

12 July 2023

EBA statement

The EBA encourages timely preparatory steps towards the application of MiCAR to asset-referenced and e-money tokens

The EBA welcomes the entry into force of Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR).¹

MiCAR establishes a regime for the regulation and supervision of crypto-asset issuance and crypto-asset service provision in the European Union (EU).

Among the activities within the scope of MiCAR are the activities of offering to the public or seeking admission to trading asset-referenced tokens (ARTs) and electronic money tokens (EMTs),² and issuing such tokens (ART/EMT activities). These activities will be subject to, respectively, Title III and Title IV of MiCAR from 30 June 2024 (the 'application date'). Prior to the application date, the possibility to offer to the public or seek admission to trading of:

- ARTs is exclusively governed by any applicable national law, and
- EMTs is exclusively governed by any applicable national law (including measures to transpose Directive 2009/110/EC (the second Electronic Money Directive³)).

With a view to promoting timely preparation for, and smooth transition toward, the application of the MiCAR requirements, the EBA issues today this statement for the attention of financial institutions (and other undertakings)⁴ who intend to commence, or have commenced, ART or EMT activities prior

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1114&qid=1687014462478>

² 'Asset referenced token' (ART) and 'electronic money token' (EMT) are to be interpreted in accordance with the definitions provided in Article 3(1)(6) and (7) of MiCAR.

³ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32009L0110>

⁴ 'Financial institution' is to be interpreted in accordance with the EBA's Founding Regulation (Regulation (EU) 1093/2010), and, as regards EMTs, encompasses credit institutions and electronic money institutions (these are the only entities that, pursuant to Article 48 MiCAR may issue EMTs); and, as regards ARTs, comprises credit institutions and other undertakings. As such 'other undertaking' is to be interpreted as encompassing those entities that issue ARTs and are not credit institutions but may be subject to authorisation or registration requirements under national law pending the application of Title III of MiCAR.

to the application date, and for competent authorities.⁵

The statement includes guiding principles to which such financial institutions (and other undertakings), are encouraged to have regard until the application date.

The guiding principles are intended to encourage preparatory steps for MiCAR thereby reducing risks of potentially disruptive and sharp business model adjustments at a later stage.

The guiding principles are non-binding and are without prejudice to any applicable national or EU law, regulatory or supervisory measures in the relevant Member State(s), and cannot supersede such law or measures.⁶

Conformity with the guiding principles should not be regarded as equating to compliance with any applicable requirements for authorisation, registration, notification, or other procedures in the Members States or under MiCAR.

Consumers are reminded that ARTs and EMTs do not constitute regulated instruments under MiCAR until the application date and so consumers do not yet benefit from the rights and protections set out in MiCAR. Consumers are also reminded to have regard to the joint-ESA warning on crypto-assets, and to check the legal status of any crypto-asset and the rights or protections (if any) under national law before deciding whether to buy crypto-assets. For a list of 'things you should know and check' before acquiring crypto-assets, see the warning available [here](#).

Guiding principles for financial institutions (and other undertakings) who consider carrying out, or carry out, ART/EMT activities in the period prior to the application date of Titles III and IV of MiCAR

Prior to commencing ART/EMT activities, financial institutions (and other undertakings) are encouraged to carry out a comprehensive legal assessment to determine if the activities are legally permissible and, if so, under what legal, regulatory and supervisory (if any) conditions in the jurisdiction(s) concerned. Additionally, financial institutions (and other undertakings) are encouraged to carry out a robust assessment of the impact on the risk profile of the entity, and identify any appropriate and effective risk mitigation measures before determining to proceed.

Financial institutions (and other undertakings) who carry out ART/EMT activities prior to the application date are encouraged to take timely actions to prepare for the forthcoming requirements under MiCAR.

In advancing their preparatory actions, financial institutions (and other undertakings) are encouraged to have regard to the guiding principles set out in the Annex to this statement.

⁵ 'Competent authority' is to be interpreted in accordance with the EBA's Founding Regulation (Regulation (EU) 1093/2010), and includes such authorities as assigned to perform supervisory tasks in relation to ARTs and EMTs.

⁶ Including any applicable authorisation, registration, notification, approval and non-objection procedures.

Timely actions can help facilitate financial institutions (and other undertakings) in their preparedness for any necessary applications for authorisation or supervisory re-evaluations (e.g. in the case of credit institutions issuing an ART or EMT) as appropriate from the application date.

Principles for competent authorities

On a best-efforts basis, where competent authorities know that a financial institution (or another undertaking within their scope of supervision) plans to commence, or has commenced, ART/EMT activities, the competent authorities are encouraged to bring to the attention of the entity:

- the forthcoming requirements under Titles III and IV of MiCAR;⁷
- the development by the EBA of 'Level 2' regulation in the form of technical standards and 'Level 3' guidelines and the related public consultations;
- this statement, including the guiding principles set out in the Annex; and
- the arrangements for any information transmission to the competent authority (e.g. mailbox, timeframe, expectations, and template for information transmission etc).

Competent authorities are also encouraged to make available on their websites information for consumers that describes in a clear and accessible manner whether ARTs or EMTs constitute regulated products in the Member State concerned prior to the application date and, if so, the rights and protections available to consumers. Competent authorities should also make available on their websites a link to the joint-ESA warning on crypto-assets.⁸

Competent authorities, in carrying out their authorisation or supervisory tasks in relation to financial institutions and other undertakings within their scope of supervision which, to their knowledge, are planning to carry out or are carrying out ART/EMT activities, are urged to encourage the entities:

- prior to carrying out ART/EMT activities, to perform a robust assessment of the legality and risk of the proposed activity and to provide to the competent authority a description of how the proposed activity matches the overall activity and risk profile of the entity;
- following commencement of the ART/EMT activities to:
 - take account of the guiding principles regarding the ART/EMT activities (which are without prejudice to any measures applicable under EU or national law);

⁷ In particular, competent authorities are encouraged to make available on their websites a link to MiCAR and to clearly signal the application date of the requirements.

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https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Warnings/2022/1028326/ESAs%20warning%20to%20consumers%20on%20the%20risks%20of%20crypto-assets.pdf

- have in place appropriate measures to mitigate any potential risks to other business activities of the entity arising from the ART/EMT activities;
- communicate regularly with the competent authority on any changes to the ART/EMT activities.

Next steps

The EBA will continue to maintain a regular dialogue with competent authorities on market developments and regulatory and supervisory issues, taking account of experience acquired with this statement, so as to foster supervisory convergence and contribute to a level playing field across the EU.

Annex to the statement: Guiding principles⁹

Principle 1: Disclosures to potential acquirers and holders of ARTs and EMTs and fair treatment

Financial institutions (and other undertakings) intending to carry out, or carrying out ART/EMT activities, are encouraged to:

- adhere to the high standards of disclosure to potential acquirers and holders of the tokens, including the disclosure of all rights and risks to which acquirers and holders may be exposed, and arrangements for redemption in alignment with the specifications set out in MiCAR;
- prepare and utilise:
 - crypto-asset white papers that define the legal nature of the token¹⁰ and are clear, fair and not misleading, and are aligned with the content and publication specifications enlisted in MiCAR;
 - marketing communications that are clear, fair and not misleading and align with the specifications set out in MiCAR;
- treat token holders equally, except where otherwise disclosed in the crypto-asset white paper and marketing materials;¹¹
- have in place complaints handling policies and procedures that are effective and transparent and ensure the prompt, fair and consistent handling of complaints received from token holders and other interested parties in alignment with the specifications set out in MiCAR.

⁹ Concepts and terms referred to in these guiding principles are to have the meaning set out in MiCAR.

¹⁰ For this purpose, financial institutions (and other undertakings) are encouraged to make available to potential acquirers of the token a legal opinion (e.g. via online publication).

¹¹ And where unequal treatment is not prevented under national law.

Principle 2: Well-defined business model

Financial institutions (and other undertakings) intending to carry out, or carrying out ART/EMT activities, are encouraged to have a well-defined programme of operations, setting out a clear description of:

- the business model, including a description of viability and sustainability of the model including under stress scenarios, sources of revenue (over a 3-year period), and distribution model for the tokens, and
- how the proposed ART/EMT activities match the overall activity and risk profile of the entity.

Principle 3: Sound governance, including effective risk management, commensurate with the nature, scale and complexity of the ART/EMT activities to be carried out and the wider business model of the entity

Financial institutions (and other undertakings) intending to carry out, or carrying out, ART/EMT activities are encouraged to:

- have in place a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- have a management body comprising members that are of sufficiently good repute and possess appropriate knowledge, skills and experience, both individually and collectively, to perform their duties. This includes sufficient knowledge, skills and experience of any risks unique to the ART and EMT activities to be undertaken, including liquidity risks, information, communication technology (ICT) risks, and risks of money laundering and terrorist financing;
- have in place effective processes to identify, measure, manage, monitor and, as appropriate, report the risks to which the financial institution (or other undertakings) is or might be exposed;
- have in place policies and procedures concerning:
 - the reserve of assets (see further principle 4), including the management of concentration, credit, liquidity, and market risks;
 - operational risks, including the management of risks arising from reliance on third parties;¹²
 - data protection risks, money laundering and terrorist financing risks, and other identified risks;
 - the identification, prevention, management and disclosure of conflicts of interest;

¹² It is highlighted that the Digital Operational Resilience Act (DORA) encompasses financial institutions, including credit institutions, electronic money institutions, and issuers of ARTs.

- internal control mechanisms, including sound administrative and accounting procedures.

Principle 4: Robust reserve, recovery and redemption arrangements

- Financial institutions (and other undertakings) issuing ARTs are encouraged to:
 - maintain a reserve of assets and sufficient own funds in alignment with the specifications enlisted in MiCAR;
 - confer on holders of ARTs a redemption right against the issuer;
 - establish and maintain recovery and redemption plans.
- Credit institutions and electronic money institutions issuing EMTs should continue to conform to any applicable national and EU measures, and are encouraged to establish and maintain recovery and redemption plans as regards their issuance of EMTs activities.
- Interest is not to be granted by issuers or by crypto-asset service providers¹³ to holders of ARTs and EMTs.

Principle 5: Communication of information to the competent authority of the intention to offer ARTs or EMTs to the public or to seek admission to trading

Financial institutions (and other undertakings) intending to carry out, or carrying out ART/EMT activities, are encouraged to communicate, on a timely basis, to the competent authority in the jurisdiction of establishment (i.e. to the 'home' authority) information about the token. A [template](#) is available from the EBA's website which can be used for this purpose and may be supplemented with additional specifications by the relevant competent authority.

¹³ 'Crypto-asset service providers' has the meaning given in Article 3(1)(15) MiCAR.