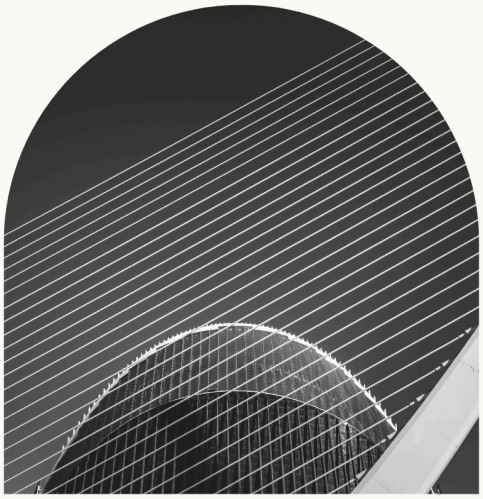
Digital Asset Markets *under MiCA*

WHERE THE RULES STAND, AND WHAT IS STILL OPEN

MiCA has closed the Wild West era of crypto in Europe with a framework modelled on MiFID providing legal certainty by creating a harmonised framework within the EU. The transitional period is over, the Commission is already reviewing the Regulation, and key questions remain open. For many businesses the practical question is now how to reach the market.



30 Dec 2024

MICA BECAME FULLY APPLICABLE ACROSS THE EU

1 July 2026

TRANSITIONAL PERIOD OVER: NO LICENCE, NO SERVICE

30 Sept 2026

THE COMMISSION'S MICA REVIEW CONSULTATION CLOSES

MiCA covers crypto-assets such as bitcoin or ether, e-money tokens referenced to a single currency, and asset-referenced tokens backed by a basket of assets. It does not cover financial instruments — shares, bonds and funds stay under MiFID — nor unique NFTs, central bank digital currencies such as the digital euro, or tokens with a very limited use, like a single retailer's loyalty scheme.

Issuers

Publish a white paper, notified to the supervisor but not approved by it. Exemptions for offers to qualified investors or to fewer than 150 persons per Member State.

Service providers

Exchanges, brokers, custodians, advisers and platforms need a CASP license: real EU presence, fit and proper management, conflict and AML policies.

Stablecoin issuers

A stricter regime. In Spain, e-money tokens bring in the Bank of Spain alongside the CNMV.

WHAT IS STILL OPEN

Four strategic questions *for market participants*

Reality moves faster than legislation. Entities usually share the same doubts before starting an authorisation process, relying on lawyers to help them with documentation and regulators. These are the ones clients raise most often.

Can we easily passport our CASP authorised crypto-asset-services across the EU?

Yes, a CASP authorised in one Member State can use MiCA's passport to provide authorised crypto-asset services across the EU without obtaining a separate CASP licence in every host Member State.

Does crypto lending and borrowing fall within MiCA's regulatory scope?

As of today, no. However, following the "EBA Response to the EC's Targeted Consultation on the Review of MiCA," dated September 24, 2026, the European Supervisor recommends that the European Commission, as part of the MiCA review, include borrowing and lending intermediation in the list of CASP services under MiCA; and establish specific obligations for CASPs to facilitate their customers' access to DeFi protocols, including through interfaces or products that provide exposure to such protocols.

Can tokenisation be used to raise finance without entering the traditional securities regime?

Sometimes, but tokenisation itself does not determine the regulatory regime. If the token represents a transferable security or another MiFID financial instrument, Article 2 MiCA excludes it from MiCA.

Does our authorised CASP need a PI or EMI license to operate with EMTs?

Yes, a CASP requires PSD2 authorisation or an appropriately authorised PSP partner, as its EMT activity also constitutes a payment service.

AGENTS AND WHITE LABELS

No agents. *White labels, in practice.*

Every other part of the financial system makes room for intermediaries. MiCA is the exception: there is currently no such thing as a 'CASP agent'. A firm cannot provide order reception/transmission, advice or other MiCA services simply because it acts on behalf of a CASP. In practice, white labelling is only possible as long as the third party remains outside the scope of the regulated service. ESMA notes the practice is not specifically regulated, but exists and is expected to grow.

DIFFERENCES

+

White labelling and agency are not equivalent concepts. White labelling primarily describes the commercial presentation of a service — including the brand, technology and user experience — whereas an agency regime determines, as a matter of regulatory law, whether a third party may carry out regulated activities on behalf of an authorised entity.

×

MiCA does not provide for an agent regime comparable to those available under MiFID II or PSD2. Consequently, an unauthorised third party cannot provide crypto-asset services on behalf of an authorised CASP merely by acting as its agent. This position was expressly confirmed by the European Commission in ESMA Q&A 2143.

> White labelling, on the other hand, is not prohibited by MiCA as a commercial or technological model and is already being used by authorised CASPs and other market participants to distribute crypto-asset services across the EU. This market case shall not surprise us, as in the EBA Report on White Labelling of October 2025, they already stated that: "It is anticipated that white labelling may also be used increasingly in the crypto-asset sector".

A CASE FOR GREATER HARMONISATION

From a Single Market perspective, it is difficult to justify why a fintech may act as an agent of a payment institution under PSD2, as a tied agent of an investment firm under MiFID II, or as an agent or distributor in the insurance sector, while a structurally similar arrangement is not available to CASPs under MiCA and instead depends on a far less certain distinction between outsourcing, white labelling and the direct provision of regulated services.

Greater harmonisation across EU financial services would allow the authorised entity to retain full regulatory responsibility and ensure customer protection, while providing a consistent framework for agency, embedded finance and white-labelling models, regardless of whether the underlying product is a payment service, financial instrument, banking product, insurance product or crypto-asset.

ROUTE TO MARKET

How to launch your crypto business model

Applying for a licence first is the default advice. Where the business model is still being proven, a staged route lets the client operate from day one.

01

Start under a white label

There are many authorised CASPs across the EU reaching white label agreements with entities located in the EU. Starting to operate from day one will help you learn the market, build volume and revenue and submit a more solid and comprehensive CASP application file before the regulator.

02

Apply for the CASP licence

Once the model is consolidated, preparing the application file is a more efficient and simpler process with a higher success of getting authorised.

03

Add e-money tokens

EMTs has a dual legal character, being treated as a electronic money as well as a crypto-asset: consequently, CASPs dealing with them also requires a PSP authorization from the Bank of Spain to operate with EMTs.

04

Offer the full service

Once authorised by the Bank of Spain, you can extend the payment services to transfers, so clients can move money in and out, not only buy and sell crypto-assets.

ALSO IN PLAY

Tokenisation *as financing*

Real estate, hotels, a patent with predictable income: assets that need large sums at once can be tokenised, so investors fund now and are repaid from future income. Whether MiCA or MiFID applies depends on the token, which is why the boundary question matters in every project.

WHERE WE HELP

A second *reading*

Even strong in-house teams want comfort: how the supervisor is likely to evaluate the feasibility or your business model, how an inspection would go, whether policies hold. We work alongside you on licence applications, policies and interpretation as the rules move.

TALK TO US

The experts *behind the insight*



Ainhoa Rodríguez del Valle

LEGAL & REGULATORY COMPLIANCE

More than 20 years in banking and financial law. Former Head of Compliance at Andbank España and Head of Legal at Solvia, where she sat on the Management Committee. Previously at Auren advising Banco Cooperativo and the Cajas Rurales, and in-house at Citibank.



Miguel Linares Polaino

FINANCIAL INSTITUTIONS, FINTECH & CRYPTO

More than 30 years in financial institutions law. Founder of Linares Abogados, previously at Cuatrecasas and Cremades & Calvo Sotelo. Recognised by Chambers and Partners as a Financial Institutions and FinTech expert since 2012.

AMBAR

Questions on licensing, white labels or tokenisation under MiCA?

GET IN TOUCH →

REFERENCES Regulation (EU) 2023/1114 (MiCA) · ESMA Guidelines on the qualification of crypto-assets as financial instruments · European Commission, targeted consultation on the review of MiCA, 20 May 2026 (deadline extended to 30 September 2026)