



# ***MiCAR: Marketing Rules for Crypto-assets***

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# 1. INTRODUCTION

The regulation of crypto assets and related services is becoming standardised across the European Union (EU) through the Markets in Crypto-assets Regulation (Regulation (EU) No 2023/1114 dated 31 May 2023), also known as **MiCAR**.

**One of the arrangements regulated within this framework is marketing communications: MiCAR introduces a set of requirements for the drafting, notification, publication, and modification of marketing communications.**

These rules are designed to protect the interests of potential investors and users in the crypto asset market, emphasising the importance of informed decision-making. It is crucial to ensure transparency and accuracy in marketing communications; which include advertising messages and marketing materials distributed through traditional and digital channels.

This Monograph provides clarity in regards to the regulatory landscape for the different categories of crypto-assets and for crypto-asset service providers as it pertains to marketing communications. This Monograph will address the following topics:

- marketing communications for crypto-assets other than asset-referenced tokens and e-money tokens;
- marketing communications for asset-referenced tokens;
- marketing communications for e-money tokens; and
- marketing communications for crypto-assets service providers.

This Monograph is the first of a **series** dedicated to MiCAR.

*This document shall not be considered legal, tax or investment advice. It may only be used for informative and educational purposes.*

## 2. PRELIMINARY TOPICS

### 2.1 What is MiCAR?

MiCAR is a comprehensive regulatory framework that governs the issuance, offerings to the public, and admission to the trading of crypto-assets, and services related to crypto-assets in the EU. As such, MiCAR outlines a comprehensive set of requirements for issuers and offerors of crypto-assets as well as for providers of crypto-asset services.

### 2.2 What is a crypto-asset under MiCAR?

MiCAR defines a crypto-asset as “a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology” (“**Crypto-asset**”). This definition should be interpreted as widely as possible to capture all types of crypto-assets that currently fall outside the scope of EU legislation on financial services.

MiCAR divides crypto-assets into the following subcategories:

- **Crypto-assets other than asset-referenced tokens and e-money tokens:** other crypto-assets that are not covered by existing EU legislation;
- **Asset-Referenced Tokens (“ART”):** “a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies”;
- **Electronic Money Tokens or E-Money Tokens (“EMT”):** “a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency”.

The first subcategory mentioned above includes “utility tokens” which are defined as “a type of crypto-asset that is only intended to provide access to a good or a service supplied by its issuer”.

Despite the broad definition of Crypto-assets, the obligations imposed by MiCAR do not apply to non-fungible tokens (to the extent where certain conditions are not met).

### 2.3 What is a crypto-asset service and a crypto-asset service provider under MiCAR?

MiCAR defines a crypto-asset service as any of the following services and activities relating to any crypto-asset:

- providing custody and administration of Crypto-assets on behalf of clients;
- operation of a trading platform for Crypto-assets;

- exchange of Crypto-assets for funds;
- exchange of Crypto-assets for other crypto-assets;
- execution of orders for Crypto-assets on behalf of clients;
- placing of Crypto-assets;
- reception and transmission of orders for Crypto-assets on behalf of clients;
- providing advice on Crypto-assets;
- providing portfolio management on Crypto-assets; or
- providing transfer services for Crypto-assets on behalf of clients.

A Crypto-asset Service Provider (“**CASP**”) is a legal person or other undertaking whose occupation or business is providing one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services.

## 2.4 **What is marketing communication and related requirements under MiCAR?**

According to MiCAR, issuers of Crypto-assets and CASPs must comply with specific organisational, conduct and disclosure rules. One of the rules requires that marketing communications (advertising messages, marketing materials, and even materials on social media platforms) must be fair, clear, and not misleading. Such marketing communications must align with the information provided in the Crypto-assets whitepaper.

Also, CASPs must avoid misleading clients about any of the actual or perceived benefits of Crypto-assets.

MiCAR provides specific obligations for marketing communications based on the subcategories of crypto assets.

## 2.5 **Entry into force and application**

MiCAR has entered into force on 29 June 2023, and will apply to all EU Member States by 30 December 2024 (with certain exceptions, e.g. regulation of ARTs and EMTs which will apply starting from 30 June 2024).

## 3. MARKETING COMMUNICATIONS FOR CRYPTO-ASSETS OTHER THAN ASSET-REFERENCED TOKENS AND E-MONEY TOKENS

### 3.1 Main rules

If a legal person wishes to make an offer to the public or seek admission to trading of a Crypto-asset other than ARTs and EMTs in the Union, the related marketing communications must adhere to the provisions established in MiCAR (and provisions discussed below).

**Exemptions.** The requirements concerning marketing communications do not apply to offers to the public of Crypto-assets other than ARTs and EMTs, if any of the following conditions are met:

- the Crypto-asset is offered for free<sup>1</sup>;
- the Crypto-asset is automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions;
- the offer concerns a utility token providing access to a good or service that exists or is in operation; or
- the holder of the Crypto-asset has the right to use it only in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.

The above exemptions do not apply if the offeror - or another person acting on the offeror's behalf - makes known in any communication an intention to seek admission of trading the Crypto-asset. This means that marketing agencies should be aware of whether or not to make this kind of announcement.

Furthermore, in case of admission to trading, the offeror and the operator of the trading platform may agree in writing that it is the operator that must comply with the requirements relating to marketing communications.

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<sup>1</sup> It is not considered free where purchasers are required to provide, or to undertake to provide, personal data to the offeror in exchange for that Crypto-asset, or where the offeror of a Crypto-asset receives from prospective holders of that Crypto-asset any fees, commissions, or monetary or non-monetary benefits in exchange for that Crypto-asset.

### 3.2 Drafting the marketing communications

Any marketing communications relating to an offer to the public of a Crypto-asset other than ARTs and EMTs or to the admission to trading of such Crypto-asset is required to comply with all of the following requirements:

- the marketing communications are **clearly identifiable** as such;
- the information in the marketing communications is **fair, clear and not misleading**;
- the information in the marketing communications is **consistent with the information in the white paper**<sup>2</sup>, where such crypto-asset white paper is required pursuant to MiCAR;
- the marketing communications clearly state that a crypto-asset white paper has been published and clearly indicate: the address of the website of the offeror, the person seeking admission to trading or the operator of the trading platform for the crypto-asset concerned, and a telephone number and an email address to contact that person; and
- the marketing communications contain the following clear and prominent **statement**:  
*“This crypto-asset marketing communication has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-asset is solely responsible for the content of this crypto-asset marketing communication”.*

**Attention.** Where a white paper is required pursuant to MiCAR, no marketing communications should be disseminated **prior** to the publication of the crypto-asset white paper. Such restriction does not affect the ability of the issuer to conduct market soundings.

### 3.3 Notification of the marketing communications

There is no need to get prior approval from the competent authorities before publishing the marketing communications. However, when addressing prospective holders of Crypto-assets other than ARTs and EMTs in those member states, when a competent authority makes a request, marketing communications must be notified to the competent authority of the home member state and to the competent authority of the host member state.

### 3.4 Publication of the marketing communications

Offerors and persons seeking admission to trading of Crypto-assets other than ARTs and EMTs are required to publish, where applicable, their marketing communications on their

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<sup>2</sup> When making an offer to the public of Crypto-assets other than ARTs or EMTs or when seeking admission to trading of such crypto-assets in the EU, offerors or persons seeking admission to trading should draw up, notify to their competent authority and publish the white paper which must contain certain mandatory disclosures.

website. These marketing communications must be accessible to the public and available in advance of the offer or admission to trading. The marketing communications should remain on the website for as long as the Crypto-assets are held by the public. The published communications must be identical to the version notified to the competent authority or, where applicable, to the version modified.

**Exemptions.** The requirements related to publication of the marketing communications of Crypto-assets other than ARTs and EMTs do not apply to any of the following offers to the public:

- an offer to fewer than 150 natural or legal persons per member state where such persons are acting on their own account;
- over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of a crypto-asset in the EU does not exceed EUR 1 000 000, or the equivalent amount in another official currency or in crypto-assets;
- an offer of a crypto-asset addressed solely to qualified investors where the crypto-asset can only be held by such qualified investors.

This exemption will not apply where the offeror, or another person acting on the offeror's behalf, makes known in any communication its intention to seek admission to trading of a crypto-asset other than ARTs and EMTs. Thus, reinforcing why marketing agencies should be aware of whether or not to make this kind of announcement.

### 3.5 Modification of published marketing communications

Offerors, persons seeking admission to trading or operators of a trading platform for Crypto-assets other than ARTs and EMTs must modify, where applicable, their published marketing communications whenever there is a significant new factor, material mistake or material inaccuracy that is capable of affecting the assessment of the Crypto-assets. That requirement must apply for the duration of the offer to the public or for as long as the Crypto-asset is admitted to trading. In addition, they must, where applicable, publish the revised marketing communications on their website, along with an explanation for the modification.

Where applicable, the modified marketing communications must be time-stamped. The most recent modified marketing communications must be marked as the applicable version.

For at least 10 years, from the date of publication, older versions of marketing communications must remain on the website of the offerors, persons seeking admission to trading or operators of the trading platforms. These out-dated versions must include a prominent warning stating that they are no longer valid, and include a hyperlink to the website location of the most recent version of the document publication.

## 4. MARKETING COMMUNICATIONS FOR ASSET-REFERENCED TOKENS

### 4.1 Main rules

If a legal person or other undertaking wishes to make an offer to the public or seek admission to trading of ARTs, that legal person or other undertaking must be the issuer of such ARTs. Additionally they must either be established in the EU and authorised by the competent authority of its home member state or be a credit institution.

Upon the written consent of the issuer, other persons may make offers to the public or seek the admission to trading of the related ARTs.

Any marketing communications relating to an offer to the public of ARTs or to the admission to trading of ARTs is required to be published on the issuer's website, and must comply with all of the following requirements:

- the marketing communications are clearly identifiable as such;
- the information in the marketing communications is fair, clear and not misleading;
- the information in the marketing communications is consistent with the information in the white paper; and
- the marketing communications clearly state that the white paper has been published and clearly indicate the address of the website of the issuer of the ARTs, as well as a telephone number and an email address to contact the issuer.

Marketing communications must contain a clear and unambiguous statement that the **holders of the ARTs have a right of redemption against the issuer at any time**.

Issuers of ARTs should **disclose any preferential treatment**, if applicable, in their marketing communications.

### 4.2 Notification of the marketing communications

Marketing communications are required to be notified to competent authorities upon the latter's request. No prior notification or approval is required.

### 4.3 Publication of the marketing communications

Marketing communications and any modifications thereto must be published on the issuer's website.



No marketing communications can be disseminated prior to the publication of the white paper. Such restriction does not affect the ability of the issuer to conduct market soundings.

## 5. MARKETING COMMUNICATIONS FOR E-MONEY TOKENS

If a legal person wishes to make an offer to the public or seek admission to trading EMTs, that legal person has to be the issuer of such EMTs, authorised as a credit institution or as an electronic money institution, and has notified a white paper to the competent authority and has published that white paper. Upon the written consent of the issuer, other persons may offer to the public or seek the admission to trading of the EMTs.

Any marketing communications relating to an offer to the public of EMTs, or to the admission to trading of such EMTs, must comply with **the rules mentioned above on ARTs**.

Marketing communications regarding EMTs must also contain a clear and unambiguous statement that the **holders of the EMTs have a right of redemption against the issuer at any time and at par value for the holders of the EMT**.

## 6. MARKETING COMMUNICATIONS FOR CASPS

CASPs must:

- provide their clients with **fair, clear, and non-misleading information**, including in marketing communications, which should be clearly identified as such; and
- not intentionally or negligently mislead clients regarding the **actual or perceived benefits** of any Crypto-assets.

### A specific requirement for a trading platform.

In case of the Crypto-assets other than ARTs and EMTs, the operator of a trading platform<sup>3</sup> is responsible for complying with the requirements for marketing communications of MiCAR.

This applies where Crypto-assets are admitted to trading on its own initiative and the white paper has not already been published in the cases required by MiCAR.

The operator is also responsible for complying with those requirements where it has concluded a written agreement to that end with the person seeking admission to trading.

The person seeking admission to trading remains responsible when it provides misleading information to the operator. The person seeking admission to trading remains responsible for matters not delegated to the operator.

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<sup>3</sup> Operation of the trading platform means the management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets.

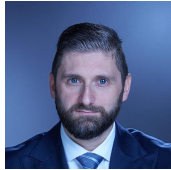
## 7. CONCLUSIONS

MiCAR, with its clear and comprehensive framework, is set to play a pivotal role in **shaping the future of the Crypto-assets market** in the EU. It is imperative for all stakeholders, issuers, trading platform operators, and service providers to understand and adhere to the regulatory requirements laid out by MiCAR to ensure the integrity and security of this rapidly evolving sector.

MiCAR encompasses various critical aspects, with one of the key focal points being **marketing communications**. This sphere encompasses the creation and dissemination of advertising messages and marketing materials via traditional and digital channels, demanding adherence to specific requirements. Accordingly, all stakeholders must accurately convey information to potential investors and users, maintain a commitment to transparency, and eliminate any misleading elements in their marketing materials.

This Monograph outlines the current legal aspects of marketing communication related to Crypto-assets under MiCAR. **This Monograph is based on current legal regulation: in the event of changes, it will no longer be reliable.**

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