



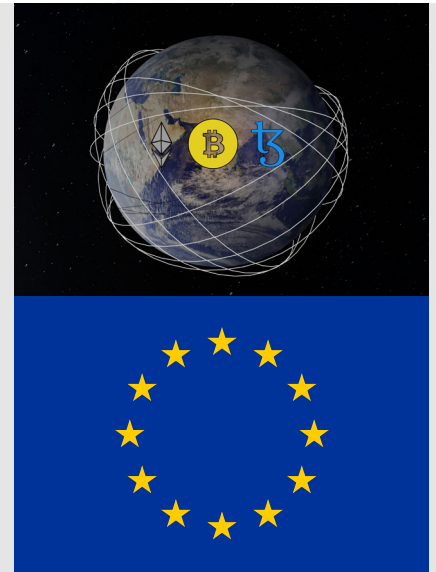


## MiCA in a nutshell.

### The key information that you need to know 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**



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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

What is MiCA?	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”)
Subject matter of MiCA	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
What is crypto-asset?	This is a digital representation of a value or right that can be transferred and stored electronically using distributed ledger technology or similar technology
What major “CA” does MiCA not address?	<ul style="list-style-type: none"> <li>● NFTs – unique and non-convertible - fractional parts of NFTs are not considered NFTs, issuing</li> <li>● NFTs in large series or collections is an indicator of “fungibility”</li> <li>● CAs that are financial instruments deposits (including structured deposits)</li> <li>● cash, unless they qualify as e-money tokens</li> </ul> <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</p> <p>NOTE, MiCA contains a number of other exclusions</p>
What is CASP?	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
Which CASPS are outside of the scope of MiCA?	CASPs who provide CA exclusively for their parent companies, subsidiaries, or for other subsidiaries of their parent companies

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 Competent Authority:

<p><b>E - money</b> tokens – electronic money token/e-money token (“<b>EMT</b>”):</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><b>Asset</b> – referenced tokens (“<b>ART</b>”):</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</p>	<p>Tokens that <b>are not EMTs and or ARTs, including</b> utility tokens:</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><b>Authorisation</b> to offer to the public or seeking admission to trading?</p> <p><b>Necessary:</b> under Directive 2013/36/EU or 2009/110/EC as a credit or e-money institution</p>	<p><b>Authorisation</b> to offer to the public or seeking admission to trading?</p> <p><b>Necessary;</b> unless that:</p> <ul style="list-style-type: none"> <li>● 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</li> <li>● the public offer is only addressed to qualified investors and only they can hold ART</li> </ul>	<p><b>Authorisation</b> to offer to the public or seeking admission to trading?</p> <p><b>NO</b>, but the offeror or person seeking admission to trading must qualify for a number of conditions</p>
<p><b>Obligation</b> to prepare a White Paper (“WP”)?</p> <p><b>YES</b></p>	<p><b>Obligation</b> to prepare a White Paper (“WP”)?</p> <p><b>YES</b></p>	<p><b>Obligation</b> to prepare a White Paper (“WP”)?</p> <p><b>YES</b></p>
<p>Obligation to <b>report</b> WP to the Competent Authority?</p> <p><b>YES</b></p>	<p>Obligation to <b>report</b> WP to the Competent Authority?</p> <p><b>YES</b></p>	<p>Obligation to <b>report</b> WP to the Competent Authority?</p> <p><b>YES</b></p>

Obligation to <b>approval</b> WP?	Obligation to <b>approval</b> WP?	Obligation to <b>approval</b> WP?
<b>NO</b>	<b>YES</b>	<b>NO</b>
Obligation to <b>publish</b> WP?	Obligation to <b>publish</b> WP?	Obligation to <b>publish</b> WP?
<b>YES</b> , the obligation to publish on their website as well as marketing communications	<b>YES</b> , the obligation to publish on their website as well as marketing communications	<b>YES</b> , the obligation to publish on their website as well as marketing communications
Marketing communications <b>reporting</b> ?	Marketing communications <b>reporting</b> ?	Marketing communications <b>reporting</b> ?
Upon request of the competent authority	Upon request of the competent authority	Upon request of the competent authority
<b>Publishing</b> marketing communication?	<b>Publishing</b> marketing communication?	<b>Publishing</b> marketing communication?
Cannot be published before the publication of the WP and must meet certain requirements	Cannot be published before the publication of the WP and must meet certain requirements	Cannot be published before the publication of the WP and must meet certain requirements
Obligation to <b>prepare a legal opinion</b> that CA is not a financial instrument?	Obligation to <b>prepare a legal opinion</b> that CA is not a financial instrument?	Obligation to <b>prepare a legal opinion</b> that CA is not a financial instrument?
<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>Capital requirements</b> for the issuer?	<b>Capital requirements</b> for the issuer?	<b>Capital requirements</b> for the issuer?
<b>YES</b>	<b>YES</b>	<b>NO</b>
Reference to Article 4 of Directive 2009/110/EC At the time of authorization, issuers must have an initial capital of not less than EUR 350,000  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	ART issuers at all times have equity funds at least equal to the highest of the following amounts: 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 Up to 20% more may be required in a risk- raising situation	

Right of redemption at any time?

**YES**

Right of redemption at any time?

**YES**

Right of redemption at any time?

**NO**

Ban on interest payments or benefits that reward the length of CA ownership?

**YES**

Ban on interest payments or benefits that reward the length of CA ownership?

**YES**

Ban on interest payments or benefits that reward the length of CA ownership?

**YES**

Consumer **right of withdrawal**?

**NO**

Consumer **right of withdrawal**?

**NO**

Consumer **right of withdrawal**?

**NO**

#### **NOTE:**

A) The obligation to prepare, notify, publish WP and information materials does not apply when:

- 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

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:

- 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

#### **NOTE:**

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

#### Providing CA services

- 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

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

#### Minimum capital requirement

<ul style="list-style-type: none"> <li>● execution orders on behalf of clients</li> <li>● CA placement</li> <li>● CA transfer on behalf of clients</li> <li>● reception and transmission orders related to CA</li> <li>● provide advice on CA</li> <li>● CA portfolio management</li> </ul>	50 000 EUR
<ul style="list-style-type: none"> <li>● provide custody and administration of CA</li> <li>● exchange of CA for funds</li> <li>● exchange of CA for other CA</li> </ul>	125 000 EUR
<ul style="list-style-type: none"> <li>● operation of trading platform of CA</li> </ul>	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

#### 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