

MICAR Expert Roundtable Series in collaboration with the European Commission

Dublin Session

25th November 2024

Initiated by Mariana de la Roche W. and Dr. Nina-Luisa Siedler, the MiCAR Roundtable Expert Series continues to build legal clarity within the EU's evolving regulatory framework for crypto-assets under MiCAR.

The tenth roundtable in this series was hosted at the Trinity Business School on November 25th, 2024. We are deeply grateful to our partners and supporters who made this event possible: the European Commission, Crystal Intelligence, Zumo, Blockchain Ireland, Trinity Business School, as well as thinkBLOCKtank.

The Dublin session brought together key players from the regulatory and crypto sectors to explore essential topics related to MiCAR. This session focused specifically on specific monitoring and

reporting issues for CASPs. The discussions were led by contributions from Daniel Taylor (Zumo) who examined application and enforcement of CASP sustainability disclosure requirements as well as challenges and opportunities in the MiCA sustainability reporting template, and Tiburcio Sanz (Crystal Intelligence) who addressed interpretations inconsistencies between EU's Transfer of Funds Regulation and the Financial Action Task Force (FATF) recommendations.

This report consolidates the insights gathered during the Dublin discussions. It is essential to note that the perspectives and conclusions presented here represent the collective understanding of these topics and do not reflect the individual positions of any participants or rapporteurs.



1. Application and enforcement of CASP sustainability disclosure requirements

Daniel Taylor, Research & Policy Lead at Zumo, led an in-depth discussion on the challenges and operational implications of MiCA's incoming sustainability disclosure requirements for CASPs. These disclosures, mandated under Article 66(5) of MiCA, are designed to provide standardized sustainability metrics for crypto-assets serviced by CASPs, and represent a critical 'Day 1' compliance obligation. However, the industry lacks clarity on how NCAs will assess CASP preparedness for meeting these requirements and the enforcement mechanisms that will follow.

Participants examined ESMA's guidance, which does not foresee any delayed application of these sustainability disclosure requirements. Despite this, questions remain about how NCAs will integrate assessments of CASP sustainability readiness into authorization processes. It was noted that these challenges are compounded by transitional discrepancies: while sustainability disclosures are expected from Day 1, other MiCA obligations, such as white paper requirements for non-EMT/ART assets, benefit from a grace period extending to 2027. This creates an uneven compliance landscape, posing significant operational challenges for CASPs.

Discussion also addressed the divergent readiness levels among NCAs, many of which are still setting up processes for assessing CASP applications under MiCA. Concerns were raised about regulatory arbitrage, as CASPs may seek jurisdictions perceived to have less stringent or clearer requirements. Some participants flagged the significant operational burden on CASPs of meeting sustainability disclosure requirements without comprehensive guidance or aligned enforcement practices across member states.

The group further explored the role of ESMA in ensuring alignment and reducing inconsistencies. Participants emphasized the need for ESMA to issue more detailed guidance on sustainability disclosures, not only to CASPs but also to NCAs. Examples of potential guidance included clarifications on acceptable compliance solutions, integration of sustainability assessments into consultation and application templates, and alignment efforts to minimize enforcement disparities between jurisdictions.

It was also noted that regulators and CASPs would benefit from industry collaboration to identify best practices for sustainability assessments. These discussions could inform regulatory approaches and foster a more uniform understanding of how sustainability

disclosures should be implemented and enforced.

Participants emphasized the operational challenges posed by MiCA's sustainability disclosure requirements, particularly the misalignment between immediate obligations for CASP sustainability disclosures and the transitional grace periods granted for other MiCA mandates, such as white paper compliance for non-EMT/ART assets. This discrepancy places a significant operational burden on CASPs, requiring them to implement processes without the benefit of a phased introduction.

A key concern was the varying readiness levels of NCAs across member states. Participants highlighted the risk of regulatory arbitrage, where CASPs might seek jurisdictions perceived to have less stringent or better-defined requirements. These disparities could lead to uneven enforcement, undermining the harmonization objectives of MiCA.

The role of ESMA emerged as pivotal, with participants stressing the need for centralized, detailed guidance to ensure uniform application of sustainability requirements. This guidance should clarify acceptable compliance solutions and provide actionable steps for both CASPs and NCAs. ESMA's proactive engagement with member states is essential to fostering alignment and mitigating inconsistencies.

Finally, the discussion underscored the importance of collaboration between regulators, CASPs, and industry stakeholders. Participants agreed that sharing best practices and maintaining an open dialogue would not only enhance compliance strategies but also reduce friction in the implementation process, ensuring a more cohesive regulatory environment across the EU.

Primary Calls to Action for Application and enforcement of CASP sustainability disclosure requirements

The primary calls to action based on the discussions are:

- **Facilitate Industry Engagement:** NCAs should engage with industry stakeholders to gather best practices on assessing CASP sustainability requirements.
- **Provide Detailed Guidance:** ESMA must prioritize issuing comprehensive guidance to NCAs and CASPs, ensuring clear operational pathways for compliance with sustainability disclosure obligations.
- **Clarify Regulatory Priorities:** If sustainability requirements are to be treated as a pressing issue, this must be explicitly communicated by ESMA and NCAs to avoid uncertainty and inconsistent enforcement.

2. Interpretations inconsistencies between EU's and FATF Transfer of Funds Regulation

Tiburcio Sanz, representing Crystal Intelligence, delivered a comprehensive analysis on the inconsistencies between the EU's Transfer of Funds Regulation (TFR) and the Financial Action Task Force (FATF) recommendations, with a particular focus on Recommendation 15 / 16 and the FATF Guidance on Virtual Assets and VASPs. His discussion delved into the complexities of implementing the Travel Rule, customer due diligence

(CDD), and enhanced due diligence (EDD) for high-risk jurisdictions, highlighting the operational challenges that VASPs face when reconciling varying global and EU standards.

The FATF Travel Rule mandates that VASPs collect and exchange originator and beneficiary information for transfers exceeding \$1,000, aiming to combat money laundering and terrorist financing. However, this standard becomes intricate when applied alongside the EU's TFR, which extends the due diligence

requirements to smaller transactions and introduces different thresholds and expectations. The divergence between these frameworks often results in operational inefficiencies and jurisdictional inconsistencies, leaving VASPs to grapple with the practicalities of compliance while managing privacy concerns and interoperability issues.

The roundtable identified key operational challenges stemming from these regulatory overlaps, including counterparty due diligence and transaction monitoring obligations. For instance, while VASPs are required to monitor funds and ensure compliance, non-cooperation or delayed responses from counterparties often create significant roadblocks. This lack of timely interaction undermines the efficiency of the ecosystem and may lead to "jurisdiction shopping," where VASPs choose regulatory environments with less rigorous oversight.

An interesting discussion emerged around the potential for a "trust seal" or certification for compliant and cooperative VASPs, aiming to build transparency and incentivize good behavior within the sector. By publicly recognizing role models in compliance and cooperation,

the sector could foster better interoperability and trust, reducing friction in meeting regulatory requirements.

Participants emphasized that creating clear and standardized protocols for collaboration is essential for the effective implementation of both the TFR and FATF standards. This requires establishing minimum expectations for cooperation, defining timelines for counterparty responses, and building systems to address gaps in compliance.

In the broader context of MiCA, the session acknowledged the risk of divergent practices among member states, fueled by varying levels of enforcement and differing risk appetites. The group proposed enhanced collaboration and data sharing between VASPs and regulators to harmonize expectations and streamline compliance efforts across jurisdictions.

The participants underscored the urgent need for harmonized regulations and robust collaboration mechanisms to address the inconsistencies between the TFR and FATF frameworks, ensuring a unified approach to AML and CTF compliance in the crypto sector.

Primary Calls to Action for Interpretations Inconsistencies between EU's and FATF Transfer of Funds Regulation

The primary calls to action based on the discussions are:

- **Create a Sector-Wide Trust Seal:** Develop a certification system that recognizes VASPs for compliance excellence, transparency, and cooperation with counterparts, fostering trust and interoperability.
- **Establish Minimum Cooperation Standards:** VASPs should collaborate to define clear expectations for counterparty due diligence, response timelines, and data-sharing protocols, ensuring consistent practices across jurisdictions.
- **Annual Data Reporting:** Build a repository of compliance data for licensed VASPs and produce yearly reports for regulators to enhance transparency and identify trends, gaps, and best practices within the sector.
- **Regulator-Driven Alignment Efforts:** Regulators should facilitate alignment between the TFR and FATF standards by issuing detailed guidance on compliance overlaps and interoperability challenges.

3. Challenges and opportunities in the MiCA sustainability reporting template

Daniel Taylor, Research & Policy Lead at Zumo, facilitated a deep dive into the complexities of the MiCA sustainability reporting template, focusing on existing ambiguities and opportunities for refining the framework in future iterations of the regulation. The session explored both the operational challenges of complying with ESMA's draft RTS and potential directions for improving sustainability reporting

standards in the evolving cryptoasset landscape.

Participants began by addressing the ambiguities within the current reporting template. Notable issues include the interpretation of "best efforts" and acceptable methodological limits, which lack a unified pan-industry standard. While adherence to rigorous methodologies is essential, the absence of standardization leaves room for inconsistent practices. The discussion also highlighted technical uncertainties, such

as the treatment of multichain tokens, modular or layer 2 architectures, and distinctions between tokens and native base layer assets. These gaps underscore the need for ESMA to provide more precise guidance, especially given the growing prevalence of wrapped and bridged assets that complicate classification.

A central theme was the importance of clarifying the definition and assessment of "material changes" requiring updated disclosures. Participants suggested basing these assessments on quantifiable metrics, such as percentage deviations from initial baseline observations, to ensure consistent and objective reporting triggers.

Looking ahead, the roundtable considered how sustainability reporting could evolve under "MiCA 2.0." One proposition was the introduction of entity-based disclosures alongside asset-based ones.

This would allow CASPs to showcase tailored sustainability efforts and mitigation activities, providing a more holistic view of their environmental impact. Participants also discussed the convergence of crypto-specific regulations with broader financial sustainability frameworks like SFDR and CSRD, predicting a blending of governance and risk considerations from traditional finance with the metrics-heavy approach of MiCA.

The discussion concluded with a call for proportionality in future sustainability regulations, emphasizing the need for alignment with broader EU competitiveness goals. Participants stressed the importance of collaborative consultation between regulators and industry stakeholders to ensure that evolving regulations are both practical and effective.

Primary Calls to Action for Challenges and opportunities in the MiCA sustainability reporting template

Primary calls to action

- **Issue Supplementary Guidance:** ESMA should provide detailed, non-legislative guidance to address ambiguities in the reporting template, particularly around technical classifications and methodological standards.
- **Foster Industry-Regulator Collaboration:** Regulators should engage industry stakeholders in shaping future iterations of sustainability reporting, ensuring alignment with practical realities and harmonization across methodologies.
- **Enable Proportional Regulation:** Future sustainability requirements should balance regulatory rigor with the competitiveness of the EU's crypto and financial markets, drawing on broader EU sustainability frameworks to create cohesive, effective standards.

MiCAR Experts Roundtable Attendees

Participant	Organizations
Adam Funnel	Zumo
Amelie Arras	Zumo
Cameron Carr	Central Bank of Ireland (CBI)
Cara Hennessy	Provenance
Cathal Houlihan	Valentia Partners
Christopher Martin	KPMG Law
Daniel Taylor	Zumo
Sinead Meany	Hogan Lovells
Gerardine Stack	Kraken
Ian McLaughlin	FS Reg Solutions
Irina Gorbach	Crystal
Juilian Godsil	Irish Times
Lisa Gibbons	Blockleaders
Mai Santamaria	Treasury
Marina Louarn	Department of Finance
Michael O'Sullivan	Department of Finance - ireland
Nina-Luisa Siedler	siedler Legal
Robin Renwick	Trilateral Research
Ronan Gahan	StoneX
Shane Kelleher	William Fry
Tiburcio Saenz	Crystal