

New MiCA Guidance Re Non-Compliance

The European Securities and Markets Authority (“ESMA”) has recently issued a statement (the “Statement”) as well as a Q&A document (the “MiCA Q&A”) in relation to compliance with the Markets in Crypto-Assets Regulation (“MiCA”). These set out the regulatory expectations of ESMA for National Competent Authorities (“NCAs”), regarding compliance with this legislation. NCAs are expected to ensure compliance by Crypto Asset Service Providers (“CASPs”) regarding non-compliant Asset Reference Tokens (“ARTs”) or Electronic Money Tokens (“EMTs”) as soon as possible, and no later than the end of Q1 2025.

Background

MiCA has extended the European financial services regulatory framework to the crypto world. It became applicable to issuers of ARTs and EMTs from the end of June 2024 and to the issuers of utility tokens and CASPs from December 2024. However, some existing businesses will be grandfathered for up to 18 months.

The Statement

On 17th January 2025, ESMA published the Statement to clarify its position that CASPs are expected to take actions to align their services promptly to ensure compliance with MiCA to avoid violating Titles III and IV, in particular, of that legislation. In practice, this means that CASPs operating trading platforms for crypto-assets are expected to stop offering trading of any crypto-assets that would qualify as ARTs and EMTs, but which are not authorised in the EU.

The MiCA Q&A

The MiCA Q&A addresses which services provided in or into the EU constitute “an offering to the public”, a “seeking of admission to trading” or “a placing of an ART or EMT”. Such activities have been subject to the authorisation requirements (subject to any applicable grandfathering) since 30 June 2024.

While the first sub-paragraph of Article 16(1) and Article 48(1) of MiCA prohibit offering to the public or seeking admission to trading unless the offeror or person seeking admission to trading is an authorised issuer under MiCA, the same applies to offering to the public or seeking admission to trading by persons other than the issuer under the second subparagraphs of these Articles.

The MiCA Q&A clarifies that offering to the public or seeking admission to trading of ARTs or EMTs is only possible if the issuer of such tokens is authorised under MiCA and that operators of trading platforms for crypto-assets that list ARTs or EMTs for which the issuer has not been authorised under MiCA are to be considered as persons seeking admission to trading on the own initiative (even if the ARTs or EMTs had been first offered to public or admitted to trading before the application of Titles III and IV and continue to be offered to public or admitted to trading).

How Clerkin Lynch Can Help

Clerkin Lynch’s regulatory services team can assist with registering or obtaining authorisation under MiCA as well as advising on potential exemptions from these requirements. We can also advise upon the classification of crypto assets under MiCA for those unsure as to whether they fall under MiCA definitions. Reach out to the contact details below for more information.



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