

Public Statement

On the provision of certain crypto-asset services in relation to non-MiCA compliant ARTs and EMTs

As recalled by the European Banking Authority (EBA) in its July 2024 statement¹, the activities of issuing, offering to the public and seeking admission to trading of asset-referenced tokens (ARTs) and electronic money tokens (EMTs) are regulated activities pursuant to Titles III and IV of MiCA², which became applicable on 30 June 2024. In its statement, EBA called on “stakeholders [to] set up as soon as possible procedures in order to assess compliance with MiCAR of ARTs/EMTs for which they offer related services and [to] refrain, as from 30 June 2024, from carrying out services that constitute offering to the public, seeking admission to trading or placing non-compliant ARTs/EMTs”.

The European Commission has adopted a Q&A³ clarifying which crypto-asset services provided in the Union may constitute an offering to the public or an admission to trading (respectively under Articles 16(1) and 48(1) of MiCA) of non-MiCA compliant ARTs and EMTs. ESMA welcomes this guidance, which provides clarity around the application of Titles III and IV of MiCA to activities carried out by crypto-asset service providers (CASPs)⁴ providing services in these types of crypto-assets.

In accordance with MiCA, as clarified in the European Commission Q&A, CASPs are expected to take actions to align their services promptly with this guidance, so as to avoid violating Titles III and IV of MiCA. It is important that National Competent Authorities (NCAs) guide them through this process, ensuring that actions are taken consistently throughout the EU and are carried out in an orderly fashion. NCAs are encouraged to cooperate and coordinate actions in this regard.

Neither ESMA nor NCAs possess any formal power to disapply a directly applicable EU legal text. Therefore, any change to the application of the EU rules would need to be implemented through EU legislation.

However, ESMA notes that sudden actions to align with MiCA, as clarified in the European Commission’s guidance could potentially lead to disorderly crypto-assets markets. Consequently, to mitigate potential disruptions and ensure a smooth and orderly transition,

¹ [EBA statement on Application of MiCAR to ARTs and EMTs.pdf](#)

² Regulation (EU) 2023/1114 on markets in crypto-assets

³ [ESMA_QA_2404](#)

⁴ For the purposes of this statement, reference to CASP includes virtual asset services providers, entities providing services on crypto-assets according to applicable national legislation and, from entry into application of Title V of MiCA, entities that will become crypto-asset service providers in accordance with Article 59 of MiCA.

NCAs should ensure compliance by CASPs regarding non-compliant ARTs or EMTs as soon as possible and no later than the end of Q1 2025.

In practice, this means that CASPs operating a trading platform for crypto-assets are expected to stop making all crypto-assets that would qualify as ARTs and EMTs but for which the issuer is not authorised in the EU (“non-MiCA compliant ARTs and EMTs”⁵) available for trading. In case of doubt regarding the classification of a crypto-asset, concerned CASPs are expected to contact their relevant NCAs for further guidance.

As indicated in the European Commission’s Q&A, other crypto-asset services may also constitute an offer to the public of non-MiCA compliant ARTs and EMTs in violation of Titles III or IV of MiCA. In particular, CASPs offering in the EU services such as:

- reception and transmission of orders;
- execution of orders for crypto-assets on behalf of clients; and
- exchange of crypto-assets for funds or other crypto-assets,

are also expected to cease providing the relevant crypto-asset services and activities in relation to these non-compliant ARTs or EMTs in the EU when their services constitute an offer to the public.

To allow clients to smoothly and orderly transition to MiCA-compliant alternatives, CASPs providing services that amount to offering to the public or seeking admission to trading are generally expected to prioritise restricting such existing services when they facilitate the acquisition of non-MiCA compliant ARTs and EMTs and, more generally, avoid entering into new products and offering services involving non-MiCA compliant ARTs and EMTs. The restrictions on the existing services are expected to be completed by the end of January 2025. To allow EU investors to liquidate or convert their position in non-MiCA compliant ARTs and EMTs, concerned CASPs may, however, maintain crypto-asset services for these products on a “sell only” basis for a longer period (until the end of Q1 2025).

CASPs should launch effective communication campaigns aimed at raising awareness among EU investors about the impact of MiCA’s application on ARTs and EMTs that are not authorised in the EU. For instance, while mere custody and transfer of these crypto-assets should remain possible, EU investors should be clearly informed of the restrictions attached to the provision of crypto-asset services involving non-MiCA compliant ARTs and EMTs, as these can lead to worse execution conditions for investors maintaining holdings in such crypto-assets. In addition to these communication campaigns, CASPs are also expected to implement technical

⁵ *Non-MiCA compliant ARTs and EMTs* refer more generally to ARTs and EMTs that were not offered to the public or admitted to trading in accordance with MiCA or in accordance with the transitional regime referred to in Article 143(4) of MiCA.

procedures and initiatives to facilitate the liquidation of EU investors' holdings in non-MiCA compliant ARTs and EMTs or their conversion into MiCA-compliant alternatives.

Finally, when processing applications for authorisation as CASPs under Title V of MiCA, NCAs should carefully consider compliance with Titles III and IV of MiCA.