

Crypto-Asset EU Regulation: Key Irish Developments

Introduction

As the regulatory landscape for digital assets continues to evolve, the Markets in Crypto-Assets Regulation¹ ("MiCA") represents a significant step towards establishing a comprehensive framework for the regulation of crypto-assets within the European Union ("EU").

MiCA seeks to address the challenges posed by the rapid growth of the crypto-asset market, ensuring investor protection, market integrity, and financial stability.

The regulation introduces a harmonised approach to the treatment of crypto-assets. By setting out clear rules and requirements for issuers, service providers, and market participants, MiCA aims to foster innovation while mitigating risks associated with this dynamic sector.

MiCA became applicable to issuers of asset-referenced tokens ("ARTs") and e-money tokens ("EMTs") on 30 June 2024 and to crypto-asset service providers ("CASPs") on 30 December 2024.

The key aspects of MiCA and its scope are summarised in our previous update².

This update aims to summarise key recent EU and Irish developments relating to the implementation of MiCA.

ESMA Policy Documents

In December 2024, the European Securities and Markets Authority ("ESMA") published the last package of final reports containing regulatory technical standards and guidelines in relation to MiCA.³ These include:

- **Regulatory technical standards on market abuse:** These give detailed specifications for the systems and procedures required to prevent and detect market abuse that persons professionally arranging or executing transactions in crypto-assets must establish and include a comprehensive template for reporting suspected market abuse.
- **Guidelines on reverse solicitation:** ESMA emphasises that the reverse solicitation exemption should be understood as very narrowly framed and should be regarded as an exception only. The guidelines outline the conditions under which third-country firms can provide crypto-asset services to EU clients without breaching authorisation requirements.
- **Guidelines in relation to specifying certain requirements of MiCA on investor protection:** These include guidelines that specify the requirements for CASPs who provide advice on crypto-assets or manage portfolios of crypto-assets to collect client information and perform a suitability assessment to deliver suitable recommendations to their clients or make suitable investment decisions on their

¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.

² <https://maples.com/knowledge/mica-and-central-bank-feedback-on-vasp-registrations>

³ <https://www.esma.europa.eu/press-news/esma-news/esma-releases-last-policy-documents-get-ready-mica>

behalf. They also include guidelines on crypto-asset transfer services and safeguard investor protection by ensuring clients are given essential information before entering into any agreement in relation to transfer services for crypto-assets.

- **Guidelines on qualification of crypto-assets as financial instruments:** These set out criteria for classifying crypto-assets as financial instruments and aim to delineate the respective scopes of application of MiCA and other sectoral regulatory frameworks, particularly the Markets in Financial Instruments Directive II.
- **Guidelines on the maintenance of systems and security access protocols:** These apply to offerors and persons seeking admission to trading of crypto-assets other than ARTs and EMTs. Consequently, they are therefore not subject to the same comprehensive operational resilience standards outlined in MiCA and the Digital Operational Resilience Act that apply to CASPs.
- **Grandfathering:** On 17 December 2024, ESMA published a statement on the transitional measures under MiCA. Under these provisions individual member states may allow CASPs to continue to provide services under their existing (pre-MiCA) national crypto-assets regime until 1 July 2026 or when their application for authorisation under MiCA has been granted or refused, whichever is sooner. A recently published list of grandfathering periods shows, member states have reduced transitional periods by differing lengths. ESMA states that this "*inherently non-unified approach*" means that CASPs will face different transitional periods depending on the member state(s) in which they are active.

MiCA and PSD2 Overlap

The European Commission ("Commission") requested the European Banking Authority ("EBA") and ESMA to consider the overlap between MiCA and the revised Payment Services Directive (EU) 2015/23664 ("PSD2"). This request particularly focuses on EMTs, which are classified as both crypto assets under MiCA⁵ and electronic money under PSD2⁶.

The Commission has asked the EBA, in coordination with ESMA, to consider issuing a 'no action letter' to temporarily suspend the enforcement of PSD2 requirements for services involving EMTs provided by CASPs. This suspension would remain in effect until the reformed PSD2 is applied.

The EBA has acknowledged the Commission's concerns and is assessing the issues in coordination with ESMA and aims to publish a response by April 2025.

Central Bank CASP Authorisation Expectations

On 8 November 2024, the Central Bank of Ireland ("Central Bank") was designated as the Irish national competent authority under MiCA.

The Central Bank has published a range of materials on its website to assist entities considering seeking authorisation as a CASP in Ireland.

Such entities must consider the following:

- **Governance and accountability:** Applicants must employ local leadership with crypto expertise, demonstrate substance and autonomy, and maintain strong governance and risk management;
- **Protection of client assets:** A Head of Client Asset Oversight must be appointed and the segregation of client assets as well

⁴ <https://eur-lex.europa.eu/eli/dir/2015/2366/oj/eng>

⁵ Article 48 (2), MiCA

⁶ Article 4 (25) PSD2.

as prompt access to reserve assets for redemption demands must be assured;

- **Business model and financial resilience:** Applicants should have a board-approved business strategy in place that ensures the business model's viability and sustainability which addresses product-related vulnerabilities;
- **Operational resilience:** The continuity and regularity in the performance of the applicant's services must be safeguarded, including Distributed Ledger Technology and Blockchain;
- **Ownership:** The identity of direct and indirect shareholders as well as any party, which can exercise significant influence, must be provided in a full, transparent and corroborated manner;
- **Conflicts of interest:** Applicants should implement remuneration policies that do not create conflicts of interest and ensure conflicts of interest are prevented or promptly addressed;
- **Crisis management:** Applicants must showcase plans for an orderly wind-down and timely redemption of customer funds in case of a crisis;
- **Conduct and transparency:** Applicants must verify their products match customers' risk tolerance; and
- **AML/CFT:** Applicants must demonstrate robust risk management and internal controls to comply with their anti-money laundering ("AML") and countering the financing of terrorism ("CFT") obligations.

AML/CFT Update

A statutory instrument⁷ has been issued to supplement the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to capture CASPs as 'Designated Persons' within the scope of the Irish AML/CFT regime.

⁷ The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Sections 25 AND 60) (Prescribed Class and Competent Authority) Regulations 2024.

⁸ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

Further Information

As the implementation of MiCA progresses, it is crucial for market participants to stay informed and prepared for the upcoming changes. Understanding the quickly evolving regulatory requirements will be essential for compliance and strategic planning.

Further information on our Irish Financial Services Regulatory Group and the services we provide is available on our website⁸ and in our FSR⁹ and FinTech¹⁰ brochures.

If you would like further information, please liaise with your usual Maples Group contact or the persons below.

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⁹ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

¹⁰ <https://maples.com/-/media/files/pdfs/general/fintech---june-2021.pdf>