

Nadia Calviño
President of the Economic and
Financial Affairs (ECOFIN)
Council
Council of the European Union

Ref: Effective application of the MiCA Regulation

Dear Ms Calviño,

As the European Securities and Markets Authority (ESMA) and National Competent Authorities (NCAs) are further specifying the rulebook stemming from the MiCA Regulation¹, I wanted to raise your attention to areas where coordinated action from EU Member States will be paramount to ensure the smooth, convergent, and effective application of this new EU regime for crypto-assets.

Recent events affecting global crypto-asset markets² have confirmed ESMA's long-standing assessment that crypto-assets and relevant service providers pose novel challenges and risks specific to the sector and that crypto-assets cannot be considered safe investments. While the MiCA Regulation is a welcome step forward, it will not provide the same level of investor protection as exists for traditional financial investment products, nor will it enable mitigation of all the significant risks linked to crypto-assets.

Moreover, the risk of 'forum-shopping', i.e. that entities active in crypto-asset markets benefit from divergences in the implementation and enforcement of the MiCA rulebook, may in turn reduce its effectiveness. A level-playing field across EU Member States, combined with adequate powers and resources for NCAs, will be key to reducing this risk to a minimum.

To tackle these challenges, ESMA and NCAs have already taken determined actions, in close cooperation with the EBA. We are progressing towards the delivery of robust draft technical standards to supplement primary legislation with the same level of ambition as for traditional financial investment products. We are promoting a stringent and pro-active approach to supervisory convergence at EU level, with several discussions in the relevant ESMA Standing Committees and at the Board of Supervisors, including discussions on specific supervisory cases and challenges. We have issued warnings to consumers on the risks of crypto-assets

¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJ L 150, 9.6.2023, p. 40–205

² See Annex B 'Recent Crypto-Asset Market Events' of the IOSCO Consultation Report on Policy Recommendations for Crypto and Digital Asset Markets: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD734.pdf>

and are articulating our supervisory expectations to market participants in a public statement³ and through regular engagement in workshops and bilateral exchanges.

However, we believe that coordinated action from EU Member States in two key areas is needed to further support ESMA's and NCAs' actions.

Firstly, NCAs need to establish as early as possible their supervisory procedures related to the authorisation regimes set out in the MiCA Regulation, including simplified authorisation procedures for entities already authorised to provide crypto-asset services under national law.

To ensure a smooth implementation of the MiCA rulebook and a swift onboarding of authorised entities, we call on each Member State to designate without delay the NCAs responsible for carrying out the functions and duties provided for in the MiCA Regulation, and to ensure these NCAs are granted adequate powers and resources to exercise their supervisory, investigative and enforcement responsibilities.

Secondly, we are concerned that an extensive use of the grandfathering clause for entities already providing crypto-asset services⁴ would weaken the effectiveness of the MiCA rulebook. This clause may allow these entities to continue operating for up to 18 months in accordance with applicable national laws.

As most of the existing national regimes are far less comprehensive than MiCA, clients could face higher risks of detriment with some entities applying less protective rules up until 1 July 2026, while other entities would apply MiCA requirements from 30 December 2024. Based on a recent stocktaking exercise conducted by ESMA, the grandfathering clause could theoretically apply to more than two thousand entities in the EEA currently registered under these national regimes.

With this in mind, we invite Member States to consider reducing the duration of the grandfathering clause to a maximum of twelve months, in particular with respect to entities that have not been through a fully-fledged authorisation process and that are not yet subject to effective supervision in the EU.

We also call on Member States to notify their approach to this grandfathering clause to the European Commission and ESMA well ahead of the deadline set for 30 June 2024, and ideally by the end of 2023 to inform ESMA's risk assessment ahead of the application of MiCA.

³https://www.esma.europa.eu/sites/default/files/2023-10/ESMA74-449133380-441_Statement_on_MiCA_Supervisory_Convergence.pdf

⁴ in paragraph 3 of Article 143 of the MiCA Regulation

ESMA remains at your disposal to provide further information as necessary. We are committed to support coordinated action in delivering on the successful implementation of the MiCA regime, and we trust that all Ministries of Finance can take action urgently to create a solid common regulatory and supervisory framework for crypto-assets in the EU.

Yours sincerely,

[signed]

Verena Ross

cc.:

Mairead McGuinness, Commissioner in charge of Financial Stability, Financial Services and Capital Markets Union, European Commission

Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs, European Parliament

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Thérèse Blanchet, Secretary-General of the Council of the European Union

Claudia Lindemann, Head of the Secretariat of the Committee on Economic and Monetary Affairs, European Parliament