



**Regulation (EU) 2023/1114 on Markets in Crypto-assets (MiCAR) Communication by the
Bank of Italy**

Rome, July 2024

1. Introduction

On 29 June 2023, Regulation (EU) 2023/1114 on markets in crypto-assets ('MiCAR') entered into force, introducing a harmonized framework in the European Union for the issuance and offering to the public of crypto-assets and the provision of services involving crypto-assets that are not related to financial instruments or services currently regulated by existing EU legislation.

More specifically, the regulation covers the following types of crypto-assets: i) electronic money tokens (e-money tokens – 'EMTs'), which purport to maintain a stable value by referencing the value of one official currency; ii) asset-referenced tokens (ARTs), which purport to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies; iii) crypto-assets other than EMTs and ARTs.

This Regulation shall be fully applicable from 30 December 2024. The rules on the issuance, offering to the public and admission to trading of EMTs and ARTs (Titles III and IV of MiCAR) shall apply as of 30 June 2024.¹

As of the dates specified above, the issuance, offering to the public and admission to trading of ARTs and EMTs, as well as the provision of crypto-asset services shall be reserved to the categories of entities expressly authorized under MiCAR. In summary:

- The issuance, offer or seeking of admission to trading of ARTs is reserved to: i) specialized entities, based on a specific authorization and supervision regime; ii) banks, upon notification to the national competent authority designated under MiCAR;
- The issuance, offer or seeking of admission to trading of EMTs is reserved to banks and electronic money institutions (EMIs) upon notification to the competent authority;
- Crypto-asset services (e.g. exchange, custody and trading, providing advice, reception and transmission of orders, transfer, placement, etc.) may be offered by a new category of intermediaries specifically authorized thereto, known as crypto-asset service providers (CASPs), as well as by intermediaries that are already supervised, within the limits set by the Regulation.²

The new EU rules on crypto-assets are supplemented by Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets, also known as the Transfer of Funds Regulation recast (TFR recast) which, in line with the FATF (Financial Action Task Force) standards: i) extended to crypto-assets the obligation (already in force for transactions in legal tender) to accompany transfers of funds with information on the originator and the beneficiary, in order to ensure their traceability and detect any suspicious transactions; ii) amended the fourth Anti-Money Laundering Directive (AMLD4) to include CASPs as financial intermediaries and thus subject them to the enhanced anti-money laundering and counter-terrorist financing (AML/CFT) control requirements established for this category of obliged entities.

In view of the application of the above-mentioned Regulations, the Bank of Italy hereby intends to draw the attention of all crypto-asset market players³ and of current and potential users to issues within its

¹The MiCAR rules will be supplemented by regulatory technical standards (RTS) and implementing technical standards (ITS), as well as by guidelines developed by the European supervisory authorities (EBA and ESMA).

²Banks, investment firms, central securities depositories, operators of trading platforms and asset management companies, EMIs, in compliance with the notification requirements vis-à-vis the designated national authority.

³These include offerors and issuers of crypto-assets and service providers, as well as entities supervised under Article 146 of the Italian Consolidated Law on Banking (TUB).

remit and has accordingly updated the content of its Communication on Decentralized Technology in Finance and Crypto-assets dated 15 June 2022.

2. The new regulatory framework and the role of the Bank of Italy

At national level, draft legislative decrees laying down provisions for adapting the national regulatory framework to MiCAR and the TFR recast were submitted for public consultation on 20 February 2024.

Within the framework defined by the draft decree, the Bank of Italy and the Italian Companies and Stock Exchange Commission (Consob) will be designated as competent authorities under MiCAR and the Bank of Italy will be granted prudential supervision powers vis-à-vis both EMT and ART issuers (including with regard to market access) and CASPs. As part of its mandate, and limited to EMT issuers, the Bank of Italy will also supervise the transparency, fair conduct and protection of EMT holders in relation to their issuance. It will also be able to exercise intervention powers on EMTs and – when necessary to ensure the stability of the whole or part of the financial system – on ARTs and crypto-assets other than EMTs and ARTs. Consob will instead be designated under MiCAR as the competent authority for crypto-assets other than EMTs and ARTs and will be responsible for the transparency, fair conduct, orderly trading and protection of customers in relation to ARTs and crypto-asset services; it will also be able to exercise intervention powers on ARTs and crypto-assets other than EMTs and ARTs in order to protect investors and safeguard the orderly functioning and integrity of the markets.

In compliance with the draft decrees, the Bank of Italy will also be the competent authority for AML/CFT supervision of CASPs.⁴

The draft decree implementing MiCAR expressly provides that the tasks and powers conferred onto the Bank of Italy with regard to the oversight of the payment system referred to in Article 146 of the TUB and its implementing provisions shall remain unaffected. Therefore, also in relation to the use of crypto-assets, the Bank of Italy oversees the smooth functioning of the payment system, its reliability and efficiency, and the protection of payment service users.

The role of central banks within the payment system is also explicitly provided for under MiCAR. Specifically, the Regulation reiterates that promoting the smooth operation of payment systems is one of the crucial tasks to be carried out through the European System of Central Banks (ESCB), as laid down in Article 127(2) of the Treaty on the Functioning of the European Union (TFEU), and refers to the tasks of the ECB and the national central banks relating to the oversight of payment systems.⁵

Furthermore, the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (PISA),⁶ through a shift from the traditional concept of ‘transfer of funds’ to the broader and innovative notion of ‘transfer of value’ and the introduction of the new category of ‘digital payment tokens’, has extended the scope of oversight to payment schemes and arrangements⁷ where crypto-assets are used for transaction purposes, provided that certain specific criteria are met.

At the international level, in July 2022 the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions

⁴With regard to issuers, the Bank of Italy is the competent authority for the AML/CFT supervision of banks and EMIs; conversely, specialized issuers of ARTs will not be ‘obliged entities’ for AML compliance purposes.

⁵Recital no. 15 of MiCAR.

⁶<https://www.ecb.europa.eu/paym/pol/instr/html/index.it.html>. The PISA framework was published in November 2021 and has been applicable since November 2022.

⁷For the definitions of electronic payment instrument scheme, electronic payment instrument arrangement, and digital payment token, see the [ECB Glossary](#). For more details on the criteria used to identify the payment schemes/arrangements under oversight, see the Eurosystem’s *Exemption policy for the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements* (<https://www.ecb.europa.eu/paym/pol/instr/html/index.it.html>).

(IOSCO) published guidance on the application of the Principles for Financial Market Infrastructures (PFMI) to systemically important stablecoin arrangements that perform the transfer function.⁸

3. Key issues within the scope of the Bank of Italy's mandate

As the new regime comes into effect, it is worth drawing again the attention of the entities concerned and users to the differences between the various categories of crypto-assets, in relation to their different characteristics and functions and to the different risk profiles associated with them, especially as regards whether or not they are suitable to perform a payment function. Notably:

- In line with the above-mentioned Communication by the Bank of Italy on Decentralized Technology in Finance and Crypto-assets,⁹ it is worth highlighting that crypto-assets other than EMTs and ARTs – especially when lacking intrinsic value, not referenced to any real or financial assets and not backed by any redemption rights granted to the users ('unbacked') – are not suitable for performing a payment function because of their highly risky nature.¹⁰ It should also be noted that the issuance or offer of these products is not subject to authorization by the competent authority, nor to specific forms of supervision other than those laid down by MiCAR with regard to the requirement to notify white papers and marketing communications to the competent authority;
- In light of the safeguards and restrictions established under MiCAR to limit their use as a means of exchange in order to safeguard the smooth operation of payment systems, monetary policy transmission and monetary sovereignty,¹¹ the Bank of Italy urges the recipients of this Communication to be especially vigilant of any ARTs being offered to customers for payment purposes. All the risks associated with this use of ARTs should be assessed thoroughly, including by looking at the specific characteristics of each individual token. In fact, these instruments are susceptible to potential fluctuations in their value and, consequently, lack the defining characteristics of a means of payment, in particular the fiduciary element which is based, first and foremost, on its redeemability at par value.
- According to MiCAR, EMTs are instead inherently suitable as a means of payment because of their legal classification¹² and of their characteristics, including, in particular, the token holder's right to redeem the token at any time and at par value.

Furthermore, the entities concerned will need to ensure that potential holders of crypto-assets are fully aware of the risks associated with holding and using them, taking into account the specific characteristics of each type of crypto-asset mentioned above and of the individual tokens. Therefore, it should be noted that the Bank of Italy is responsible for customer protection tasks only in connection with the issuance of EMTs.

With regard to the protection of EMT holders, the entities concerned will have to ensure that potential holders are fully aware of both the potential risks associated with the technology used and the rights and obligations attached to the specific token, in particular the right of redemption at par value as well as the procedures and conditions for the exercise of those rights. Moreover, as MiCAR also refers to certain provisions of Directive 2009/110/EC (the EMD2), any banks and electronic money institutions that start

⁸CPMI and IOSCO, *Application of the Principles for Financial Market Infrastructures to stablecoin arrangements*. <https://www.bis.org/cpmi/publ/d206.pdf>.

⁹https://www.bancaditalia.it/media/approfondimenti/2022/cripto/en-Comunicazioni-della-Banca-d-Italia-DLT-cripto.pdf?language_id=1

¹⁰Crypto-assets other than EMTs and ARTs include, in addition to unbacked assets, utility tokens, which are defined in MiCAR as 'a type of crypto-asset that is only intended to provide access to a good or a service supplied by its issuer'.

¹¹In particular, Articles 17(5), 21(4), 22, 23, and 24(2) and (3).

¹²Pursuant to Article 48 of MiCAR, e-money tokens shall be deemed to be electronic money and are subject to the rules laid down for electronic money, unless otherwise specified by MiCAR.

issuing EMTs are urged, among other things, to adapt their complaint handling procedures to take into account the specific characteristics of such issuing activity and the relationship with EMT holders.

The specific characteristics of the different types of crypto-assets and enabling technologies and their suitability, or not, to perform a payment function are also essential to the sound and prudent management of the firm. These aspects will therefore need to be properly taken into account by those intending to start activities governed by MiCAR, when defining sustainable business models and identifying and mitigating the specific risk profiles associated with issuing activity or the provision of the various services.

In particular, alongside traditional financial risks, crypto-asset market players will need to adequately take into account the operational risk profiles inherent to the technology and related to the functioning of the DLT infrastructures on which the tokens are issued and transferred, to the implementation of smart contracts to support such activities, and to providing custody of the private cryptographic keys necessary to transfer the assets owned or stored on behalf of customers.

In light of the new business models and technological complexity, the entities supervised by the Bank of Italy that wish to operate in this sector will need to: rely on people with adequate skills, including on the board of directors; ensure that their management bodies and control functions are fully involved right from the planning stage of new initiatives; adopt procedures to adequately identify, measure and mitigate all the financial and operational risks, especially when their business models involve combining several activities governed by MiCAR (not only issuance and the provision of services, but also the provision of the same service for different types of tokens).

The supervised entities will also have to carefully manage the risks arising from the high degree of interconnectedness among themselves and between them and specialized third parties, including those outside the scope of supervision. In this context, the choice and control of the solutions adopted for the custody of digital assets, whose security is a fundamental condition for the proper functioning of the entire financial system, is of particular importance. When relying on third parties, it is crucial that crypto-asset market players conduct thorough due diligence on potential providers before entering into any agreements, so as to ensure that relying on third parties does not affect the ability of the crypto-asset market players to fulfil their obligations.

The entities interested in carrying out the new activities will have to fully comply with anti-money laundering and counter terrorist financing provisions, including by ensuring the adequacy of their organizational and control structures. Risk-mitigating safeguards are thus particularly important. Specifically, as regards the risks associated with: i) transactions involving self-hosted addresses; ii) the use by customers of anonymization tools; iii) any inconsistency between the volumes and types of transactions in crypto-assets and the customer profiles; iv) links with high-risk jurisdictions.

Crypto-asset market players will also need to pay specific attention to the safeguards against the risk of circumvention of international sanctions through the use of crypto-assets.

In order to ensure full awareness among potential holders of crypto-assets, the entities that intend to issue and offer ARTs or EMTs must clearly indicate on their website and in the white paper that the crypto-assets are issued in compliance with MiCAR.

In accordance with the draft decree implementing MiCAR, the key points illustrated above – which do not exhaust the range of potential risks that crypto-asset market players need to monitor, assess and mitigate on an ongoing basis – will be carefully examined by the Bank of Italy when evaluating projects involving crypto-assets submitted either by notification or as part of authorization procedures.

Therefore, while reiterating that the Bank of Italy will carry out the tasks entrusted to it, also taking into account the impact that a crypto-asset may have on the smooth functioning of the payment system, we urge all those intending to carry out the activities governed by MiCAR to assess in advance the potential effects of their initiatives and projects on the smooth functioning of the payment system and to start, at an early stage, to evaluate the actions necessary to ensure compliance with the new requirements set out in MiCAR, in the AML Directive (as last amended), and in the TFR recast, in line with the expectations outlined above. The Bank of Italy reserves the right to exercise the powers referred to in Article 146(2) of the TUB, should the subjective and objective conditions laid down by it be met, so as to safeguard the functioning of the payment system, its reliability and efficiency and the protection of payment service users.

Virtual asset service providers (VASPs) currently entered in the register kept by the Italian Agents and Brokers Organization (OAM) are hereby reminded that, during the transition to the new regime, the provisions of the current anti-money laundering framework continue to apply.

To help implement the new regime smoothly, as the national legislation is finalized, the Bank of Italy is open to informal discussions to guide any entities interested in starting crypto-asset operations in the future.

To this end, this communication will be followed by the publication of a technical communication inviting crypto-asset market players to contact the competent bodies before formally submitting their notifications and authorization applications and providing guidance on how to submit the relevant documentation.