

MiCA in a nutshell.

The key information that you need to know from the legal perspective

MICA IN A NUTSHELL

The key information that you need from the legal perspective





WHAT IS MICA AND ITS SUBJECT MATTER?

WHAT MAJOR "CA" DOES MICA NOT ADDRESS?

THE MAIN TYPES OF CA COVERED BY THE MICA REGULATION AND THE MAIN CONDITIONS FOR THEIR OFFER TO THE PUBLIC

MICA TIMELINE

Dr. Katharina Lasota Heller, Natalia Gaik-Hoang

The European Union has attempted to comprehensively regulate the cryptocurrency sector and its functioning in trading to this end, the European Parliament by majority decision adopted the MiCA (Market in Crypto-Assets) Regulation

This regulation aims to regulate cryptocurrencies and digital assets in the European Union, setting requirements for public offerings and for the authorisation of crypto-assets that are:

- E- money tokens "ETM"
- asset-referenced tokens "ART"
- tokens that are not ETMs or ARTs

MiCA's mandate is to ensure greater transparency, safety and market investor protection in the cryptocurrency market in the European Union

The regulations introduce:

- uniform definitions of crypto-assets (CA) related terms
- regulation of crypto-assets service providers in particular their registration, risk management, customer protection, transaction reporting
- creating licenses for crypto-asset service providers (CASPs). The licence requires compliance with a number of cryptocurrency requirements including: capital requirements, customer cryptocurrency security and other aspects of the activities
- investor protection through appropriate measures to protect investors from fraudulent practices

The regulation provides for a number of requirements regarding the information document and its publication

<p>What is MiCA?</p>	<p>MiCA is an EU regulation; it establishes uniform requirements for the public offering and admission to trading of crypto-assets ("CA") as defined in MiCA and for CA service providers ("CASPs")</p>
----------------------	---

<p>Subject matter of MiCA</p>	<p>Natural and legal persons and certain other companies participating in the issuance, public offering, and admission to trading of CA or providing services related to CA</p>	
<p>What is crypto-asset?</p>	<p>This is a digital representation of a value or right that can be transferred and stored electronically using distributed ledger technology or similar technology</p>	
<p>What major “CA” does MiCA not address?</p>	<ul style="list-style-type: none"> • NFTs - unique and non-convertible - fractional parts of NFTs are not considered • NFTs, issuing NFTs in large series or collections is an indicator of “fungibility” • CAs that are financial instruments deposits (including structured deposits) cash, unless they qualify as e-money tokens <p>Within 18 months of the entry into force of MICA, ESMA will issue guidelines specifying the conditions under which tokens can be considered financial instruments NOTE, MiCA contains a number of other exclusions</p>	
<p>What is CASP?</p>	<p>Service provider - a legal person or other undertaking whose activity consists in the professional provision of at least one CA service to customers and which has been authorized to provide CA services</p>	
<p>Which CASPS are outside of the scope of MICA?</p>	<p>CASPs who provide CA exclusively for their parent companies, subsidiaries, or for other subsidiaries of their parent companies</p>	
<p>The main types of CAs covered by the MiCA regulation and the main conditions for their offer to the public and seeking their admission to trading by CCompetent Authority:</p>		
<p>E - money tokens - electronic money token/e-money token (“EMT”):</p>	<p>Asset - referenced tokens (“ART”):</p>	<p>Tokens that are not EMTs and or ARTs, including utility tokens:</p>

<p>A type of CA that is to be used primarily as a medium of exchange and that is expected to maintain a stable value by being pegged to a single legal tender currency</p>	<p>A type of CA that is not electronic money but is intended to maintain a stable value by virtue of being linked to another value or right or a combination, including at least one official currency</p>	<p>A type of CA that is only intended to provide access to a particular good or service provided by its issuer</p>
<p>Authorisation to offer to the public or seeking admission to trading?</p> <p>Necessary: under Directive 2013/36/EU or 2009/110/EC as a credit or e-money institution</p>	<p>Authorisation to offer to the public or seeking admission to trading?</p> <p>Necessary; unless that:</p> <ul style="list-style-type: none"> • over a period of 12 months, the average value of the ARTs issued does not exceed EUR 5,000,000 and the issuer has no relationship with a network of other exempt issuers • the public offer is only addressed to qualified investors and only they can hold ART 	<p>Authorisation to offer to the public or seeking admission to trading?</p> <p>NO, but the offeror or person seeking admission to trading must qualify for a number of conditions</p>
<p>Obligation to prepare a White paper ("WP")?</p> <p>YES</p>	<p>Obligation to prepare a White paper ("WP")?</p> <p>YES</p>	<p>Obligation to prepare a White paper ("WP")?</p> <p>YES</p>
<p>Obligation to report WP to the Competent Authority?</p> <p>YES</p>	<p>Obligation to report WP to the Competent Authority?</p> <p>YES</p>	<p>Obligation to report WP to the Competent Authority?</p> <p>YES</p>
<p>Obligation to approval WP?</p> <p>NO</p>	<p>Obligation to approval WP?</p> <p>YES</p>	<p>Obligation to approval WP?</p> <p>NO</p>

<p>Obligation to publish WP?</p> <p>YES, the obligation to publish on their website as well as marketing communications</p>	<p>Obligation to publish WP?</p> <p>YES, the obligation to publish on their website as well as marketing communications</p>	<p>Obligation to publish WP?</p> <p>YES, the obligation to publish on their website as well as marketing communications</p>
<p>Marketing communications reporting?</p> <p>Upon request of the competent authority</p>	<p>Marketing communications reporting?</p> <p>Upon request of the competent authority</p>	<p>Marketing communications reporting?</p> <p>Upon request of the competent authority</p>
<p>Publishing marketing communication?</p> <p>Cannot be published before the publication of the WP and must meet certain requirements</p>	<p>Publishing marketing communication?</p> <p>Cannot be published before the publication of the WP and must meet certain requirements</p>	<p>Publishing marketing communication?</p> <p>Cannot be published before the publication of the WP and must meet certain requirements</p>
<p>Obligation to prepare a legal opinion that CA is not a financial instrument?</p> <p>NO</p>	<p>Obligation to prepare a legal opinion that CA is not a financial instrument?</p> <p>YES</p>	<p>Obligation to prepare a legal opinion that CA is not a financial instrument?</p> <p>NO</p>
<p>Capital requirements for the issuer?</p> <p>YES</p> <p>Reference to Article 4 of Directive 2009/110/EC</p> <p>At the time of authorization, issuers must have an initial capital of not less than EUR 350,000</p> <p>In addition, own funds for the business of issuing electronic money must be equal to at least 2% of the average value of electronic money in circulation</p>	<p>Capital requirements for the issuer?</p> <p>YES</p> <p>ART issuers at all times have equity funds at least equal to the highest of the following amounts:</p> <ul style="list-style-type: none"> a) 350 000 EUR; b) 2% of the average amount of the asset reserve referred to in Article 36 c) one-fourth of the previous year's fixed indirect costs <p>Up to 20% more may be required in a risk-raising situation</p>	<p>Capital requirements for the issuer?</p> <p>NO</p>
<p>Right of redemption at any time?</p> <p>YES</p>	<p>Right of redemption at any time?</p> <p>YES</p>	<p>Right of redemption at any time?</p> <p>NO</p>

<p>Ban on interest payments or benefits that reward the length of CA ownership?</p> <p>YES</p>	<p>Ban on interest payments or benefits that reward the length of CA ownership?</p> <p>YES</p>	<p>Ban on interest payments or benefits that reward the length of CA ownership?</p> <p>YES</p>
<p>Consumer right of withdrawal?</p> <p>NO</p>	<p>Consumer right of withdrawal?</p> <p>NO</p>	<p>Consumer right of withdrawal?</p> <p>YES</p>
<p>NOTE:</p> <p>A) The obligation to prepare, notify, publish WP and information materials does not apply when:</p> <ul style="list-style-type: none"> • the offer to less than 150 natural or legal persons per member state, where the persons are acting on their own account • within a period of 12 months from the beginning of the offering, the total value of the CA public offering in the Union does not exceed EUR 1,000,000 or the equivalent this amount in another official currency or in CA • the offering of CA to qualified investors only, if only such qualified investors can hold that CA <p>B) The provisions on the offer and admission to trading of tokens other than EMT or ART do not apply if one of the following conditions is met:</p> <ul style="list-style-type: none"> • CA offered free of charge (gratuitousness is not presumed if min. personal information is transferred in exchange for CA) • CA is created automatically in exchange for transaction validation or registry maintenance the offer relates to a utility token providing access to an existing good or service in progress • the CA holder has the right to use it only in exchange for goods and services in a limited network of merchants who have entered into contractual arrangements with the offeror 		
<p>NOTE:</p> <p>with respect to EMTs and ARTs, it is important to keep in mind the obligation to have a capital reserve or assets and possibly other requirements in the case of so-called “significant” tokens</p>		
<p>Providing CA services</p> <ul style="list-style-type: none"> • require a CASP Authorisation under MiCA • possible without the authorization under MiCA for other entrepreneurs operating under separate financial market regulations e.g., credit institutions, brokerage houses, etc.; additional requirements must be met • crypto - exchanges that are completely decentralized do not require a CASP Authorisation • CASP Authorisation is not required for providing custody, administration and transfer services for CAs described in point B 		
<p>The following services require a CASP Authorisation under MiCA. Among other requirements, the Authorisation might only be granted if the CASPs is established in the EU</p>	<p>Minimum capital requirement</p>	
<ul style="list-style-type: none"> • execution orders on behalf of clients • CA placement 	<p>50 000 EUR</p>	

- CA transfer on behalf of clients
- reception and transmission orders related to CA
- provide advice on CA
- CA portfolio management

- | | |
|---|-------------|
| <ul style="list-style-type: none"> • provide custody and administration of CA • exchange of CA for funds • exchange of CA for other CA | 125 000 EUR |
|---|-------------|

- | | |
|---|-------------|
| <ul style="list-style-type: none"> • operation of trading platform of CA | 150 000 EUR |
|---|-------------|

Can CASPs passport their services through the EU?

YES

Can CAPSs from third countries provide their services in the EU, without MiCA authorization?

Only based on “**reverse solicitation**” - where a client in the EU initiates provisioning of the service at its own exclusive initiative

Note, any kind of solicitation, promotion, or advertising direct or indirect, regardless of the means of communication, in the EU shall not be deemed as provided at the exclusive initiative of the client

MiCA Timeline:

June 9, 2023 - publication of MiCA in the Official Journal of the European Union

June 29, 2023 - entry into force

December 30, 2024 - commencement of application of MiCA