



MiCAR: M&A RULES

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, and admission to trading of Crypto-assets, as well as providers of services related to Crypto-assets (“**CASPs**”), 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.

In particular, MiCAR sets forth dedicated provisions for corporate and M&A transactions concerning issuers of ARTs and CASPs in order to ensure a higher level of market transparency and protection.

MiCAR entered into force on 29 June 2023 and has been fully applicable in all EU Member States since 30 December 2024. However, the rules regarding ARTs and EMTs have been in effect since 30 June 2024.

This Monograph is the seventh 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. ACQUISITION OF ISSUERS OF ASSET-REFERENCED TOKENS

2.1 Legal Background

Legal persons and other undertakings intending to issue ARTs must obtain authorisation from the competent authority designated under MiCAR. The suitability of the persons with influence on the regulated entities is a pillar of prudential regulation. Hence, MiCAR mandates any natural or legal person intending to directly or indirectly acquire, either individually or collectively, qualifying holdings in issuers of ARTs or to increase directly or indirectly such qualifying holding must first submit a notification to the competent authority and be subject to a prudential assessment.

The European Banking Authority (“EBA”), in close cooperation with the European Securities and Markets Authority (“ESMA”), has drafted regulatory technical standards¹ (“RTS”). These standards detail the necessary information for conducting the prudential assessment required by MiCAR.

2.2 Main Rule

Any natural or legal person who intends to directly or indirectly (the “**Proposed Acquirer**”):

- acquire a qualifying holding (20%, 30% or 50%) of shares in an issuer of the ART (“**Target Entity**”);
- increase its qualifying holding in the Target Entity, resulting in qualifying holding where the proportion of the voting rights or of the capital held reaches or exceeds 20%, 30% or 50%; or
- make the Target Entity its subsidiary.

must notify the competent authority of the Member State of the Target Entity in writing.

Specific information (such as size of the intended qualifying holding) must be provided to enable the competent authority to assess the proposed acquisition or increase in an existing qualifying holding.

¹ [Draft Regulatory Technical Standards on the detailed content of information necessary to carry out the assessment of a proposed acquisition of qualifying holdings in issuers of asset-referenced tokens under Article 42\(4\) of Regulation \(EU\) 2023/1114](#)

3. ACQUISITION OF CRYPTO-ASSET SERVICE PROVIDERS

3.1 Legal Background

Any natural or legal person who intends to acquire or to increase a qualifying holding in a CASP must notify the competent authority of that CASP in writing and provide specific information to enable the relevant competent authority to either assess the proposed acquisition or increase of an existing qualifying holding.

ESMA, in cooperation with EBA, is mandated to develop RTS to provide content regarding the assessment of proposed acquisitions for qualifying CASPs. This should ensure a harmonised approach to the assessment across Member States in the EU.

3.2 Main Rule

Any natural or legal person who intends to directly or indirectly (the “**Proposed Acquirer**”):

- acquire a qualifying holding (20%, 30% or 50%) of shares in a CASP (“**Target Entity**”);
- increase its qualifying holding in the Target Entity, resulting in qualifying holding where the proportion of the voting rights or of the capital held reaches or exceeds 20%, 30% or 50%;
- make the Target Entity its subsidiary;

must notify the competent authority of the Member State of such the Target Entity in writing.

Specific information (such as size of the intended qualifying holding) must be provided to enable the competent authority to assess the proposed acquisition or increase in an existing qualifying holding.

4. PRUDENTIAL ASSESSMENT FOR ACQUISITION OF ISSUERS OF ARTS OR CASPS

4.1 Under the MiCAR

According to MiCAR, the competent authority is required to assess the suitability of the Proposed Acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- reputation of the Proposed Acquirer (integrity and professional competence);
- suitability of the persons who will direct the business of the Target Entity, to the extent the Proposed Acquirer intends to appoint any;
- financial soundness of the Proposed Acquirer;
- compliance with prudential requirements of the Target Entity; and
- reasonable ground to suspect an attempt or increase in the money laundering or terrorist financing risk by the proposed acquisition.

4.2 Under the RTS

The RTS includes information requests on the following, among others:

- where the Proposed Acquirer is a legal person: information on the identity of the ultimate beneficial owners and on the reputation and experience (over the last ten years);
- where the Proposed Acquirer is a natural person: information on both the Proposed Acquirer and any undertaking formally directed or controlled by the Proposed Acquirer over the last ten years;
- financial information concerning the Proposed Acquirer, including a description of the current business activities;
- information on the financial and non-financial interests or relationships of the Proposed Acquirer with any shareholders, directors or members of the Target Entities management body, or person entitled to exercise voting rights in the Target Entity, or with the Target Entity itself or its group;
- information on the good repute, knowledge, skill and experience of the management body members where the Proposed Acquirer intends to appoint/replace members of the Target Entities management body;
- provide information identifying the Target Entity through providing details on the

Proposed Acquirer's intention and strategic investment, including the shares owned or contemplated to be owned by the Proposed Acquirer (i.e. the price of the proposed acquisition and a copy of the contract of acquisition);

- where Proposed Acquirers, intending to acquire a qualifying holding of more than 20% and up to 50%, will envisage the strategy of the Target Entity.

Attention!

If the qualifying holding is less than 20% in the Target Entity, but exercising an equivalent significant influence over it (i.e. the existence of shareholders' agreements, the distribution of shares, participating interests and voting rights), the Proposed Acquirers should also provide an envisaged strategy of the Target Entity:

- where there is a proposed change in control of the Target Entity, a full business plan must be provided; if there is no change, information on the entity's future strategy and the Proposed Acquirer's intentions for the Target Entity must be included
- the origin source of funding for the acquisition, such as, details on the assets that have to be sold by the Proposed Acquirer and the details on the channels used to transfer such funds, etc.;
- where the Proposed Acquirer is established outside the EU additional information is required to assess potential legal obstacles and the Proposed Acquirer's reputation in their home country.

Attention!

The information contained in the notification submitted by the Proposed Acquirer should be true, accurate, complete and up-to-date from the moment of submitting the notification until the completion of the assessment by the competent authority. Thus, competent authorities should be informed of any changes to the information provided in the notification.

4.3 The Principle of Proportionality

When a Proposed Acquirer seeks to acquire or increase qualifying holdings in the Target Entity, and has been assessed by the same competent authority of the Target Entity within the past two years, they are required to only submit updated information that differs from their previous assessment. Similarly, if the Proposed Acquirer is an authorised entity under the prudential supervision of the same competent authority of the Target Entity, certain information already in possession of the authority may be exempt from submission. In both cases, the Proposed Acquirer should only submit information specific to the proposed acquisition, which must be accompanied by a signed declaration certifying that the rest of the information set-out in MiCAR that has not been submitted because the current information in possession of the competent authority is true, accurate and up-to-date.

5. ACQUISITION ASSESSMENT PROCESS AND TIMELINE FOR ISSUERS OF ARTS AND CASPS

The competent authority will acknowledge the receipt of a completed application within two working days, and assess the proposed acquisition within 60 working days of the acknowledgment.

The competent authority may request additional information (in any case no later than the 50th working day from the date of the written receipt acknowledgement), which will allow them to suspend the assessment period until the additional information has been received (not by more than 20 working days for EU applicants or 30 working days if the Proposed Acquirer is situated outside the EU).

If the competent authority chooses to challenge the acquisition, it must notify the Proposed Acquirer within two working days.

Attention!

The competent authority may oppose the proposed acquisition only where there are reasonable grounds for doing so, such as, when the information provided to satisfy the above criteria is false or not submitted in the relevant period

Where the competent authority does not oppose the proposed acquisition, the proposed acquisition is deemed to be approved.

The competent authority may set a maximum period for concluding the proposed acquisition, and extend that maximum period where appropriate.

6. DISPOSING THE ISSUERS OF ARTS AND CASPS

Any natural or legal person who has decided to dispose, directly or indirectly, of a qualifying holding in an issuer of ARTs or CASP must notify the competent authority in writing **before carrying out the disposal**.

This notification should include details regarding the size of the holding being disposed of.

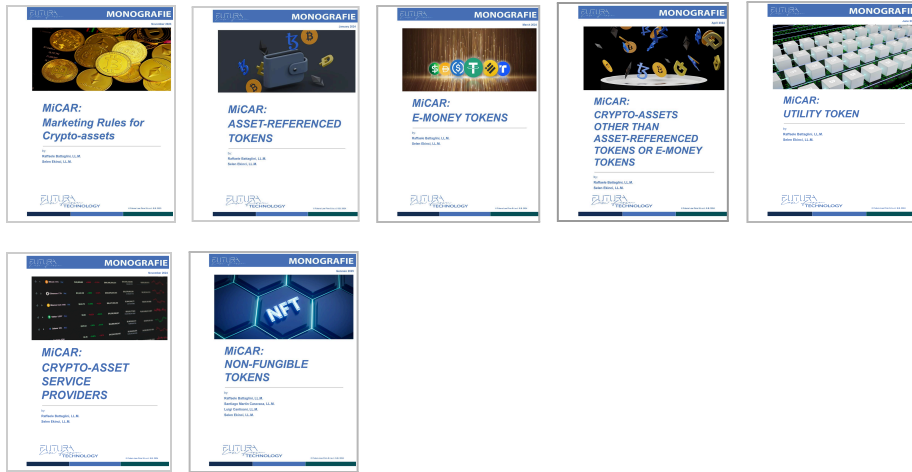
Additionally, if the person intends to reduce a qualifying holding to the degree that the proportion of voting rights or capital falls below the thresholds of 10%, 20%, 30%, or 50%, or if the issuer of ARTs or CASP would cease to be its subsidiary, they must notify the competent authority accordingly.

7. CONCLUSIONS

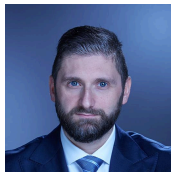
MiCAR represents a pivotal step towards harmonising the regulation of Crypto-assets across the EU. MiCAR mandates that any M&A deals concerning the acquisition or disposal of significant holding in an issuer of ARTs or in a CASP must undergo a thorough prudential assessment by the relevant competent authority. This process involves evaluating the acquirer's reputation, financial soundness, and the potential impact on the target entity's compliance with prudential requirements. The principle of proportionality ensures that the regulatory burden is commensurate with the size and complexity of the acquisition. This ensures continuous oversight and stability in the market.

MiCAR has been fully applicable across EU member states since 30 December 2024. In this context, the rules regarding ARTs and the M&A rules concerning ART issuers have been in effect since 30 June 2024. However, the M&A rules related to CASPs came into force on 30 December 2024.

Previous monographs in the MiCAR series



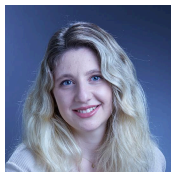
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