

# ➤ Crypto under AFM and DNB supervision: the key issues

## MiCA – should I take action?

On 29 June 2023, the Markets in Crypto Assets Regulation (the **MiCA**) entered into force. MiCA regulates the issuance of crypto assets and the provision of crypto asset services. MiCA has direct effect in the EU.

## Regulators welcome regulation

The crypto sector is currently largely unregulated. The AFM has no enforcement mandate and, partly for this reason, has pursued a policy of discouragement in recent years, partly due to a lack of oversight and investor protection. Regulators, therefore, seem to welcome the upcoming regulation, showing no signs of backing down:

*“And given the experiences from the past, we also see no reason for leniency in enforcement at the start”<sup>1</sup>*

*“These parties are aware of the risks of money laundering and terrorist financing and apparently like to operate from the Netherlands. This underlines the need for better regulation and robust supervision of the crypto sector, including here”<sup>2</sup>*

## Issuers

The MiCA covers four types of crypto assets:

1. *asset-referenced tokens (ARTs)*
2. *e-money tokens (EMTs)*
3. *utility tokens*
4. all other crypto assets

Under MiCA, issuers will be subject to certain governance requirements and the obligation to publish a whitepaper, this is a kind of crypto asset prospectus. The white paper for ARTs and EMTs must be pre-approved by national competent authorities. All other issuers only have a notification requirement and must substantiate why their crypto assets are not out of MiCA's scope. Issuers of ARTs and EMTs are also subject to authorisation regimes, with a top-up regime for significant ARTs and EMTs.

## Service providers

All crypto service providers will need to be licensed to operate in the EU. Service providers will be subject to prudential and governance requirements and specific service rules in relation to, for example, custody of clients' crypto assets. The following services are regulated under Mica:

- 1 custody and management of crypto assets on behalf of third parties
- 2 the operation of a crypto asset trading platform
- 3 the exchange of crypto assets for other crypto assets or legal tender
- 4 the execution of orders on behalf of third parties
- 5 placement of crypto assets
- 6 receiving and transmitting crypto assets orders on behalf of third parties
- 7 giving advice on crypto assets
- 8 crypto asset portfolio management
- 9 offering transfer services for crypto assets on behalf of third parties

EU authorized credit institutions (banks) may offer all services under their authorisation. MiFID II authorised investment firms may, without MiCA authorisation, provide MiCA services equivalent to those for which their MiFID II authorisation was granted.

## Market abuse

To ensure market integrity, MiCA also contains rules on market abuse, including insider trading, wrongful disclosure and market manipulation.

## MiCA implementation in the Netherlands

Although MiCA has direct effect, a number of changes need to be made to Dutch legislation. On 11 August 2023, the consultation<sup>3</sup> for the implementing law relating to the MICA closed. Key points regarding the proposed implementing law are:

- ✗ supervision will be divided between AFM and DNB. Supervision of the issuance of *stablecoins* (ARTs and EMTs) will be placed with DNB, while the AFM will supervise the other parts
- ✗ the Netherlands will not make use of the simplified procedure for market participants who already have a MiCA licence (for crypto asset services). All market participants will have to go through the full authorisation procedure
- ✗ the Netherlands plans to shorten the 18-month transition period after which the MICA becomes applicable to 6 months

<sup>1</sup> Financieel Dagblad: “Cryptos: regulator continues to struggle”, 17 March 2023 (translated)

<sup>2</sup> Financieel Dagblad: “US Regulator calls Amsterdam refuge to circumvent crypto rules”, 13 March 2023 (translated)

<sup>3</sup> <https://www.internetconsultatie.nl/verordeningmica/b1>

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