CASPs must meet under MiCAR, covering areas such as custody, trading platforms, order execution, advice, and portfolio management. These obligations are designed to ensure that CASPs operate fairly, transparently, and in the best interests of their clients; with appropriate safeguards in place to mitigate risks.

As the regulation evolves, CASPs will need to continuously adapt their practices to ensure compliance, while also addressing the complexities of the growing Crypto-asset market. MiCAR represents a critical step in the integration of Crypto-assets into the EU's financial regulatory framework, providing both opportunities and challenges for market participants.

Previous monographs in the MiCAR series



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