

## Markets in Crypto-Assets Regulation (MiCAR)

The most comprehensive crypto regulation creates opportunities to enter the European market.

### What is MiCAR?

MiCAR is the first uniform regulation for crypto assets for a market as big as the EU, offering huge possibilities for international players to enter the EU market.

### What changes with MiCAR?

MiCAR will give (i) issuers of token, and (ii) crypto asset service providers a single rulebook for the European crypto market.

MiCAR will partly apply with 30 June 2024 and will be fully applicable from 30 December 2024 onwards.

### Access to the EU Market

MiCAR licensed institutions will have access to the whole EU market with 447 million people.

### New product opportunities

With MiCAR crypto assets and services are defined, making it possible to expand the product portfolio (e.g. asset referenced tokens).

### Competitive Advantage

Now is the time to start MiCAR preparations to secure a competitive advantage.

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## Scope of MiCAR

- ▶ **MiCAR** is today the most comprehensive framework for crypto assets globally.
- ▶ **MiCAR** will be applicable to (i) issuers of crypto assets (differentiating between unbacked crypto assets and asset/currency backed crypto assets) and (ii) crypto asset service providers (CASP).
- ▶ **Issuer of crypto assets.** Basic requirement for issuers/offers will be the notification/publication of a White Paper containing all relevant information about the project. Further obligations will apply for issuers/offers of either asset referenced tokens or e-money tokens (e.g. a more extensive white paper, authorization of the competent supervisory authority, own fund and reserve management requirements).

▶ **CASP services.** MiCAR will introduce a catalogue of services requiring an authorization (e.g. custody, trading) platforms, exchange services or portfolio advice). Offering of such services will require a license under MiCAR, however, it will be possible to offer such services in a regulated environment.

▶ **TradFi & MiCAR.** Certain regulatory reliefs will apply to "traditional" financial institutions (e.g. credit institutions, investment firms) wanting to offer MiCAR services. Thus, from a strategic point of view it should be explored if existing licenses could be leveraged for MiCAR services or if setting up already regulated entities could be a competitive advantage.

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## MiCAR brings huge opportunities

▶ **Single Market.** MiCAR is introducing the so-called passporting system to the crypto sector, allowing service providers to operate in the whole EU with one authorization. This "One Catch All" - system brings a huge opportunity to enter the EU market in one sweep.

▶ **Effective and reliable rulebook.** Comprehensive legislation brings more predictability. EU authorities will have a precise rulebook to operate under. This is currently missing for many other authorities leaving more room for changes in administrative practice and unexpected decision making.

▶ **High quality standard.** Developing policies and a technological setup in compliance with MiCAR will create sought after reputation and a business model, which can likely be applied on an international scale.

▶ **Public engagement.** MiCAR will hopefully generate further acceptance and interest in the general public, which will further grow and enhance the market as a whole, creating more opportunities, liquidity and innovation in Europe.

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## How can we support to create your competitive advantage?

MiCAR will create a unique opportunity to enter the EU crypto market for US crypto players and companies involved in the traditional financial market. Many European players are already starting to prepare, so US companies should do the same to be among the first to operate under MiCAR. As fully licensed Austrian (European) law firm, we can provide you with all-round support:

- ▶ Assessment of your business model under MiCAR and other supervisory laws to identify and eliminate showstoppers.
- ▶ Development and implementation of a MiCAR strategy tailored to your business model to implement MiCAR requirements/policies to operate with maximized effectiveness.
- ▶ Identifying the optimal EU jurisdiction to set up shop. Establishment of corporate structure and business operations in especially Austria.
- ▶ Gap-Assessment for established and operating crypto exchanges or TradFi companies to identify necessary steps and implementations for MiCAR compliance.
- ▶ Support during the (pre-)authorization process regarding preparation of documents and communication with national authorities. Subsequent support regarding passporting procedure to operate in the Single Market.
- ▶ In case of existing businesses/licenses in Europe: Adapting the strategy to optimize MiCAR facilitations for licensed entities during the authorization/notification process.

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\*Pelzmann Gall Größ Rechtsanwälte GmbH

## Your Contact

The EY Law Austria team is happy to discuss your projects and help you to identify and implement your needs to ensure that you will maximize your benefits and opportunities under MiCAR!

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# MiCAR Roadmap

## MiCAR TIMELINE

9 June 2023

### Publication of MiCAR

29 June 2023

### MiCAR enters into force

- ▶ Transitional period of 12/18 months starts
- ▶ EBA and ESMA shall draft Implementing Technical Standards (ITS) and Regulatory Technical Standards (RTS)

30 June 2024

### Provisions for ARTs & EMTs apply

- ▶ Title III (on Asset-Referenced Tokens) & Title IV (on E-Money Tokens) will apply to issuance and offering
- ▶ Draft ITS/RTS will be submitted to European Commission for adoption

30 December 2024

### MiCAR applies in full

- ▶ Other titles of MiCAR will apply (most importantly CASP regime)
- ▶ transitional period (18 months) starts for service providers operating under the current AMLD5 regime

30 July 2026

### VASP registered under AMLD5 require a CASP license

- ▶ Extended transitional period ends
- ▶ Service providers can exclusively operate with a MiCAR license within the EU

## THINGS TO PREPARE IN THE MEANTIME

### ✓ Prior VASP registration vs greenfield MiCAR registration

- ▶ Analysis of pros and cons for specific business model whether a VASP registration should be obtained prior applying for a MiCAR license
- ▶ Registered VASP will benefit from an extended transitional period and simplified authorization process.
- ▶ Choice of jurisdiction for VASP registration (and MiCAR application see below)

### ✓ Explore the possibility to leverage existing licenses

- ▶ To some extent existing/new TradFi licenses (e.g. licenses as investment firms, banking licenses etc) can be leveraged for MiCAR
- ▶ Connected to before: explore how to best utilize existing VASP registrations

### ✓ Choice of Jurisdiction

- ▶ Despite the harmonized MiCAR, the selection on the optimal EU jurisdiction can have a big impact on the operational success.
- ▶ **Consider:** *inter alia* crypto-knowledge of the national authority, reputation, other applicable laws (e.g. flexibility of labor law, tax laws).

### ✓ Corporate setup (if needed)

- ▶ To obtain a license, MiCAR requires a established entity within the EU.
- ▶ **Consider:** The setup of a new corporate structure can be an interesting option, even if established entities are available

### ✓ MiCAR authorization process

- ▶ The preparation of application documents should start in due time, as a significant number of applicants can be expected.
- ▶ **Consider:** pre-aligning with competent supervisory authority
- ▶ **Consider:** Existing license approach with TradFi licenses (Notification) or VASP registration (simplified procedure)

### ✓ Ongoing MiCAR compliance

- ▶ National and EU authority practice needs to be established in the first months/years of application.
- ▶ **Consider:** Regular monitoring of recent practice/publications can help ensuring operational compliance