

The background of the entire page is a dark, atmospheric image of a laptop. The screen displays a complex network diagram with glowing blue and green nodes and connecting lines. The overall scene is lit with warm, bokeh-style light spots in shades of orange and yellow, creating a futuristic and digital aesthetic.

# THE MARKET IN CRYPTO-ASSETS REGULATION: A DEEP DIVE



## Nicolas Pavlovitch

Partner

Contact: [n.pavlovitch@reply.com](mailto:n.pavlovitch@reply.com)



## Giulio Soana

Senior Consultant

Contact: [g.soana@reply.com](mailto:g.soana@reply.com)



## Grégoire Bellefroid

Consultant

Contact: [g.bellefroid@reply.com](mailto:g.bellefroid@reply.com)

### **AVANTAGE REPLY**

Avantage Reply, part of the Reply Group, specialises in Financial Services consulting with a focus on Governance, Risk and Finance Transformation, Treasury and Capital, Quantitative Modelling, Compliance and Regulatory Advisory.

Since its establishment in 2004, Avantage Reply has been committed to industry specialisation (financial services) offering insights and in-depth experience. Avantage Reply works with board members, CROs, CCOs, COOs and CFOs, senior and mid-management finance and risk executives of leading financial services institutions.

With offices across Europe and the United Kingdom, we count some of the world's most significant financial groups among our clients, including in Investment, Retail and Commercial Banking, Custodian Banking, Insurance and Investment Management.

[www.avantagereply.com](http://www.avantagereply.com)

# Introduction

The first comprehensive European regulation pertaining to the crypto-market was approved in May 2023 and is known as the Market in Crypto-assets Regulation (MiCaR). With the Fifth AML Directive, the Union had already regulated crypto-assets in the AML space, albeit under a different name: virtual currency. To harmonise the sectorial laws, MiCaR, however, greatly broadens the Directive's purview. Until now, Member States have been in charge of enforcing the discipline surrounding the issuance of crypto-assets and CASP registration. As a result, the Union became fragmented, with different requirements.

MiCaR, a directly applicable regulation, seeks to address this by establishing standardised, union-wide standards for CASP registration and crypto-asset offerings. In order to ensure consistency and promote the smooth operation of the shared market, MiCaR incorporates both a mutual recognition system, also known as passporting, and common regulations. According to passporting, a CASP or an offeror must be acknowledged throughout the Union after receiving authorisation from one Member State (the Home MS).



# Definitions

MiCaR significantly changes the previous definition of virtual currency provided by the Fifth AML Directive. Following the regulation, a crypto-asset is any digital token that has three characteristics: 1) is a representation of value or rights, 2) can be transferred electronically, 3) uses a Decentralised Ledger Technology (DLT) or similar technology. Conversely, a DLT is any technology based on a shared, synchronised information repository that is updated by a consensus mechanism among various nodes. It is important to emphasise that both permissionless and permissioned DLTs are included in the definition of crypto-assets, which does not mention the network's governance structure.

Below this overarching definition, the MiCaR introduces three sub-definitions: asset-referenced (ART), e-money (EMT), and utility tokens. The first two tokens can be classified as stable coins – crypto-assets that aim to maintain a stable value by pegging it to another currency, commodity, or a basket thereof. The third group includes tokens designed to grant users access to a good or service that their issuer provides. There is one somewhat distinct discipline offered for each of these categories. The general, overarching regulation still applies to any token that does not fit into one of the three previously mentioned categories, with such tokens being qualified as OCA.

Two last observations on this definition. Firstly, the term “crypto-assets” is defined in an explicitly residual manner. Therefore, MiCaR does not apply to any crypto-asset that is already covered by another European regulation, such as MIFID II. Secondly, Non-Fungible Tokens (NFTs), such as collectible and artistic ones, are expressly excluded from MiCaR.

In terms of covered entities, the regulation further broadens the regulatory purview. Custodian wallet providers and exchangers are the two types of VASPs (now CASP) that were introduced by the Fifth AML Directive.

MiCaR adds three macro-categories to this list: offerors, issuers, and CASPs (the CASP's categories moving from the previous two to the ten).

A CASP is now defined as any service provider that is active in the following fields 1) custody and administration of crypto-assets on behalf of clients, 2) operation of a trading platform for crypto-assets, 3) exchange of crypto-assets for funds, 4) exchange of crypto-assets for other crypto-assets, 5) execution of orders for crypto-assets on behalf of clients, 6) placing of crypto-assets, 7) reception and transmission of orders for crypto-assets on behalf of clients, 8) advice on crypto-assets, 9) portfolio management on crypto-assets, 10) transfer services for crypto-assets on behalf of clients. It is important to emphasise that even in cases where services are offered in a fully decentralised manner and fall within one of the regulated categories, MiCaR does not cover them. Therefore, DAOs and DeFi should typically be regarded as exempt.

One final general observation regarding the definitions: the aforementioned goal of MiCaR is to establish the norm for the regulation of crypto-assets throughout the European Union; therefore, its definitions will extend beyond its scope. For example, the definitions of crypto-asset and CASP in MiCaR are mentioned in both the recently approved Travel Rule Regulation and the upcoming AML Package.

# The duties provided by the regulation: the authorisation and registration regime

Now that its scope has been established, let's move on to the responsibilities the regulation lays out.

As mentioned, the core of MiCaR is 1) an authorisation regime for crypto-assets' offerings, partially different depending on the type of crypto-asset offered, 2) a registration regime for CASPs.

Concerning the authorisation regime, the basic discipline is provided for the issuance of OCA. For such an issuance three requirements are provided, the offeror should 1) be a legal person, 2) draft a white paper, publish it, and notify the supervisor, 3) comply with the organizational and prudential requirements (act honestly, treat token holders fairly and equally, etc.). These basic requirements are augmented with regards to ARTs and EMTs due to the perceived higher risk posed by stable coins. Such additional requirements are, for instance, an approval process (instead of the general notification one) for ART's offerings.

The discipline of white papers is essential to the offering's regulation. Crypto-offerings, or initial coin offerings, have long been described in white papers as a way for developers to showcase their projects and draw in investors. The regulation now imposes strict guidelines on what must be included in white papers. The goal is to make sure investors are fully informed about the project's contents and that the offering of crypto-assets is only pursued after a set of minimal conditions are met.

The second limb of MiCaR is the registration process for CASPs. Such a registration was already provided by the AML regulation, albeit its concrete definition and implemen-

tation was left to national legislation. MiCaR now introduces a unified registration regime. Such a registration is a prerequisite for offering CASP services in the Union.





Any CASP offering services within the Union has to register in one Member State. To apply, the CASP has to be a legal person or any other undertaking – a simplified procedure is envisioned for regulated FI as credit institutions.

To be authorised, crypto-asset service providers shall 1) have a registered office in a Member State where they carry out at least part of their crypto-asset services, 2) shall have their place of effective management in the Union, 3) at least one of the directors shall be a resident in the Union.

The authorisation request should be presented to the competent authority of the Home Member State containing a list of information provided by the regulation (complemented by guidelines to be adopted by the Commission as proposed by EBA and ESMA). After receiving the application, the competent authority has 40 working days to make a fully justified decision about whether to approve or deny the request for authorisation.

Besides the authorisation regime, CASPs are under a series of organizational and prudential requirements similar to the one provided for offerors – i.e., obligation to act fairly and honestly, provide truthful information to their clients, minimum permanent capital requirements, etc.

Detailed requirements are provided for specific types of services - e.g., custodial wallet providers. Non-compliance with such requirements can result in the withdrawal of the authorisation by the competent authority.

Entities	Characteristics	White paper	Authorisation	Supervision	Organizational requirements
<b>EMT issuers</b> 	<ul style="list-style-type: none"> <li>- Ruled under e-money directive</li> </ul>	<p>YES :</p> <ul style="list-style-type: none"> <li>- Must be complete</li> </ul>	<p>YES :</p> <ul style="list-style-type: none"> <li>- As credit institutions or e-money institutions</li> </ul>	<p>By NCA and ECB for significant EMTs issuers</p>	<ul style="list-style-type: none"> <li>- Own funds</li> <li>- Liquidity management policy</li> <li>- Reserve assets</li> </ul>
<b>ART issuers</b> 	<ul style="list-style-type: none"> <li>- Legal Person or not or any other undertaking established in the EU</li> </ul>	<p>YES:</p> <ul style="list-style-type: none"> <li>- Must be approved by NCA</li> <li>- Must be clear, fair and complete</li> </ul>	<p>YES:</p> <ul style="list-style-type: none"> <li>- Application for authorisation with NCA</li> </ul>	<p>By EBA for significant ARTs issuers (see criteria)</p>	<ul style="list-style-type: none"> <li>- Robust governance arrangements</li> <li>- Own funds/capital</li> <li>- NCA can require an increase of those funds</li> <li>- Strong and detailed policies</li> </ul>
<b>OCA issuers</b> 	<ul style="list-style-type: none"> <li>- Legal person</li> </ul>	<p>YES:</p> <ul style="list-style-type: none"> <li>- To notify NCA</li> <li>- Some exemptions exist</li> </ul>	<p>NO:</p> <ul style="list-style-type: none"> <li>- Offerors of OCA's are not subject to prior authorisation</li> </ul>		<ul style="list-style-type: none"> <li>- Act honestly, fairly</li> <li>- Identify and manage conflicts of interests</li> </ul>
<b>CASP's</b> 	<ul style="list-style-type: none"> <li>- Legal person with registered office in a MS</li> <li>- At least 1 director must be an EU citizen</li> <li>- Management body must be qualified</li> </ul>	<p>N.A.</p>	<p>YES:</p> <ul style="list-style-type: none"> <li>- NCA's should acknowledge receipt</li> <li>- Notification procedure for already authorised credit institutions</li> </ul>		<ul style="list-style-type: none"> <li>- Internal control risk management</li> <li>- Prevent market abuse</li> <li>- Prudential safeguards</li> <li>- Secure client funds</li> <li>- Act honestly, fairly and professionally</li> <li>- Conflict of interest policies</li> </ul>

# Contacts

---

## Avantage Reply (Milan)

Via Castellanza, 11 - 20151 Milan - Italy  
tel +39 02 535761 - fax +39 02 53576444  
avantage@reply.it

---

## Avantage Reply (Turin)

Via Cardinal Massaia, 83 - 10147 Turin - Italy  
tel +39 011 29100 - fax +39 011 2911009  
avantage@reply.it

---

## Avantage Reply (Rome)

Via del Giorgione, 59 - 00147 Rome - Italy  
tel +39 06 844341 - fax +39 06 84434599  
avantage@reply.it

---

## Avantage Reply (Paris)

5th Floor, 3 rue du Faubourg Saint Honore  
75008 Paris - France  
tel +33 (0) 1 70 23 08 74  
avantage@reply.com

---

## Avantage Reply (Luxembourg)

21-25 allée Scheffer, L-2520 Luxembourg,  
Luxembourg  
Tel: +352 286 843 1  
avantage@reply.com

---

## Avantage Reply (Bruxelles)

Congresstraat / rue du Congrès, 5  
B-1000 Brussels / Bruxelles - Belgium  
tel +32 (0) 2 88 00 32 0  
avantage@reply.com

---

## Avantage Reply (München)

Luise-Ullrich-Straße 14 - 80636 München - Deutschland  
tel +49 89 411142-200 - fax +49 89 411142-299  
avantage@reply.de

---

## Avantage Reply (Frankfurt)

Uhlandstr.2, 60314 Frankfurt am Main, Germany  
tel +49 (0) 69 9999937-0  
avantage@reply.de

---

## Avantage Reply (Amsterdam)

The Atrium Strawinskylaan 3051 -  
1077 ZX Amsterdam - Netherlands  
tel +31 (0) 20 301 2123 - fax +31 (0) 20 301 2202  
avantage@reply.com

---

## Avantage Reply (London)

38 Grosvenor Gardens - London SW1W 0EB -  
United Kingdom  
tel +44 (0) 207 730 6000 - fax +44 (0) 207 259 8600  
avantage@reply.com

---

Visit Avantage Reply's LinkedIn page 