

# **The Regulation on Markets in Crypto-Assets Becomes Fully Applicable in All Member States of the European Union**

Article By:

Dr. Jan Boeing

---

## **Application of Markets in Crypto-Assets Phase I and Phase II**

Starting on 30 June 2024, with the application of the first of two introduction phases of the Regulation on Markets in Crypto-assets (MiCA)<sup>1</sup> across all member states of the European Union (EU), the EU has introduced for the first time a harmonized regulatory framework as well as accompanying passporting rights for service providers of the crypto-asset market, affecting both traditional institutions of the financial sector and new players emerging in the crypto-ecosystem.<sup>2</sup>

As of 30 December 2024, the second phase of MiCA, and therefore MiCA in its entirety, is directly applicable throughout the EU.

With the first phase of MiCA's introduction, the provisions of Titles III and IV of MiCA, governing the authorisation and supervision of both: (i) crypto assets that aim to maintain a stable value by referencing several currencies that are legal tender, one or several commodities, one or several crypto-assets, or a basket of such assets (asset-referenced tokens or ART); and (ii) crypto assets that are intended primarily as a means of payment and that aim to stabilize their value by referencing only one fiat currency (e-money tokens or EMT), became applicable.

The second introduction phase has activated the remaining elements of MiCA regulating crypto-assets other than ART and EMT and regarding providers offering crypto-asset services, referred to as crypto-asset service providers (CASPs).

Several items of second-level legislation (delegated acts) have been either prepared by the European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, as final drafts or have already been issued by the European Commission in December 2024, regarding points such as own funds and qualified holding requirements, stress testing programmes and remuneration policy of issuers of ART and EMT.

---

## **Supersession by MiCA of the Local Virtual Asset Service Provider Regime and Transition Period**

Prior to the general application of MiCA in all EU member states, providers of services with respect of virtual assets were subject to the supervisory regime under their applicable national law. In Luxembourg, the national legislator introduced the virtual asset service provider (VASP)<sup>3</sup> regime, supervised by Luxembourg's financial sector supervisory authority (CSSF). An entity contemplating to provide virtual asset services in Luxembourg is required to register upfront with the CSSF.

With the entry into force of MiCA, the VASP regime is no longer available for first-time registration. As of 30 December 2024, service providers seeking to carry out crypto-asset activities will be required to seek authorisation from their national competent authority (NCA) as a CASP (governed by MiCA). For certain entities already subject to prudential supervision, such as credit institutions and investment firms, it is sufficient to notify their NCA of their intention to provide crypto-asset services. Unlike the VASP regime, which is a purely national (Luxembourg) regime, the CASP regime grants the benefit of EU-wide passporting of activities under MiCA. Service providers already registered in Luxembourg as VASPs benefit from a transitional regime, permitting them to be treated as CASPs in most respects until 1 July 2026, at which time they will be required to have become authorised CASPs.

### **ESMA Issues Statement on MiCA Transitional Measures**

The 18-month transitional period provided for Luxembourg VASPs is the maximum window permitted by MiCA. MiCA permits EU member states to adopt a transitional period shorter than 18 months for local service providers. To date, 15 EU member states have taken that step and adopted five-, six-, nine- or 12-month transitional periods.<sup>4</sup>

Transitional periods that deviate between EU member states might create uncertainty for VASPs registered as such and providing covered services in multiple EU member states. A statement released by ESMA on 17 December 2024, clarifies that each EU member state's transitional period will only apply to the provision of covered services provided in that relevant EU member state.<sup>5</sup>

For example, an entity, which is registered as a VASP and seeking a MiCA authorisation as a CASP in a first EU member state with a 12-months transition period, while also serving clients in a second EU member state with a six-month transition period, should take action to ensure compliance at all times with the applicable law of the EU member state with the shorter transition period. In particular, if the authorisation as CASP is granted in the first EU member state only after the transition period in the second EU member state has ended, the entity will not be able to provide crypto-asset services to clients in that second EU member state until it has obtained its authorisation as CASP and can rely on the passporting granted under MiCA.

In its statement, ESMA reminds NCAs across the EU to maintain a thorough picture of the cross-border activities of those service providers applying for a CASP status and to engage in early and continuous dialogue with their counterparts in relevant jurisdictions to mitigate the risk of disruptions in services that could cause harm to such service providers' clients.

### **European Supervisory Authorities Joint Guidelines on Standardised Classification of Crypto-Assets**

---

In advance of the entry into force of the second part of, and as contemplated by, MiCA, the three European supervisory authorities (ESAs): (i) the European Banking Authority; (ii) the European Insurance and Occupational Pensions Authority; and (iii) ESMA released on 10 December 2024<sup>6</sup>, a set of joint guidelines to promote the consistent application of MiCA across the EU.

The guidelines intend to facilitate consistency in the regulatory classification of crypto-assets, noting that MiCA does not apply to crypto-assets that are unique and not fungible with other crypto-assets; or which qualify as financial instruments, deposits, insurance and pension products or similar products which are in scope of the relevant sectoral legal framework.

The guidelines include a standardised test for the classification of crypto-assets as well as templates market participants should use when communicating the regulatory classification of a crypto-asset to their relevant NCA.

## **ESMA Encourages Investor Prudence With Respect of Crypto-Assets**

In the context of the full entry into force of MiCA and the sharp rise in value of certain crypto-assets in November 2024, ESMA issued a warning on 13 December 2024<sup>7</sup>, reiterating the inherent risk of investing in crypto-assets and reminding investors that the safeguards provided by MiCA are less extensive than those for traditional investment products.

Comparing MiCA with the frameworks regulating the provision of traditional investment services, ESMA in particular notes, that:

- Crypto-assets are not to be covered by an investor compensation scheme and, consequently, investors face the risk of a total loss, if a CASP is unable to return a crypto-asset to them;
- MiCA does not require all providers of crypto-asset services to collect clients' information to assess their ability to understand the crypto-asset products they wish to trade;
- Crypto-asset service providers have no obligation to periodically report to clients the crypto-assets they hold on clients' behalf with their updated or current value; and
- The above-noted transitional period may leave investors without some of the investor-protection resources provided by MiCA until the relevant CASP's authorisation as a CASP, as, under the VASP regime, an NCA's power may be restricted to the enforcement of antimoney laundering rules.

## **Conclusion**

The full implementation of MiCA heralds a new era of harmonised supervision for crypto-assets across the EU to provide legal certainty through a flexible legal framework for CASPs and protection for holders of crypto-assets (while remaining less extensive than those in place for traditional investment products), as well as to ensure the overall integrity of the crypto-asset market. The delegated acts in preparation and already issued by the European Commission, along with the supplementary guidance provided by ESMA and the ESAs promise to flesh out the MiCA framework.

---

## **Footnotes**

<sup>1</sup> [Regulation - 2023/1114 - EN - EUR-Lex.](#)

<sup>2</sup> See the blog post dated 24 May 2024, for further details. This blog post is available

here: [EU/Luxembourg Update on the Regulation on Markets in Crypto-Assets and the Digital Operational Resilience Act.](#)

<sup>3</sup> See the client alert dated 13 September 2023, for further details. This client alert is available here: [Luxembourg Financial Services Regulator, the Financial Sector Supervisory Commission, and Issues FAQs on "Virtual Asset Service Provider" Regime.](#)

<sup>4</sup> A table of transitional periods by EU member state has been published by ESMA and is available here: [List of grandfathering periods decided by Member States under MiCA.](#)

<sup>5</sup> ESMA's statement of 17 December 2024, is available here: [ESMA Statement on MiCA Transitional Measures.](#)

<sup>6</sup> The joint guidelines issued by the ESAs are available here: [Joint ESA Guidelines 10 December 2024.](#)

<sup>7</sup> ESMA's warning of 13 December 2024, is available here: [ESMA Warning on crypto-assets 13 December 2024.](#)

---

Copyright 2025 K & L Gates

National Law Review, Volume XV, Number 24

Source URL: <https://natlawreview.com/article/regulation-markets-crypto-assets-becomes-fully-applicable-all-member-states>