
Highlights of the AFM MiCAR Webinar (on Crypto regulation)

Event date: 25 June 2024

Location: Online

Hosted by: Judith Kelliher Corstjens (Autoriteit Financiële Markten)



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Introduction

This webinar covered the regulation of Cryptomarkets across the EU and within the Netherlands. Its central theme is the rollout and implementation of MiCAR (Regulation (EU) 2023/1114). Several experts have shared their views and experiences with this new piece of legislation. I have documented several highlights per speaker.

Below you can find an outline of the webinar. I have used Roman numbers to rank each step, with the corresponding field expert. Slides are copyrighted by the AFM.

Hoofdstukken

Agenda

Opening | Tanja Pieters-Gorissen

Overview of MiCAR preparation at AFM | Arend van Ewijk

Deep Dive | Tycho van Ewijk

> Role of ESMA | Martijn van de Kerkhof

Live Q&A

I. Opening by Tanja Pieters-Gorissen

- She is the head of Capital Markets Integrity Supervision
- Crypto has significantly grown in size and scope
- Crypto-based initiatives like FTX and Voyager still pose risks for consumers -> Hence the Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114) was brought into life
- This regulation is necessary for mature and healthy Crypto markets -> Soon a MiCAR license is a requirement for crypto providers
- Yet not every aspect is clear yet -> Hence a dialogue with the market is needed

II. Arend van Ewijk -> Acting Managing Director

- Today we discuss how AFM prepares for MiCAR
- The AFM has a light-regime for non-tokens -> These require no authorisation
- Every quarter there is a newsletter
- We use Q&As, receive and handle authorisations properly in time
- Build knowledge, prepare an ongoing supervision
- In order to prepare the market, we try to be as transparent and predictable as possible
- Investing in a level-playing field means we cooperate with the European Securities and Markets Authority (ESMA) and directly with other National Competent Authorities (NCAs)
- MiCAR is more extensive than the Anti-Money Laundering Directive 5 regime
- Uncertainties regarding MiCAR -> Several clarifications are needed
- There is a different speed of implementation between countries

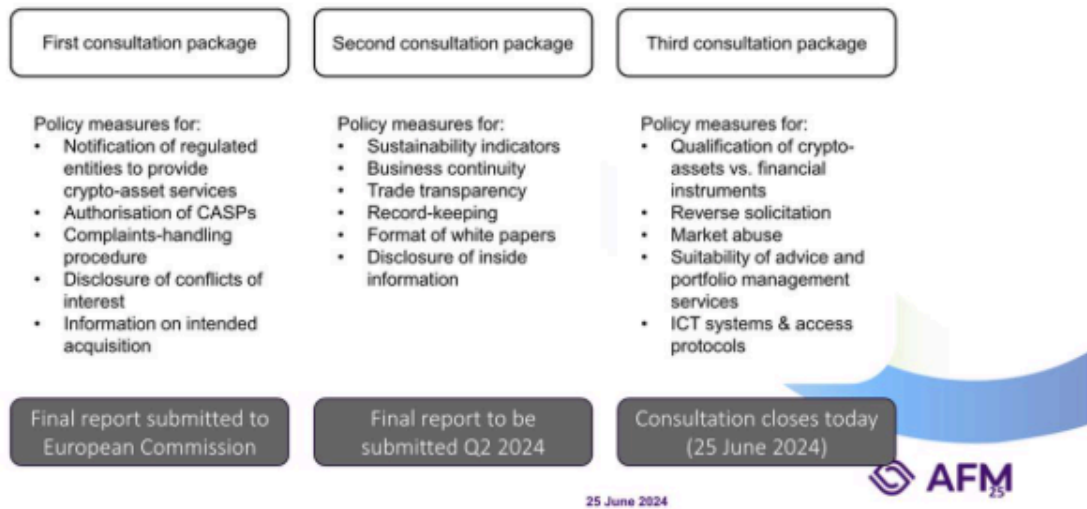
III. Judith

- The Digital Operational Resilience Act (DORA) is currently a hot topic

IV. Deep dive - Tycho van Ewijk

- As AFM, we offer some guidance already

ESMA policy mandates under MiCA



- There is a pre-scan procedure in place -> This is voluntary when preparing for a Crypto-asset Service Provider (CASP) license application -> in general, there is a Q&A, followed by a meeting, and additional feedback based on the meeting's outcome
- The CASP authorisation procedure is a complex one, and takes several months (at least 5), which is similar to the MiCAR timeline
- In a Best-case scenario, the provider's services are complete, high-quality, with no organisational amendments needed (yet practice is often somewhat different)
- The AFM may refuse the application if the deadline is not met (less than 25 working days) -> New information may be requested with <25 + 20 additional days + deadline to provide this
- Article 60 of MiCAR offers details on notification procedures

3.5 CASP authorization and notifications: provisional costs

CASP-authorization: provisional costs (pending final decision by the Ministry of Finance)

- The anticipated cost of handling a CASP authorization request is €200 per hour, with a maximum of €100,000.
- For Fit and Proper testing, the provisional fee is €700 per person for the reliability assessment. The standard fee for the suitability assessment is €2,900 per person. If an individual has already been tested by DNB in the context of an AMLD5 registration, a lower fee of €1,500 or €500 will be applied, depending on the scope difference between the previous and current assessment.
- Finally, shareholders with a qualified shareholding in the CASP are assessed by DNB. The assessment by DNB encompasses both direct and indirect shareholders and is subject to a fee by DNB.

CASP-notification: provisional costs (pending final decision by the Ministry of Finance)

- The anticipated cost of processing a CASP notification is €200 per hour, subject to a maximum of €50,000.

- There is a pre-scan procedure, this started in February 2024 -> Thus far about 20 market participants have applied
- The procedure includes a clear argumentation, sufficient level of detail, MiCAR requirements referring to DORA, Conflicts-of-Interest, market abuse detection and reporting
- At the board level of a provider, keep asset-segregation requirements in mind -> Manage conflicts of interest -> Provisional costs need to be administered by the Ministry of Finance -> This costs €200 per hour with a cap of €100000

- Shareholders with qualified holding are assessed by the DNB -> Currently we can only accept fiat money for payments

V. Martijn van Kerkhof -> MiCAR and the role of ESMA

Supervisory convergence



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- What is ESMA doing? Why? How?
- In terms of priority, you have MiCA level 2 and 3 measures, followed by supervisory

ESMA MiCA workstreams



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convergence, at the bottom we have other operational tasks such as right IT-systems, policy operations etc.

- Main aim is to have a congruent approach on MCA
- ESMA has quite an extensive technical guidelines
- A final report has been submitted to the European Commission, to reviewed in Q2 2024 -> Consultation closes today (25 June)

- Regarding Supervisory Convergence -> Duty to ensure level playing field, consistent investor protection and prevent regulation arbitrage
- View early stage to take action at the right moment
- What areas do we focus on? NCAs can shorten the transitional period under MiCA (regarding transitional measures) -> This is certainly the case with the AFM
- There are also jurisdictions that only have AMLD5 in place
- There should be no significant difference in how authorisation is executed
- Authorisation is one of the key areas in this regard
- There are multi-function crypt-asset intermediaries
- There are large conglomerates active in crypto -> This requires additional scrutiny
- Cross-border activity -> Entity can target investors outside of authorised jurisdiction -> The larger cross-border activities, the more oversight matters
- Qualification issues -> ESMA can deliver opinions on that -> We need to make sure the same products have the same classifications across jurisdictions
- Mapping and monitoring -> Discussions with NCAs extend to cross-border services -> Expected applications etc. ensure a level playing field



VI. Q & A:

- Audience question: How will enforcement of MiCAR be organised at the MS and EU-level?

Tycho:

- On a national level, consumer protection is the main pillar -> The mandate is similar to those for other sectors -> And the main focus is on illegal activities

Martijn:

- At the European level, ESMA will serve more as a coordination point and keep a register that is widely available
- ESMA has a role where the NCAs go for product intervention -> AFM is required to inform ESMA
- One exception -> Article 103 specifies temporary intervention powers for ESMA -> This is reserved for highly exceptional circumstances

Tycho:

- Some MiCAR infringements also count as economic offences subjected to criminal prosecution

- Audience question: Does a MiCAR license allow parties to passport across the EU in the same way as other financial institutions?

Judith:

- According to Article 65, the answer is YES!

- Audience question: Is it possible for a CASP to keep using stable coins that do not comply with MiCAR after 30 June?

Martijn:

- Discussed at EU -> Whole idea of token regimes is creating oversight -> There is a practical element -> Too harsh deadlines can have unintended consequences
- Audience question: Until when is the pre-scan procedure open?

Tycho:

- This is open at least until the end of this year, also dependent on the amount of applications and an area of focus of NCAs

On a final note

It was a pleasure to be at this webinar, which touched upon an important market in the making for Europe and the Netherlands: Crypto-assets. Interestingly there is a high degree of interplay between NCAs and ESMA, yet at the same time regulatory differences persist, for the time-being. Many thanks to and the AFM for having organised this event and for having welcomed me! For feedback, please send an E-mail to quero@discounted-by-a-lightning-strike.com. Thank you for reading!

I have no interests to declare other than my attendance as a board member of investment committee Carpe Divitias.