

# New Crypto Rules in Italy: An Overview of the MiCAR Decree

1 July 2024

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On 24 June 2024 the Italian Government approved the Legislative Decree implementing the MiCAR. The Decree introduces a comprehensive regulatory framework for Crypto Asset Service Providers (CASPs) operating in Italy, which will replace the existing rules on Virtual Asset Service Providers (VASPs).

There will be a 12-month transition period lasting until 30 December 2025 for VASPs that are regularly registered in Italy as of 27 December 2024. The transition period will apply to VASPs that submit their MiCAR application in Italy or another EU Member State by 30 June 2025.

In line with the MiCAR, the rules on asset-referenced tokens (ARTs) and e-money tokens (EMTs) apply starting from 30 June 2024. VASPs must accordingly assess whether the offer or use of stablecoins on their platforms is consistent with the MiCAR rules on ARTs and EMTs.



## The MiCAR Decree

The Markets in Crypto-Assets Regulation (“**MiCAR**”) provides for a uniform legal framework for the issuance and trading of crypto-assets within the EU. Most of the MiCAR provisions will start to apply from 30 December 2024, except for the rules on asset-referenced tokens (“**ARTs**”) and e-money tokens (“**EMTs**”) that became effective on 30 June 2024.

On 24 June 2024 the Italian Government approved the Legislative Decree implementing the MiCAR (the “**MiCAR Decree**”) following a consultation with the relevant stakeholders that ended in March 2024.

The MiCAR Decree identifies the Italian authorities that will be responsible for the supervision of crypto-asset service providers (“**CASPs**”) in Italy and the supervisory powers that can be exercised by them consistently with the MiCAR. It also exercises certain national discretions envisaged under the MiCAR, including with respect to the Italian transitional regime.



*The MiCAR will start to apply from 30 December 2024, except for the rules on ARTs and EMTs which became effective on 30 June 2024.*



*The transition to MiCAR will be a major challenge for Italian VASPs, considering the high regulatory standards imposed under the MiCAR compared to the existing Italian rules.*



*Italian VASPs that are enrolled in the VASP Register on 27 December 2024 will benefit from a 12-month transitional period, provided that they apply for a MiCAR license in Italy or in another EU Member State by 30 June 2025.*

## The Transition to MiCAR

Virtual Asset Service Providers (“VASPs”) are currently subject to a light-touch supervisory regime based on a registration procedure with the Italian competent authority (*Organismo Agenti e Mediatori*) (“OAM”) lasting up to 15 days.

Following the enrolment in the register kept by the OAM (the “VASP Register”), Italian VASPs can provide their services to Italian customers. They must comply with the Italian anti-money laundering obligations as well as with quarterly reporting obligations towards the OAM.

The transition to MiCAR will be a major challenge for Italian VASPs, as the regulatory standards envisaged in the MiCAR are significantly higher than those that are currently applicable to Italian VASPs.

## How Will the Italian MiCAR Transitional Regime Work?

Also in consideration of the nature of the regime currently applicable to Italian VASPs, the Italian government exercised the option to reduce the term of the transitional regime envisaged under the MiCAR, and did not introduce any fast-track authorization procedure for VASPs already enrolled in the VASP Register.

Italian VASPs that are regularly enrolled in the VASP Register on 27 December 2024 may continue to provide crypto services on the basis of the rules in force before MiCAR becomes effective, provided that they submit an application to be authorized as CASP under the MiCAR in Italy or in another EU Member State by no later than 30 June 2025.

The transitional regime will last until 30 December 2025, or until the date when the authorization is granted or denied (if earlier than 30 December 2025).

## Notification Duties Connected with the MiCAR Transitional Regime

Italian VASP must notify the OAM of the submission of the MiCAR application in order to benefit from the MiCAR transitional regime. If the application is submitted in another EU Member State, the notification must be sent to the Bank of Italy and Consob as well.

If the application is denied, Italian VASPs will have a maximum term of 60 days to manage the ordinary termination of the relationships with Italian customers, which must occur as promptly as possible.

By 31 May 2025 all Italian VASPs must communicate to their customers as well as on their website how they intend to comply with the MiCAR regime or, alternatively – i.e. if they do not intend to submit a MiCAR application – how they intend to manage the orderly termination of the existing relationships with the customers.



## The Italian MiCAR Timeline

The following table summarises the key steps to be considered for the purpose of the MiCAR compliance based on the provisions of the Italian MiCAR Decree.

Deadline	Timeline
30 June 2024	Entry into force of the MiCAR provisions on ARTs and EMTs.
30 December 2024	Entry into force of the remaining provisions of the MiCAR, including those on the authorization of CASPs.
31 May 2025	Italian VASPs must communicate to their customers and on their website whether they want to submit a MiCAR application or how they intend to manage the orderly termination of existing relationships with customers.
30 June 2025	Deadline for the submission of a MiCAR application in Italy or in another EU Member State by Italian VASPs that want to benefit from the transitional regime.
30 December 2025	End of the Italian MiCAR transitional regime.

## The Supervisory Role of the Bank of Italy and Consob



*Consob will be the competent authority for the authorization of all Italian CASPs. The authorization will be granted or denied upon consultation with the Bank of Italy.*

The Bank of Italy and Consob will be the competent supervisory authorities for the purpose of the MiCAR rules, and will be entitled to exercise all supervisory powers contemplated under the MiCAR and the MiCAR Decree, such as the power to apply the relevant administrative sanctions, conduct on-site inspections, etc.

While the Bank of Italy will be primarily responsible for the supervision of issuers of ARTs and EMTs, for all other CASPs (i) CONSOB will be responsible for the supervision of the compliance with the applicable rules of conduct in the performance of their business, while (ii) the Bank of Italy will be responsible for the organizational, risk management, own funds and similar aspects.

CONSOB will also be responsible for the application of the rules regarding the offer of crypto-assets (other than ARTs or EMTs) and those on market abuse.

## CASP authorization process with Consob

All applications to be authorized as CASP must be submitted to Consob. The authorization will be granted or denied by Consob after having consulted the Bank of Italy.

Investment firms, banks, asset managers and other financial institutions wishing to provide crypto asset services under the MiCAR must send their notifications to Consob or the Bank of Italy, as specified in the MiCAR Decree.



Italian CASPs must be established in the form of joint stock company, partnership limited by shares, limited liability company or cooperative company.

The members of the management body of CASPs must satisfy the same fit and proper requirements applicable to the members of the management body of Italian banks. Similarly, any person owning a qualifying shareholding in an Italian CASP must satisfy the same good standing, correctness and competence requirements as those applicable to the relevant shareholders of Italian investment firms.

### **Additional Aspects Concerning the Regime Applicable to CASPs and Issuers of ARTs**

Italian CASPs will be required to apply the IAS/IFRS for the drafting of their financial statements, (appoint an external auditor in compliance with the rules applicable to other regulated financial institutions and comply with the Italian rules on whistleblowing.

The MiCAR Decree sets forth the provisions regulating the insolvency and winding-up procedures of Italian CASPs and issuers of ARTs, leveraging on the existing framework concerning the liquidation, insolvency and resolution of regulated financial institutions.



*The MiCAR Decree introduces a ring-fencing regime for crypto-assets and funds held by CASPs, as well as for reserve assets held by issuers of ARTs.*

### **Ring-Fencing of Crypto-Assets and Funds**

The MiCAR Decree introduces a ring-fencing regime for crypto-assets and funds held by CASPs while performing crypto-asset services and the related ancillary activities.

These crypto-assets and funds are ring-fenced by operation of law from all other assets of the relevant CASPs, as well as from the assets of any other customer of the CASPs. They cannot be subject to enforcement actions by the creditors of the CASP (or in their interest) or by the creditors of the custodian (or any sub-custodian) (or in their interest). The creditors of the customers can exercise their enforcement actions within the limits of the assets held by such customers.

CASPs cannot use the crypto-assets and funds held on behalf of the customers for their own account.

The ring-fencing principles summarised above apply also in case of issuers of ARTs – including with respect to reserve assets covering different tokens issued by the same issuers. The MiCAR Decree specifies that the reserve assets must be used to reimburse the holders of ARTs. If the reimbursement plan is activated, or the issuer of the ARTs is subject to insolvency or resolution, the reimbursement right is satisfied by liquidating the reserve assets (or in accordance with the rules governing the compulsory administrative liquidation or resolution, as applicable). If the reserve assets are insufficient to this end, the issuer of ARTs is responsible with its own assets.



## Criminal and Administrative Sanctions

The provision of crypto-asset services in the absence of a MiCAR authorization, the offer or negotiation of ARTs or EMTs as well as the issuance of EMTs in breach of the relevant MiCAR requirements, constitute a criminal offense under the MiCAR Decree, which is punished with imprisonment for a period ranging between six months and four years, as well as a fine between Euro 2,066.00 and Euro 10,329.00.

The MiCAR Decree details the administrative sanctions that apply in case of breach of the relevant provisions of the MiCAR. These sanctions can be enforced both against the legal entity and the members of its management body / personnel, based on the criteria outlined in the MiCAR Decree.

## How the Existing Regime will Be Phased-Out

The VASP Register will continue to exist until the expiry of the transitional regime (*i.e.* 31 December 2025). After this date the VASP Register will be terminated, and the OAM will no longer have any responsibility with regard to Italian VASPs / CASPs.

The current OAM reporting obligations will cease to apply after the submission of the last report due for Q1 2025.

Instead of being subject to a duty to report the relevant transactions to the OAM, Italian VASPs / CASPs will be subject to an obligation to keep record of all relevant information for a period of 10 years and make such information available to competent authorities. This obligation will apply starting from 1 April 2025 and will relate to all transactions made until the Italian VASP / CASP is cancelled from the VASP Register.

## Rules on Financial Products

The MiCAR Decree specifies that the Italian rules regarding financial products will no longer apply to crypto-assets that are subject to the MiCAR.

As a consequence of this provision, the offer of crypto-assets falling within the scope of the MiCAR will no longer be subject to the obligation to publish an offering prospectus, as well as to the rules on distance marketing (*offerta mediante tecniche di comunicazione a distanza*) or door-to-door sale (*offerta fuori sede*) of financial products.

## What is the Correct Timing for Submitting a CASP Application in Italy?

Notwithstanding the possibility to benefit from the transitional regime until 30 June 2025 and submit the CASP application by that date, if a MiCAR application is submitted in May or June 2025 it is likely that the authorization procedure will not be completed by 30 December 2025 (*i.e.* the deadline of the Italian transitional regime), considering the timing normally necessary for Italian regulators to review and process similar applications.



*The VASP Register will continue to exist until the expiry of the transitional regime. After this date the OAM will no longer be responsible for the supervision of VASPs.*



*Italian VASPs should consider submitting their MiCAR applications well before the deadline of 30 June 2025 if they want to minimize the risk that they will no longer be able to operate in Italy after 30 December 2025.*



Italian VASPs should accordingly consider submitting their MiCAR applications well before the deadline of 30 June 2025, if they want to minimise the risk that they will no longer be able to operate in Italy or will have to suspend their operations after 30 December 2025.

### Stablecoins on the Radar

As noted above, the MiCAR rules on ARTs and EMTs are already applicable starting from 30 June 2024. Italian VASPs must accordingly assess what are the implication of such rules for the offer and trading of stablecoins on their platforms, considering the framework set out under the MiCAR.

As of today, several issuers of stablecoins have not taken a clear position on the qualification of their crypto-assets as ARTs or EMTs and their intention to comply with the MiCAR. This is creating regulatory uncertainties to several crypto exchanges and brokers.



*MiCAR will start a regulatory competition among EU Member States to attract DLT businesses, and Italy is well positioned to be considered as one of the possible options for international and EU players to establish their EU operations.*

### The Italian Route to MiCAR

All VASPs operating in Europe are looking for the best jurisdiction to set up their EU operations in view of the entry into force of the new MiCAR rules and the opportunity to passport their MiCAR license in all EU Member States.

The analysis of the national transitional regimes plays an important role in the definition of the MiCAR transition strategy, along with other factors such as the approach taken by national competent authorities to crypto-assets and DLT in general.

Thanks to its friendly regulatory environment, so far Italy has been one of the preferred jurisdictions for crypto companies to establish their European presence. The Italian legal and regulatory framework was sufficiently flexible to facilitate the setting-up of crypto projects. The Italian government introduced an advanced legislation on the issuance of security tokens. Italian authorities have launched regulatory sandboxes dedicated to DLT projects and are open to test the application of DLT technology to payment and settlement systems.

MiCAR will start a regulatory competition among EU Member States to attract DLT businesses, and Italy is well positioned to be considered as one of the possible options for international and EU players to establish their EU operations.



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