MiCAR important step in regulation of crypto markets

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General

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The new EU regulation for issuers of crypto assets and crypto service providers – the Markets in Crypto Assets Regulation (MiCAR) – is a welcome step in the regulation of European crypto markets, according to De Nederlandsche Bank (DNB) in response to the recent agreement reached in Brussels on the regulation. MiCAR provides uniform rules for crypto markets, which is important for investors in crypto assets and for the stability and integrity of the crypto ecosystem. DNB calls on market participants to prepare for the new MiCAR rules, which are expected to take effect in 2024.

The central bank and supervisory authority also says that the rapid developments in crypto markets make it essential to continue evaluating, tightening and expanding regulations. For instance, further regulation in the area of financial services offered decentrally through blockchain technology – also known as Decentralised Finance (DeFi) – is likely going forward.

Rationale: new risks for investors and the financial system

Firms providing exchange services between virtual money (crypto) and regular (fiat) money and custodial wallet providers are currently subject to integrity supervision by DNB. The continued rise of blockchain technology and crypto markets in recent years offers opportunities for additional innovation in financial markets. However, as crypto markets have grown and diversified, the risks have also increased.

These include risks of market manipulation and fraud. The recent turmoil in crypto markets also illustrates the market and credit risks associated with investing in crypto assets. With the rise of stablecoins – crypto assets whose value is linked to the value of fiat money, cryptocurrencies or other assets – more links may arise between the crypto ecosystem and the traditional financial system.

For these reasons, preliminary agreements have recently been reached in the EU on new regulations that will apply to crypto asset issuance and crypto service provision (MiCAR). New rules on disclosure requirements for transactions involving crypto assets (the Transfer of Funds Regulation, TFR) were also agreed.

Which cryptos are regulated?

MiCAR contains uniform European requirements for crypto asset issuance. For instance, crypto asset issuers must publish a white paper for investors containing specific information

about the crypto to be issued. MiCAR also regulates the liability of crypto asset issuers.

MiCAR defines crypto assets as a digital representation of a value or right that can be traded via a distributed ledger (e.g. a blockchain). Cryptos that are not redeemable and that represent a unique real asset – known as Non-Fungible Tokens or NFTs – fall outside the scope of MiCAR. The same applies to crypto assets with the same characteristics as existing financial products or instruments. This means that tokenised securities and other instruments are covered by existing MiFID rules.

Stablecoins do fall within the scope of MiCAR. Specific and additional rules will apply to issuers of stablecoins, especially regarding the assets that serve as reserves for stablecoins. MiCAR distinguish between stablecoins whose value is linked to multiple (fiat) currencies, commodities or crypto currencies (known as Asset-Referenced Tokens, ARTs) and stablecoins whose value is linked to the value of a single fiat currency (Electronic-Money Tokens, EMTs).w

Rules for crypto service providers

Alongside crypto assets, MiCAR also regulates certain crypto services. These include operating a trading platform for crypto assets, exchange services for crypto assets (crypto for crypto or regular currency) and crypto asset custody services. The professional provision of advice and portfolio management services for crypto assets are also considered crypto services that are regulated by MiCAR.

Providers of crypto services must obtain a licence from a financial supervisor and comply with consumer protection and disclosure requirements. Their governance structures and information security systems must be in order, they must detect and respond appropriately to conflicts of interest, have a complaints procedure in place and provisions on outsourcing. Transaction service providers must also put in place effective systems and procedures to detect market manipulation, although the MiCAR requirements are less stringent in this regard than the Market Abuse Regulation (MAR).

Market manipulation

MiCAR requires not only detection of market manipulation, but the regulation also prohibits activities that could lead to manipulation of crypto markets. This applies to anyone operating in crypto markets and covers unlawful disclosure of inside information, insider trading and acts and conduct that are likely to lead to disruption or manipulation of crypto markets.

Licence

Under MiCAR, issuers of stablecoins or anyone offering crypto services must obtain a licence to do so from a financial supervisor. This licence allows MiCAR-regulated activities to be undertaken in all countries in the European Economic Area. In this respect, it is essential that the transition from current national regimes to the MiCAR regulation is carefully structured.

Transfer of Funds Regulation

In addition to MiCAR, the EU also recently agreed to expand the Transfer of Funds Regulation (TFR). This regulation will require crypto service providers to include information about the originator and beneficiary in every crypto asset transaction. The aim of this requirement is to make criminal money flows traceable. Crypto transactions tend to be anonymous and of a cross-border nature, and crypto services are provided remotely. This is why crypto service providers must comply with these new and sweeping requirements.

Finalisation and consultation

The MiCAR and TFR regulations are currently being finalised and are expected to be published in the coming months. MiCAR rules for issuing stablecoins are expected to come into force 12 months after publication, the other regulations after 18 months, as are the TFR requirements. In addition, European Supervisory Authorities (ESAs) will soon start developing detailed technical standards for implementing the new rules. Market participants will also be consulted on these standards, and they are advised to follow these developments closely. DNB is also keen to stay in dialogue with market participants. When more is known about the implementation of the new regulations, DNB will, where possible together with the Dutch Authority for the Financial Markets, also provide additional information on follow-up steps and the transition process from the current to the new regulations.

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