

ESAs issue Crypto supervisory guidance

The three European supervisory authorities, the European Securities and Markets Authority (“ESMA”), European Banking Association (“EBA”) and EIOPA published guidance (the “Guidelines”) on 10th December 2024 on the regulatory classification of crypto-assets under the Markets in Crypto Assets Regulation (“MiCAR”). The Guidelines are designed to ensure consistency in the interpretation and application of MiCAR for the purposes of crypto-asset classification across Europe.

Background

MiCAR extends the European financial services regulatory framework to the crypto world. It became applicable to issuers of asset referenced tokens (“ARTs”) and electronic money tokens (“ESTs”) from the end of June 2024 and to the issuers of utility tokens and crypto asset service providers (“CASPs”) from the end of December 2024. However, some existing businesses will be grandfathered for up to 18 months. Over 30 RTS and guidelines relating to MiCAR have been issued but this is the only joint one by the ESAs. These Guidelines were issued under the requirements of Article 97(1) of MiCAR.

The Guidelines

The overall aim of the Guidelines is to ensure as much consistency as possible between the different national competent authorities in Europe, including the Central Bank of Ireland, when assessing crypto assets. Accordingly, the Guidelines include a standardised test for assessing projects as well as templates market participants

should use when applying to regulators for regulatory classification.

Specifically the Guidelines detail the legal opinions that must accompany applications for Asset Reference Tokens (“ARTs”) as well as the explanations to accompany the white papers for crypto assets which are not ARTs, electronic money tokens (“EMTs”) or crypto assets excluded from the scope of MiCAR.

Next Steps

The Guidelines are now being translated into all official European languages prior to publication in the Official Journal. Once published they will become effective three months after the publication of the translations.

How Clerkin Lynch Can Help

Clerkin Lynch’s financial services team can assist with authorisation applications with the Central Bank as well as providing advice on whether any such authorisation is required.

Contact us for more information.



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