

Legal Update

ESMA issues MiCAR Supervisory Briefing

The European Securities and Markets Authority (“ESMA”), the overall European regulatory authority for financial services, recently published a supervisory briefing (the “Supervisory Briefing”) relating to the newly effective Markets in Crypto Assets Regulation (“MiCAR”). The goal of the Supervisory Briefing is to foster consistency in interpretation amongst the National Competent Authorities (“NCAs”) responsible for supervision and authorisation in each member state of the European Union.

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 December 2024. However, some existing businesses will be grandfathered for up to 18 months.

Scope of the Supervisory Guidance

The Supervisory Guidance, which was issued at the end of January 2025 contains clear guidance for the NCAs addressing key matters including substance and governance of CASPs, outsourcing and the suitability of personnel. The guidance makes it clear that a risk-based approach may be adopted but highlights factors that create higher risk concerns.

Reflecting the multinational nature of most crypto projects, the Supervisory Briefing specifically

addresses related issues such as dealing with staff outside the country of authorisation as well as outsourcing more generally. The guidance in this regard is also of relevance to other regulated financial services firms authorised under other pieces of European legislation

Additional MiCAR Guidance

ESMA has already published a series of over 30 final reports containing regulatory technical standards (“RTS”) and guidelines (the “Guidelines”) relating to different areas of MiCAR.

Next Steps

The NCAs are expected to apply the principles in the Supervisory Briefing both during the authorisation process and on an ongoing basis for CASPs once authorised under MiCAR.

How Clerkin Lynch Can Help

Clerkin Lynch’s financial services team can assist with authorisation applications for CASPs under MiCAR. Contact us for more information.



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