

MiCA Authorization

From 30 December 2024, the EU's Markets in Crypto-asset Regulation (MiCA) becomes fully applicable.

From your choice of jurisdiction to understanding the rules relating to your business activities, we are best placed to support you in getting ready for MiCA.



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Unparalleled digital assets and blockchain expertise

Our Digital Assets and Blockchain (DAB) Practice is at the heart of the industry.

We keep close to the discussions that are driving regulatory and legislative change, delivering briefings, training sessions, and webinars with governments and regulators globally on crypto and digital asset activities. We are founding members of industry associations, Global Digital Finance, and Innovate Finance, for which we continue to provide counsel.

Our market leading lawyers and consultants leverage a wealth of experience and expertise to provide our clients with the best possible service. Spanning our offices worldwide, the DAB team gives truly global, cross-jurisdictional representation.

Our MiCA expertise

Via our associations, we have been engaging with the European Institutions at every stage of MiCA's development, and our approach has meant that we have been seen as trusted counsel to members of the negotiating team.

Having been engaged in discussions throughout its development, we have a holistic understanding of the practical ways in which MiCA will impact firms. We work closely with clients to help them understand and unpack the new requirements, and their options according to their business activities and the jurisdictions they are operating in.

The Markets in Crypto-Asset Regulation (MiCA)

- MiCA is an EU regulation that aims to provide a harmonised framework for regulating certain crypto-asset related activities that are provided from or into the EU. It was introduced as part of the EU's Digital Finance Strategy in September 2020, and officially entered into force on 29 June 2023 following its publication in the Official Journal of the European Union.
- Additionally, EU regulators such as the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) are responsible for developing further standards and guidelines (i.e. Level 2 and Level 3 measures) to set out more detailed measures to supplement the obligations under MiCA.
- National competent authorities (NCAs) across EU member states have been preparing for the implementation of MiCA and the transition from local regimes.

EU Digital Finance Strategy

- Aims to remove fragmentation in the digital single market
- Promotes innovation in the financial sector; legal certainty; consumer protection; market integrity, and financial stability
- Published 24 September 2020

Digital operational Resilience Act (DORA)

- Ensures digital operational resilience across the financial services sector and strengthens financial entities' ICT and third-party risk management and controls
- Applies from **17 January 2025**

Pilot Regime for DLT Market Infrastructures

- Provides ability to test the application of distributed ledger technology (DLT) in the financial sector in a 'regulatory sandbox'
- Applies from **23 March 2023**

Markets in Crypto Assets Regulation (MiCA)

- Establishes a regulatory framework for cryptoasset issuers and service providers
- Titles III (ARTs) and IV (EMTs) apply from **June 30 2024**
- Full application from **30 December 2024**

MiCA and existing legislation

MiCA applies to **issuers** of certain types of cryptoassets which do not fall within existing financial services legislation, as well as **cryptoasset service providers (CASPs)**.

MiFID II	E-Money Directive	MiCA
<p>Covers financial instruments:</p> <ul style="list-style-type: none"> • Transferable securities • Money-market instruments • Units in collective investment undertakings • Options, futures, swaps, forward rate agreements • Derivatives • Contracts for differences 	<p>Covers “e-money”:</p> <ul style="list-style-type: none"> • Are stored electronically • Issued on receipt of funds • Used for the purposes of making payments transactions • Accepted as a means of payment by persons other than the issuer • Represented by a claim on the issuer 	<p>Applies to those not covered by MiFID II and the EMD, and puts in place requirements for:</p> <ul style="list-style-type: none"> • Issuers of E-Money Tokens • Issuers of Asset Reference Tokens • Issuers of all other cryptoassets <p>It also sets out obligations for cryptoasset service providers.</p>

Our areas of focus

- Advising clients on authorisation under MiCA and its interplay with other authorisation requirements under EU financial services legislation (including jurisdictional comparisons across different EU Member States)
- Advising on the interplay between existing digital asset regulatory regimes (e.g. VASP AML/CTF regimes) and the upcoming changes
- Analysis of characterization of crypto-assets under MiCA, and advising on regulatory requirements relating to different activities such as on whitepaper and prospectus compliance in relation to crypto-asset issuances
- Engaging with the European Supervisory Authorities and the European Institutions on the development of the Level 2 text for MiCA
- Advising clients on the DLT Pilot Regime in the context of digital bonds

CASPs: key requirements

As of 30 December 2024, crypto-asset service providers (CASPs) that are not already registered or licensed in an EU Member State will not be permitted to provide services in/to the EU until they obtain a MiCA authorisation. **Subject to Member State laws and approach taken by national authorities**, CASPs with existing permissions to operate within an EU jurisdiction may benefit from a transitional period of up to 18 months.

<p>Crypto Asset services include:</p> <ul style="list-style-type: none"> • Custody and Administration • Trading platforms • Exchanges (crypto-fiat / crypto-crypto) • Execution of orders in cryptoassets on behalf of clients • Placing of crypto-assets • Reception and transmission of orders for cryptoassets on behalf of third parties • Provision of advice • Provision of portfolio management • Transfer services on behalf of clients 	<p>Eligibility</p>	<p>Entities providing cryptoasset services must be a legal entity that is authorised under MiCA. Authorised CASPs must have in the EU: a registered office, place of effective management, and a director.</p>
	<p>Conditions of authorisation</p>	<p>Must demonstrate (where applicable and among other things):</p> <ul style="list-style-type: none"> • Sufficient capital to meet prudential requirements • Effective governance and internal control mechanisms relating to AML/CTF risks • Business continuity planning • Systems in place to prevent market abuse
	<p>Overarching requirements</p>	<p>CASPs must comply with requirements on (among other things):</p> <ul style="list-style-type: none"> • Conflicts of interest • Complaints handling • Acquisitions • Disclosure requirements (including sustainability disclosures), and record keeping • Outsourcing
	<p>Other requirements depending on type of CASP</p>	<p>Other requirements apply depending on type of service provider, for example:</p> <ul style="list-style-type: none"> • Custodians must segregate holdings of crypto-assets on behalf of clients from their own holdings • Exchanges must publish prices of crypto-assets and establish a non-discriminatory policy regarding types of clients they agree to transact with • Trading platforms will need to establish operating rules such as rules on minimum due diligence and approval processes for admittance of cryptoassets

CASPs: What are some key issues to consider if you are in / are entering the EU market?

Considerations for CASPs looking to operate in the EU	
Member State considerations	<ul style="list-style-type: none"> • Transition to MiCA and timing requirements: Different jurisdictions may take different approaches to implementation of MiCA and to the 'grandfathering' clause, and will therefore present different timing requirements. • VASP regimes: Existing national regimes (e.g. AML rules implemented as a result of 5AMLD in relation to VASPs) are still in place – see also "AML/CFT" considerations below. • Structural/organisational requirements: Financial entities will need to comply with legislative requirements on physical presence (e.g. under MiCA, member state rules, or potentially other FS legislation depending on whether such application is applicable), such as requirements to have a registered office in a Member State.
Anti-money laundering / Counter financing of terrorism (AML/CFT)	<p>Existing AML/CTF standards on a Member-State level may, in practice, impact the ability for CASPs to passport services under MiCA. Compliance with rigorous AML/CTF standards in a reputable jurisdiction will likely be key to being able to passport across jurisdictions.</p> <p>Note also that the new EU AML Package includes the following:</p> <ul style="list-style-type: none"> • Regulation establishing an AML Authority, which will start operations from mid-2025 (Frankfurt). • AML Regulation which aims to harmonise AML rules across the EU and will apply 3 years after entry into force (10 July 2027). • 6th AML Directive setting out rules for national supervisors and financial intelligence units. • Directive to revise the Transfer of Funds Regulation incorporating the "Travel Rule" – this applies from 30 December 2024. The same directive amends 5AMLD to remove registration requirement.
Other (business) considerations	<p>The following factors may influence a CASP's choice of jurisdiction when establishing its EU presence:</p> <ul style="list-style-type: none"> • Tax • Business environment • Attitude of national authority • Talent / human resources

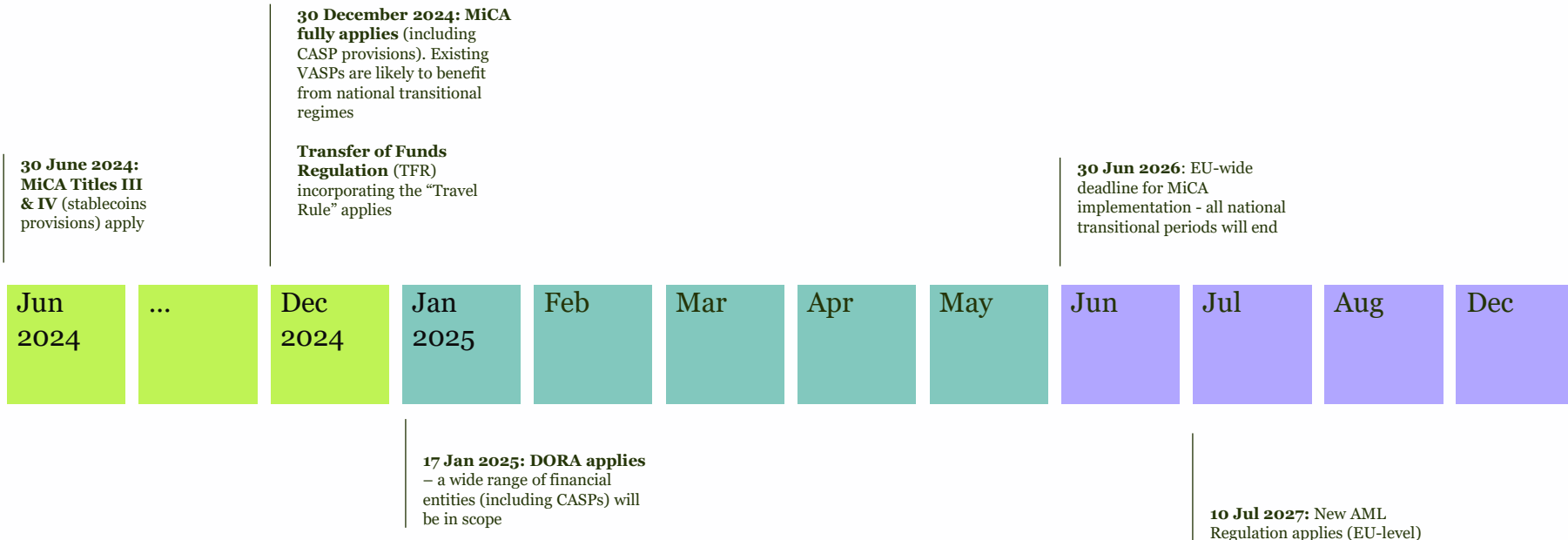
CASPs: Further considerations

Considerations for CASPs looking to operate in the EU (2)	
MiCA – Titles III & IV (“stablecoins” – EMTs / ARTs)	<p>The regulatory framework for EMTs and ARTs applies from 30 June 2024.</p> <ul style="list-style-type: none"> • As of 30 June 2024, persons carrying out certain activities relating to EMTs/ARTs —(1) issuing, (2) offering to the public, (3) seeking admission to trading—need to comply with MiCA. • CASPs should also be aware of the relevant requirements and may need to set up procedures to assess compliance of those ARTs/EMTs for which they offer related services.
MiCA – all other provisions	<p>All other provisions under MiCA apply from 30 December 2024, which set out requirements relating to (i) issuers of crypto-assets <u>other than</u> EMTs/ARTs and (i) CASPs.</p>
Operational Resilience	<ul style="list-style-type: none"> • ‘DORA’ sets out a comprehensive, EU-wide framework on digital operational resilience—the requirements under DORA are extensive, and will be relevant to a wide range of financial entities including CASPs as defined under MiCA. • DORA is applicable from 17 January 2025.
Other regulatory issues	<ul style="list-style-type: none"> • Existing financial services and payments legislation: If a CASP is dealing in digital assets that amount to regulated financial instruments (e.g. tokenised securities) existing financial services legislation such as MiFID II applies; similarly, if a CASP is also dealing with “funds”, it may be in scope of payments legislation. Note that EU payments legislation is also subject to legislative reform. • Financial Promotions: Although there is no overarching EU regulatory framework on financial promotions / advertising of crypto-assets, there may be local law requirements (e.g. Spain). • Open Finance: CASPs are included in the remit of the proposed legislation (‘FiDA’) and may need to participate in data sharing schemes. • Data Protection: The GDPR will need to be complied with where personal data of EU customers is involved. • Digital Services Act: Certain tangential services (such as Web3 browsers) may fall in scope of the DSA.

The timeline: your key dates for MiCA

Here are the key dates for MiCA, DORA, and AML/CFT-related legislation at the EU-level.

Please note that other key dates will be relevant according to the jurisdiction in which you apply for MiCA authorisation and the approach being taken by the national authority.



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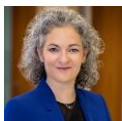
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The logo consists of the words "Hogan Lovells" in a dark green, serif font, stacked vertically. The text is centered within a light green square background.

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