MONOGRAFIE

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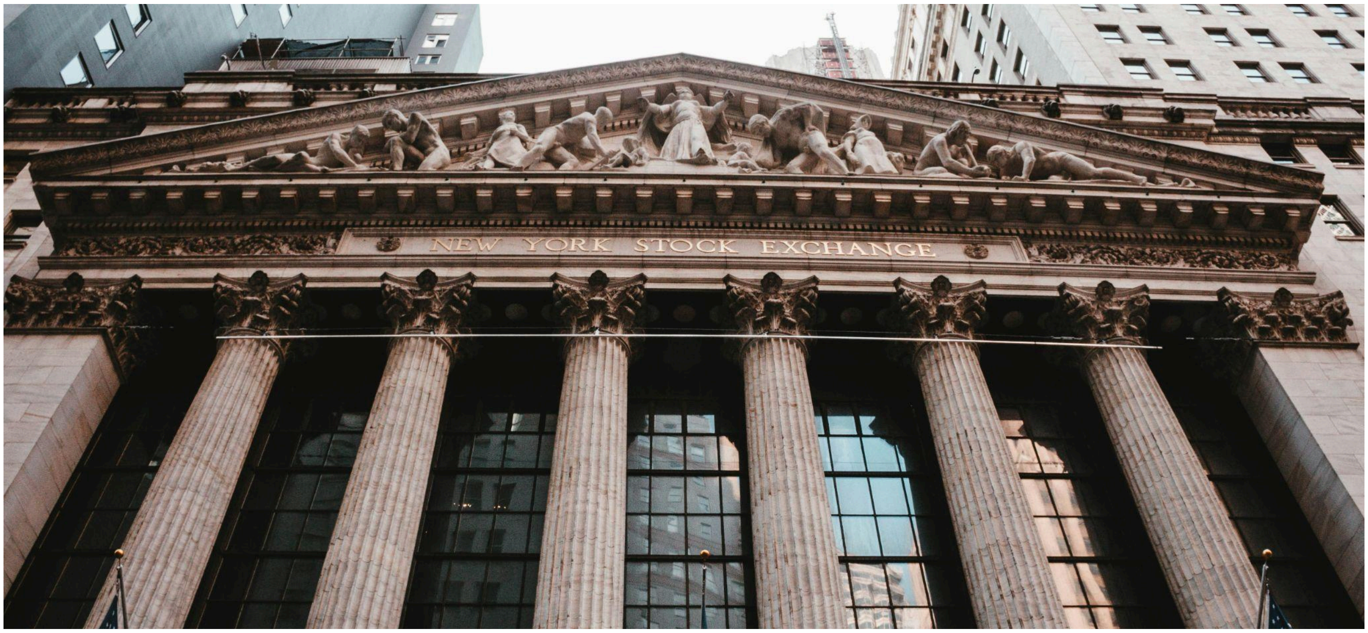

MiCAR: MARKET ABUSE

by:

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TECHNOLOGY

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 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**").

A crucial element of MiCAR is its focus on preventing **market abuse** in the rapidly growing and evolving Crypto-asset sector. Market abuse rules aim to protect market integrity and enhance the confidence of potential purchasers by prohibiting insider dealing, unlawful disclosure of inside information, and market manipulation

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 ninth of a **series** dedicated to MiCAR.

2. SCOPE OF MARKET ABUSE AND INSIDE INFORMATION

2.1 Scope of the Rules on Market Abuse

The rules on market abuse under MiCAR are designed to cover a wide range of Crypto-assets-related activities. These rules apply to acts carried out by any person associated to:

- Crypto-assets that are admitted to trading or for which a request for admission to trading has been made;
- transactions, orders, or behaviours concerning such Crypto-assets, regardless of whether these take place on a trading platform.

Attention These rules are geographically unrestricted and apply to actions or omissions occurring both within the EU and in third countries, provided they involve Crypto-assets covered by MiCAR.

2.2 The Concept of Inside Information

For the purposes of MiCAR, inside information refers to specific types of information that could significantly impact the prices of Crypto-assets if made public. For such inside information to qualify as likely to affect prices, the information must be relevant to a reasonable Crypto-asset holder's purchase decisions.

Inside information includes:

- **non-public, precise information:** information that is not publicly available, is precise in nature, and relates to issuers, offerors, persons seeking admission to trading, or Crypto-assets. If disclosed, this information could significantly affect the price of the relevant Crypto-assets or related Crypto-assets.
- **client order information:** for those executing orders for Crypto-assets on behalf of clients, this refers to non-public, precise information provided by a client about their pending orders. If disclosed, such information could significantly impact the price of the relevant Crypto-assets or related Crypto-assets.

Attention Information is deemed precise if it indicates existing or reasonably expected circumstances or events that are specific enough to enable conclusions about their potential impact on Crypto-asset prices. This includes future circumstances or events arising from lengthy processes, along with any intermediate steps that may qualify as inside information if they meet the established criteria.

3. PUBLIC DISCLOSURE OF INSIDE INFORMATION

3.1 Main Rule

Issuers, offerors, and persons seeking admission to trading are required to inform the public as soon as possible about any inside information that directly concerns them. This information must be disclosed in a way that allows for quick access and enables the public to fully assess the details in a complete, correct, and timely manner.

Moreover, they are required to publish and maintain this inside information on their websites for at least five years.

Attention The disclosure of inside information must be separate from marketing activities, ensuring that the information is conspicuous and serves an informative, not promotional, purpose.

3.2 Conditions for Delayed Disclosure

In certain circumstances, issuers, offerors, and persons seeking admission to trading may delay the public disclosure of inside information, but only <u>if all the following conditions are met</u>:

- immediate disclosure would likely harm their legitimate interests;
- the delay is not likely to mislead the public;
- confidentiality of the information is maintained during the delay.

Attention When an issuer, offeror, or person seeking admission to trading delays the disclosure of inside information, they must notify the competent authority immediately after the information is disclosed. They must also provide a written explanation detailing how the conditions for delayed disclosure were met. Alternatively, Member States may allow that such an explanation be provided only upon the request of the competent authority.

3.3 Prohibition of Unlawful Disclosure of Inside Information

No person in possession of inside information may unlawfully disclose it to others, except where such disclosure is made in the normal course of employment, a profession, or duties.

The onward disclosure of a recommendation or inducement constitutes unlawful disclosure of inside information if the person making the disclosure knows or ought to know that it was based on inside information.

4. PROHIBITION OF INSIDER DEALING

4.1 Definition of Insider Dealing

Insider dealing occurs when a person who possesses inside information uses that information by acquiring or disposing of Crypto-assets, either for their own account or on behalf of a third party. This can happen directly or indirectly.

Insider dealing also includes cancelling or changing orders related to a Crypto-asset if the order was placed before the person had access to the inside information. Additionally, submitting, modifying, or withdrawing a bid based on inside information is also classified as insider dealing.

4.2 Main Rule

Engaging in, attempting to engage in, recommending, or inducing insider dealing using inside information about Crypto-assets is prohibited.

The use of a recommendation or inducement, when the person knows or ought to know it is based on inside information, is also considered insider dealing.

The prohibition applies to any person who possesses inside information due to:

- being a member of the administrative, management or supervisory bodies of the issuer, the offeror, or the person seeking admission to trading;
- having a holding in the capital of the issuer, the offeror, or the person seeking admission to trading.
- having access to the information through the exercise of an employment, profession or duties or in relation to its role in the distributed ledger technology or similar technology; or
- being involved in criminal activities.

5. PROHIBITION OF MARKET MANIPULATION

Engaging in or attempting to engage in market manipulation is prohibited.

Market manipulation includes various activities aimed at misleading others as it pertains to the supply, demand, or price of a crypto-asset. Such activities include, but are not limited to:

- entering into a transaction, placing an order to trade, or engaging in any other behaviour that gives, or is likely to give, false or misleading signals about the supply, demand or price of a crypto-asset, or secures or is likely to secure, the price of one or several crypto-assets at an abnormal or artificial level, unless carried out for legitimate reasons;
- using fictitious devices or any form of deception in transactions or orders that affect the price of a crypto-asset;
- disseminating false or misleading information through media, including the internet, that could mislead others about the supply, demand, price of a crypto-asset, or secure its price at an abnormal or artificial level. This includes cases where the person who engaged in the dissemination knew, or ought to have known, that the information was false or misleading.

6. PREVENTION AND DETENTION OF MARKET ABUSE

Any person who professionally arranges or executes transactions in Crypto-assets is required to have effective arrangements, systems, and procedures in place to prevent and detect market abuse. This includes implementing robust monitoring mechanisms to identify and assess any suspicious activity regarding an order or transaction, including any cancellation or modification thereof. Additionally, such mechanisms will monitor aspects of the functioning of the distributed ledger technology such as the consensus mechanism, where circumstances indicating that market abuse has occurred, is occurring, or is likely to occur must be reported without delay.

When such suspicious activity is detected, it must be promptly reported to the competent authority of the Member State where it is registered or has its head office or, in the case of a branch, the Member State where the branch is situated.

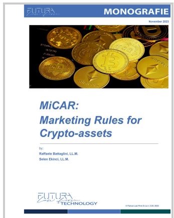
7. CONCLUSIONS

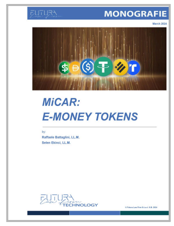
By delineating rules on market abuse, MiCAR aims to protect market integrity, enhance purchaser confidence, and promote fair practices among market participants. MiCAR's emphasis on preventing insider dealing, unlawful disclosure of inside information, and market manipulation underscores the necessity of transparency and accountability in the crypto sector.

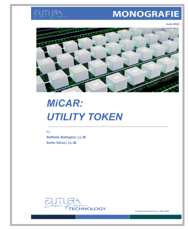
Moreover, the responsibilities imposed on market participants to implement effective arrangements for the prevention and detection of market abuse further fortify the regulatory landscape.

The enforcement of these rules across jurisdictions reflects the EU's commitment to maintaining high standards of market integrity in the emerging field of Crypto-assets.

Previous monographs in the MiCAR series







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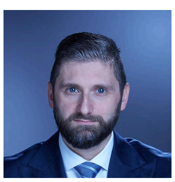

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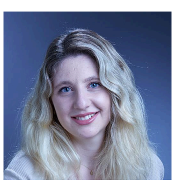

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