

# MICAR ROUNDTABLE EXPERT SERIES

## Brussels

The MiCAR Roundtable Expert Series is an initiative of Validvent, thinkBLOCKtank and siedler legal with the aim to increase legal certainty within the realm of the EU crypto markets. As a new regulatory framework, the application of MiCAR still raises numerous questions and as such the MiCAR Roundtable Series aims at facilitating expert discussions, resulting in public reports and specific calls to action. The roundtables will be held across Europe throughout the year 2024.

Following the roundtables in London, Berlin and Vienna the fourth roundtable was held in Brussels in collaboration with APCO and Crystal Intelligence and with the support of the Web3 Foundation

The Brussels roundtable included a keynote from Peter Kerstens, Advisor on Technological Innovation and

Cybersecurity at the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union and Joachim Schwerin, Principal Economist at the European Commission.

This roundtable counted with expert contributions of Beata Sivak on white papers; Romena Urbonaite on supervision under MiCAR and Roeland Van der Stappen on reverse solicitation.

This report aims to consolidate the insights from these discussions. It is important to note that the perspectives and conclusions presented herein represent the collective understanding of the topics discussed and do not reflect the individual positions of any participants or the respective rapporteur.



## 1. Disclosures & Whitepapers

The topic of disclosures and whitepapers under MiCA, presented by Beata Sivak, Government Relations & Policy Head, EMEA at Kraken, focused on the various challenges the industry faces regarding the scope, timelines, and liabilities attached to these requirements. MiCA outlines specific disclosure requirements related to crypto-assets, including environmental impacts (Article 66(5)) and more comprehensive whitepaper requirements (Article 6). The key issues highlighted were:

1. **Scope:** While the scope is clear for stablecoins, questions arise regarding decentralised assets and assets with no issuer. There is a concern that multiple disclosures or whitepapers produced by different market players for a single asset could confuse customers.
2. **Timelines:** Assets listed before December 30, 2024, benefit from a three-year grandfathering period, but newly listed assets require an immediate whitepaper. This discrepancy could create a bottleneck. Additionally, environmental disclosures are required earlier than whitepapers, raising concerns about feasibility and data reliability.
3. **Liability:** The liability primarily lies with the preparer or writer of the whitepaper, raising doubts about the practicality of reusing whitepapers with written consent. MiCA allows third parties to prepare whitepapers but does not address the economics of such

arrangements, questioning the viability of a healthy vendor market.

The initial proposed solution was that the authorities could issue detailed guidance on the scope and make the process transparent to prevent duplication of whitepapers notified to NCAs and communicated to ESMA. Moreover, it was suggested that the environmental disclosures should be delayed until December 2027, aligning with the whitepaper mandate for all assets.

### Key Discussion Points:

During the roundtable discussion, it was emphasised that MiCA is crucial for bringing digital asset companies into a regulated environment, which is beneficial for standardising digital asset management within the real economy. Participants noted that while MiCA may not be the first to require disclosures, it demands a higher level of detail and complexity. Challenges in complying with new disclosure requirements were outlined, particularly given the complexity and volume of digital assets managed.

The need for detailed information in white papers for specific digital assets was emphasised, highlighting the requirement for platforms to disclose the environmental impact of each asset on their websites. This adds complexity to compliance efforts. Comprehensive whitepaper disclosures are mandatory by 2027, posing a significant preparatory burden despite the time allowance. Participants expressed the need for more

detailed guidance on the implementation timeline, especially concerning the preparation and submission of white papers and environmental disclosures. The responsibility for the contents of the white paper lies with the entity writing it, and this responsibility cannot be transferred to those who merely read or use the white paper. The liabilities associated with the white papers are strictly tied to their authors.

There was a common agreement on the need for additional regulatory guidance to address ambiguities in the scope and responsibilities associated with MiCA. Engaging more actively with academic and research institutions to develop a standardised methodology for assessing the environmental impact of cryptocurrencies was suggested. Participants also discussed pooling resources from various blockchain foundations to fund research into the environmental impact of digital assets, leading to a sustainable, industry-wide standard.

The Cambridge Energy Consumption Index for Blockchain was mentioned, which provides data on major cryptocurrencies but lacks coverage for the broader spectrum of digital assets.

Advocacy for a new, comprehensive index providing detailed environmental impact data for a wider array of cryptocurrencies, potentially spearheaded by European institutions, was discussed. The requirement for environmental impact disclosures is crucial but challenging due to the diverse nature and operational specifics of different cryptocurrencies. Concerns about inconsistencies between different national regulatory frameworks within the EU could lead to confusion and compliance difficulties for companies operating across borders.

Any crypto asset distributed within the EU needs to have a white paper, except for those without a formal issuer like Bitcoin. White papers must clearly state who is issuing the asset and what the asset is, with the issuer liable for the accuracy of the information provided. Discussions highlighted the need to integrate crypto regulations with broader environmental sustainability goals. The ongoing discussions aim to translate regulatory requirements into practical actions that companies can realistically implement.

### Primary call to action for Disclosures & Whitepapers:

The primary call to action from the Brussels roundtable involved:

- **Establish Clear and Detailed Definitions:** Regulators should setting standards for the depth and breadth of information required, ensuring that whitepapers provide comprehensive, relevant data without overwhelming customers with duplicative or conflicting information, specially for decentralised assets.
- **Develop a Liability Framework for Whitepapers:** Authorities should establish clear guidelines on the liability associated with whitepapers, distinguishing

between the responsibilities of the preparers and those who use the whitepapers. This framework should include mechanisms for accountability and recourse in cases of misinformation or omission, ensuring that the preparers are held responsible for the content.

- **Standardise Third-Party Whitepaper Preparation:** Regulators should create standards for third-party preparation of whitepapers, ensuring these documents meet the required accuracy, reliability, and comprehensiveness. This could include setting up a certification process for third-party vendors and creating a repository of approved providers to help CASPs easily access reliable whitepaper preparation services.
- **Implement a Streamlined Notification System:** Establish a system for the notification and dissemination of whitepapers to NCAs and ESMA, reducing duplication and ensuring that all relevant parties have access to the same information. This system should include a centralised database accessible to all stakeholders, providing a single source of truth for whitepaper information.

## 2. Supervision under MiCA: Significant Issuers and CASPs

The topic of supervision under MiCA, presented by Romena Urbonaite from Bitpanda, focused on the complexities and challenges of ensuring harmonised supervision across EU member states. MiCA introduces a dual supervision regime for issuers of significant ARTs and EMTs, involving both national and EU-level oversight. This regime aims to address systemic risks but also presents several practical and regulatory challenges, such as possible re-assessments..

The primary issue regarding supervision is the lack of harmonisation in supervision practices across EU member states. Factors contributing to this include varying capabilities of national competent authorities, differences in organisational structures, and diverse supervisory powers, different level of administrative penalties. The dual supervision regime for significant ARTs and EMTs aims to mitigate systemic risks, but the criteria for significance and the lack of reporting requirements for

CASPs and issuers introduce further complexities, such as requests for ad-hoc reporting, different national requirements)

### Key Discussion Points:

The roundtable discussion highlighted several key points regarding the implementation and effectiveness of MiCA's supervision framework. Participants emphasised the importance of supervisory convergence, with ESMA playing a crucial role in coordinating efforts among national authorities. There was a focus on the challenges and importance of supervisory convergence across the EU to maintain a harmonised regulatory environment. The discussion centred on how ESMA and national authorities might handle the supervision of significant CASPs. The potential shift towards more centralised EU-level supervision was debated, considering its effectiveness compared to national-level oversight.

The variability in supervision practices was noted, as EU competent authorities have diverse opinions, leading to different supervisory approaches. This variance affects the consistency of market regulations across the EU, allowing market participants to exploit the most favourable jurisdictions.

Moreover, MiCA's dual supervision model for significant ARTs and EMTs adds a layer of complexity. The roundtable discussed that the criteria for determining significance, such as having more than 15 million active users for CASPs, are not well-calibrated because they do not adequately reflect the systemic importance of the entities and could lead to inconsistent regulatory oversight. Participants noted that currently, there are no extra obligations for significant CASPs. However, they emphasised that if dual supervision is implemented for these entities, the regulation must be refined to ensure it only includes CASPs that are systemically important.

The lack of standardisation in applying supervisory measures and penalties across member states was also discussed. Participants pointed out that this can lead to inconsistent enforcement and varying degrees of compliance. There is a need for standardised supervisory measures and penalties across member states. The current lack of harmonisation can result in fragmented enforcement and varying degrees of compliance. The fragmented approach to assessing the reputation of qualifying shareholders and management, which varies significantly across member states, was also highlighted.

MiCA does not mandate regular reporting from issuers and CASPs, instead allowing national authorities to request information on an ad hoc basis. This could be burdensome for CASPs, who may be unprepared for unexpected information requests. The participants discussed the practical difficulties of implementing MiCA, particularly the varied interpretations and applications by different member states. This includes how significant market players are regulated and supervised. There was speculation about future revisions to MiCA, addressing changes that might be necessary as the digital asset market evolves and the regulatory landscape matures.

Concerns about the “passporting” system, which allows firms regulated in one member state to operate across the EU without needing further authorization, were discussed. The discussion covered the risks of regulatory arbitrage, where firms might choose to base operations in member states with more lenient regulatory environments. A proposal was made to harmonise sanctions and penalties across the EU to avoid discrepancies that could lead to uneven enforcement and compliance challenges. Issue of “reverse solicitation”, where services are marketed to clients in jurisdictions without the provider seeking local authorization, were addressed. This includes how different national regulations and practical enforcement of the requirements might affect the uniform application of MiCA.

The potential for regulatory arbitrage was discussed extensively, with concerns about how differing national interpretations of what constitutes a security versus a crypto asset could



impact the uniformity and effectiveness of MiCA. The conversation underscored a broad consensus on the need for more robust, coherent, and harmonised regulatory frameworks to manage the complexities of crypto markets effectively. Participants expressed a desire for clearer guidelines from ESMA to aid in consistent application and enforcement of MiCA across member states. There is an ongoing debate about the balance between national sovereignty in regulatory matters and the benefits of centralised EU-level supervision, highlighting the delicate interplay between local autonomy and EU-wide regulatory goals.

The primary call to action for supervision under MiCA emphasised the need to establish standardised supervisory practices and harmonise administrative penalties across all EU member states to ensure a level playing field. This includes developing specific criteria for assessing the reputation of qualifying shareholders and management bodies and implementing these standards through regulatory technical standards rather than guidelines. Practical cooperation among national competent authorities should be strengthened, with ESMA or EBA taking a leading role in ensuring supervisory convergence. This could include facilitating regular training and workshops to align supervisory practices and improve communication channels between national authorities. Introducing mandatory regular reporting requirements for issuers and CASPs to provide national competent authorities with consistent and timely information was recommended. This will help prevent the ad hoc nature of current information requests and ensure better preparedness among market participants.

The need to reevaluate and refine the criteria for determining significant CASPs to ensure that only systemically important entities are subject to dual supervision was also highlighted. This includes considering additional factors beyond the number of active users, such as market impact and transactional volume. The discussion suggested considering implementing a centralised supervision model for major global players and significant market participants to ensure consistent regulatory oversight and address potential systemic risks. This model should include clear guidelines on the roles and responsibilities of national and EU-level authorities. These actions aim to create a more coherent and effective supervisory framework under MiCA, fostering a stable and transparent crypto asset market within the EU.

The participants considered that the regulator should provide comprehensive guidance on the practical implementation of MiCA's supervisory provisions. This should cover the classification of crypto assets, the responsibilities of significant entities, and the specific requirements for compliance, helping to ensure a uniform application of the regulations. Moreover, the NCAs and regulatory authorities should develop mechanisms to prevent regulatory arbitrage, ensuring that entities cannot exploit discrepancies between national regulations. According to some of the participants this could include stricter passporting rules and closer monitoring of cross-border activities.

One of the discussions at the roundtable also addressed the issue of passporting a MiCA licence from one jurisdiction to another. In particular, the concern was

about how a certain asset might be classified differently in various jurisdictions—such as being considered a utility under MiCA in one country but a security under MiFID in another. The discussion emphasised the need for clarity in ensuring that once a MiCA licence is passported, the asset should maintain its classification across all jurisdictions to avoid regulatory confusion. It was noted that the regulator

should ensure that once a MiCA licence is passported, the classification of assets remains consistent across jurisdictions. This could involve providing clear guidelines on how assets should be treated when moving from one regulatory framework to another, particularly in cases where assets might be considered utilities in one country and securities in another.

### Primary Call to Action for Supervision under MiCA:

The primary calls to action from the Brussels roundtable on the topic of supervision under MiCA emphasise practical and concrete steps that regulators can take to ensure a harmonised and effective supervisory framework. The industry urges regulators to:

- **Harmonise Supervisory Practices:** Regulators should work towards fully harmonised supervision practices across all EU member states. This includes standardising administrative penalties, supervisory powers, and the interpretation of key regulatory provisions to prevent regulatory arbitrage and ensure a level playing field.
- **Establish Centralised Supervision for Systemically Important Entities:** Consider centralising supervision for systemically important CASPs and significant issuers of ARTs and EMTs at the EU level, possibly under the oversight of ESMA, EBA, or EIOPA. This would ensure more consistent and rigorous supervision of major market players.
- **Improve Criteria for Significance:** Refine and better calibrate the criteria for determining significant CASPs. This could involve incorporating additional factors such as market impact, transaction volumes, and interconnectedness with other financial systems, beyond just the number of active users.
- **Standardise Reporting Requirements:** Implement clear and consistent reporting requirements for CASPs and issuers across all member states. This should include regular, standardised reports rather than ad hoc information requests, to reduce the burden on entities and ensure timely and accurate data for regulatory oversight.

### 3. Reverse Solicitation Requirements

The discussion on reverse solicitation requirements under MiCA was led by Roeland Van der Stappen, Deputy

Director and Head of Policy and Advocacy at the Swiss Finance Council. The primary focus was on the necessity of ensuring that EU consumers engage with CASPs authorised in the EU. This necessity arises from the concern that

certain third-country CASPs may operate with limited or no regulation.

MiCA's stringent reverse solicitation requirements aim to prohibit third-country CASPs from soliciting clients in the EU. ESMA's task was to modernise the concept of marketing, considering technological advancements and the current methods of crypto asset promotion, such as social media and sponsorship deals. Consequently, ESMA's draft guidelines interpret solicitation broadly, potentially prohibiting brand-building marketing even when it is not directly linked to specific crypto assets or services. This interpretation could prevent well-regulated third-country financial institutions from responding to EU client requests for crypto asset products or services if they engage in brand marketing in the EU.

A significant concern discussed was the presumption that a website in an official EU language indicates solicitation of EU clients. This assumption poses challenges for third-country financial service providers with strong EU ties, such as those in Switzerland with shared language roots, as local activities could be misconstrued as marketing to EU customers.

During the roundtable, participants highlighted the benefits of strict reverse solicitation requirements for EU-authorized pure crypto firms, ensuring a level playing field against offshore firms. However, they debated whether adapting these requirements to allow continued brand marketing by third-country financial firms with multiple business lines would create an unfair advantage. The consensus was that establishing a clear nexus between marketing and a specific crypto asset service or product would help maintain a level playing field.

It was considered that this approach aligns with MiCA's objective of protecting EU consumers, recognizing that existing financial institutions capable of performing certain CASP activities are already subject to equivalent regulations. Moreover, it was noted by the participants that the NCAs and regulatory authorities should reevaluate the presumption that having a website in an EU official language indicates solicitation. It was highlighted that there should be clearer criteria to prevent local activities from being misinterpreted as marketing efforts targeting EU clients.

#### Primary calls to action for Reverse Solicitation Requirements:

The primary calls to action from the Brussels roundtable on reverse solicitation requirements under MiCA emphasise practical and concrete steps for regulators:

- **Establish a Clear Nexus for Marketing:** Regulators should establish a clear connection between brand marketing and specific crypto asset services or products. This ensures that brand marketing by firms with multiple business lines and brands not predominantly associated with crypto assets or services is not unfairly restricted.



- **Allow for Continued Brand Marketing:** Adapt the proposed reverse solicitation requirements to allow for brand marketing by third-country financial firms with diversified business lines, ensuring these firms can continue their brand-building efforts without being wrongly categorised as soliciting EU clients.

Thank you to all participants of the Brussels roundtable: Aaron Tait (Lighter), Alessandro Marco Patti, Beata Sivak (Kraken), Christian Stoll (CCRI), Delphine Forma (Solidus Labs), Dimitrios Psarrakis (GBBC), Francesco Paolo Patti, Georg Brameshuber (Validvent), Hedi (Crystal), Ilija Rilakovic (WALK Attorneys, Belgrade), Joachim Schwerin (EU Commission), Louise C. D. Hubert (Crystal) Maggie Parsons (Lighter), Marcin Zarakowski (BSV), Maria Riivari (Aave), Mariana de la Roche (Validvent and tBt), Miguel Angel Calero (Isertix), Nathalie Boyke (Web3 Foundation), Nina Siedler (siedler legal and tBt), Olena Zabrodska (1inch), Pelle Braendgaard (NotaBene), Peter Kerstens (EU Commission), Roeland van der Steppen (Swiss Council), Romena Urbonaite (Bitpanda), Tim Boeckmann (Vidos), Tommaso Astazi (APCO), Vladimir Sotirov, and Zalan Noszek (Crystal).