From Wild West to Regulated Frontier: The Impact of MiCAR on Europe's Crypto Markets

The "Markets in Crypto-Assets Regulation" (MiCAR) closes existing gaps in the EU's financial services legislation by creating a uniform system of standards for the regulation of cryptocurrencies within the EU. It is designed as part of a more comprehensive regulatory effort (*i.e.* the EU's Digital Finance Package), which includes further initiatives such as the Digital Operational Resilience Act (DORA) and the Transfer of Funds Regulation (TFR).

The regulation provides for an entry into force of its regulatory framework in several phases. Rules on asset-referenced tokens (ART) and e-money tokens (EMT) enter into force on 30 June 2024, whereas the remainder of MiCAR-imposed regulations – except for a number of provisions referenced in Art 149, which took effect already on 29 June 2023 – will apply as from 30 December 2024 onwards. Meanwhile, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) are simultaneously working on the development of technical regulatory standards, implementation standards and guidelines further specifying the application of MiCAR.

MiCAR provides for a uniform definition of crypto-assets, describing them as "digital representations of values or rights that can be electronically transferred and stored using distributed ledger technology or similar technology". It introduces three sub-categories of crypto-assets: electronic money tokens (EMTs), asset-referenced tokens (ARTs) and a catch-all category for other crypto-assets (including utility tokens). EMTs are stablecoins that maintain a stable value by referencing an official currency. They operate as electronic substitutes for traditional money and are primarily used for payments. ARTs also aim at maintaining a stable value but can reference various values or rights, including official currencies, commodities, or other crypto-assets. MiCAR designates EMTs and ARTs as significant if they meet certain criteria such as the number of holders, market capitalization, or their issuer's gatekeeper status. Significant ARTs and EMTs are subject to stricter rules, including capital requirements, and are supervised by the European Banking Authority (EBA) instead of national authorities.

Consequently, MiCAR regulates the proper business organization of crypto asset issuers and crypto asset service providers, transparency and disclosure obligations for the issuance and trading of crypto assets, investor and consumer protection regulations for the issuance, trading and custody of crypto assets as well as regulations to combat market abuse on crypto trading venues. Additionally, it also addresses the authorization and supervision of crypto asset service providers (CASPs) as well as traditional financial institutions issuing crypto assets. It does not cover crypto-assets regulated by existing financial services legislation, such as security tokens (which are generally classified as financial instruments), securities (within the meaning of MiFID2), instruments of the DeFi-industry (Decentralized Finance), operations of Decentralized Autonomous Organizations (DAO) as well as non-fungible tokens (NFTs). However, under certain conditions, NFTs issued in a large series or collection may be considered fungible and thus fall under the scope of MiCAR.

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As stated above, the main objective of MiCAR is to create uniform and secure standards for the issuance and trading of cryptocurrencies within the EU, making providers of crypto services subject to strict regulations and compliance regimes ultimately monitored by the European Securities and Markets Authority (ESMA). Going forward, crypto service providers doing business within the EU, regardless of whether they are headquartered in the EU or in a third country (particularly involving crypto exchanges, wallet providers, crypto platforms and crypto funds issuing or trading digital financial instruments) will require a respective approval (license) to be issued by the ESMA. Said approval is tied to strict requirements, ensuring better protection of customers and obliging affected companies to implement appropriate procedures for securing customer funds and data alike. Moreover, MiCAR encompasses strict rules concerning the management of insider information and an obligation of issuers of crypto-assets to issue white papers providing specific information on traded assets.

Importantly, companies that do not issue or trade cryptocurrencies or digital financial instruments, but come into contact with them nonetheless, may also fall within the scope of MiCAR. Therefore, it is conceivable that companies offering payment services could also be subject to additional compliance requirements, including qualification-, reliability-, organizational- and transparency-rules, the obligation to implement adequate protection mechanisms against cyber-attacks as well as measures to prevent money laundering and the financing of terrorism (KYC).

The new legal framework established by MiCAR further extends the power of national supervisory authorities, which now could monitor cryptocurrency or financial instrument providers and, in this context, for example, set requirements for capitalization, risk management processes and governance structures. In order to comply with the requirements of the new MiCAR legislation, Austrian crypto service providers will particularly have to adapt to a set of new rules regarding their business processes-, risk management- and IT-systems. Against this backdrop, it appears crucial to conduct suitable monitoring and audit procedures and to prepare adequate step plans for the implementation of all measures required by the new legislation.

Overall, MiCAR intends to strengthen confidence in the cryptocurrency market while simultaneously providing greater transparency and security for consumers and investors in the EU alike. Nevertheless, companies might face significant challenges in implementing these regulations and requirements. Therefore, while MiCAR can be considered an important step towards efficient regulation of cryptocurrency trade, it still remains to be seen whether the regulation can actually successfully standardize the rules for cryptocurrency markets in Europe and, in such way, turn the (at least to a certain extent) still existing “Wild West” into uniformly regulated frontier.