

# Markets in Crypto-Assets Regulation (MiCAR)

Guide for token issuers – June 2024



## Introduction

The Markets in Crypto-Assets Regulation (MiCAR) entered into force on 29 June 2023 and will become applicable as of 30 June 2024 for issuers of e-money tokens (EMTs) and asset-referenced tokens (ARTs). For issuers of other tokens within the scope of MiCAR, it will become applicable as of 30 December 2024. This document provides issuers of crypto assets with relevant guidance and news from the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the national competent authorities (NCAs) of Belgium, the Netherlands, Germany and Poland.



## Highlights per country

## Contact us

### Background

Issuers of EMTs, ARTs and tokens other than EMTs or ARTs (for example, utility tokens) will have to comply with several requirements:

- White paper requirements: They will have to draft a white paper that complies with content and form requirements and submit it to the competent authorities ahead of their publication. Prior approval of the white paper is only required for ART and EMT issuers under certain circumstances.
- Licensing and organisational requirements: ART-issuers will have to hold a specific licence, while EMT-issuers will need to be authorised as a credit institution or as an electronic money institution. Along with these licences, issuers will have to comply with organisational requirements on an ongoing basis.
- Conduct of business requirements: Marketing communications must comply with form and content requirements and must be submitted to competent authorities.

ART-issuers other than credit institutions may continue their activities if the tokens were issued before 30 June 2024 and until they are granted or refused an authorisation under MiCAR, provided they apply for authorisation before 30 July 2024. For credit institutions that issued ARTs prior to 30 June 2024, a white paper has to be approved before 30 July 2024 in order to be able to continue their activities.

### Level 2 and 3 measures

MiCAR includes a substantial number of Level 2 and Level 3 measures that must be developed before the application of the new regime. During the implementation phase, the EBA and, to a limited extent for issuers, the ESMA, are preparing a range of technical standards. The date of entry into force of Level 2 measures depends on their publication in the Official Journal of the European Union. In May 2024, the first four technical standards were published, set to come into force in June 2024.

Osborne Clarke's tracker follows the status of Level 2 and 3 measures under MiCAR. [View the latest version of the MiCAR tracker here.](#)

### Direct effect and national implementation

MiCAR has direct effect and will thus apply directly in all EEA Member States. Nonetheless, the European legislator gave Member States the power to finetune certain aspects, such as on sanctions. The NCAs also need to make the required preparations for MiCAR.

# Markets in Crypto-Assets Regulation (MiCAR)

## Guide for token issuers – June 2024



### Introduction

### Highlights per country

### Contact us

#### Belgium



In Belgium, there is still no clarity on any criminal or administrative sanctions that would be applied in addition to the sanctions set out in MiCAR or deviating therefrom.

It is also not yet determined who will be the NCA in Belgium. Most likely this will be the Financial Securities and Markets Authority (FSMA).

The FSMA published guidance on their interpretation mechanism for the classification of crypto-assets as securities, investment instruments or financial instruments. This could help issuers as well with the (broader) qualification of their tokens.

As of 17 June 2023, a new regulatory framework was also implemented in Belgium regarding advertisements for crypto assets. These rules will in principle remain applicable (next to the rules on marketing and publicity as set out in MiCAR).

#### The Netherlands



Supervision will be divided between the Dutch Central Bank (DNB) and the Dutch Authority for the Financial Markets (AFM). DNB will be the primary supervisor for EMT- and ART-issuers and the AFM for market abuse and issuers of tokens other than EMTs and ARTs.

Local implementation laws are being prepared that among others include enforcement tools for the DNB and the AFM in the event of violations of MiCAR provisions.

For ART-issuers, DNB has announced that it will open its license application desk as per 30 June 2024.

For EMT-issuers, DNB has not yet made formal announcements.

#### Germany



The German regulator the Federal Financial Supervisory Authority (BaFin) provides a regularly updated Q&A section on its website in [German](#) and [English](#). BaFin and the German Federal Bank are the NCAs for issuers of EMTs and non-significant ARTs. The German government has recently published a draft law on the supervision of crypto-asset markets (KMAG). The KMAG provides for, *among other things*, the following sanctions against issuers of EMTs and ARTs:

- BaFin stop-order regarding public offerings of EMTs and ARTs as well as related marketing information, if there is reasonable suspicion of violation of MiCAR.
- BaFin to request changes to white paper if not in line with MiCAR requirements.
- Investors' claims for damages against issuers in case of missing white papers.

#### Poland



The draft act implementing MiCAR is expected to be adopted by the end of the third quarter of 2024. The supervisory competencies are granted to the Financial Supervision Commission (KNF).

Key points of the draft include:

- Provisions on liability for the content of the whitepaper.
- ART and EMT issuers will need to comply with additional disclosure obligations, among other things, inform KNF on their financial condition and compliance with MiCAR requirements using a "durable medium".
- KNF will be able to withhold or prohibit the issuance of cryptocurrency and impose penalties not only on the issuer, but also on a person responsible.
- KNF will be able to publish information on a person responsible for non-compliance with MiCAR.

# Markets in Crypto-Assets Regulation (MiCAR)

## Guide for token issuers – June 2024



Introduction

Highlights per country

Contact us

### Key Contacts



**Frank Hoogendijk**  
Counsel, Belgium

T +32 2 515 9370  
[frank.hoogendijk@osborneclarke.com](mailto:frank.hoogendijk@osborneclarke.com)



**Jean-Christophe Vercauteren**  
Counsel, Belgium

T +32 2 515 9331  
[jc.vercauteren@osborneclarke.com](mailto:jc.vercauteren@osborneclarke.com)



**Anka Langedijk**  
Senior Associate, The Netherlands

T +31 20 702 8948  
[anka.langedijk@osborneclarke.com](mailto:anka.langedijk@osborneclarke.com)



**Eric Romba**  
Partner, Germany

T +49 30 7262 18089  
[eric.romba@osborneclarke.com](mailto:eric.romba@osborneclarke.com)



**Szymon Ciach**  
Counsel, Poland

T +48 22 152 42 04  
[szymon.ciach@osborneclarke.com](mailto:szymon.ciach@osborneclarke.com)



**Jan Herrmann**  
Counsel, Germany

T +49 221 5108 4478  
[jan.herrmann@osborneclarke.com](mailto:jan.herrmann@osborneclarke.com)

### Osborne Clarke in numbers

**1300+**

talented lawyers

working with

**340+**

expert Partners

in

**26**

international locations\*

advising across

**8**

core sectors

with insight into

**3**

Transformational trends

driven by

**1**

client-centred approach

### Our locations around the world

#### Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

Italy: Busto Arsizio, Milan, Rome

The Netherlands: Amsterdam

Poland: Warsaw

Spain: Barcelona, Madrid, Zaragoza

Sweden: Stockholm

UK: Bristol, London, Reading

#### USA

Miami, New York, San Francisco

#### Asia

China: Shanghai

India\*: Bengaluru, Mumbai, New Delhi

Singapore

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: [osborneclarke.com/verein/](https://osborneclarke.com/verein/)

\*Services in India are provided by a relationship firm

[osborneclarke.com](https://osborneclarke.com)

© Osborne Clarke LLP April 2022  
Publication number Q\_220325148