

Alert | Blockchain & Digital Assets



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New Italian Rules for Virtual Asset Service Providers

With new rules under Regulation (EU) 2023/1114 on Markets in Crypto-Assets (Markets in Crypto-Assets Regulation – MiCA), virtual asset service providers operating in Europe are looking for favorable jurisdictions to establish their EU operations and the opportunity to passport their MiCA license in all EU Member States.

The analysis of the national transitional regimes plays an important role in MiCA transition strategy, along with other factors like national competent authorities' general approach to crypto-assets and distributed ledger technology (DLT).

Italy has been one of the preferred jurisdictions for crypto companies to establish their European presence because the legal and regulatory framework facilitates creating crypto projects. The Italian government has also introduced an advanced legislation on issuing security tokens. Authorities have also launched regulatory sandboxes dedicated to DLT projects and are open to testing the application of DLT technology to payment and settlement systems.

MiCA may start a regulatory competition among EU Member States to attract DLT businesses, and Italy is positioned to be considered an option for international and EU players.

In this context, two regulations have been published in Italy concerning MiCA implementation and the reformation of the rules applicable to virtual asset service providers in accordance with MiCA itself:

Legislative Decree 5 September 2024 no. 129, published in the Official Gazette on 13 September 2024 (MiCA Decree), and Consob's Communication no. 1/24 of 12 September 2024 (prepared before the approval of the MiCA Decree and based on the last draft thereof).

This GT Alert summarizes the regulations' main features.

The MiCAR Decree (Legislative Decree no. 129/2024)

Highlights

The MiCA Decree introduces a comprehensive regulatory framework for crypto asset service providers (CASPs) operating in Italy, which will replace the existing rules on virtual asset service providers (VASPs).

There will be a 12-month transition period lasting until 30 December 2025 for VASPs that are regularly registered in Italy as of 27 December 2024 and will apply to VASPs that submit their MiCA application in Italy or another EU Member State by 30 June 2025.

In line with MiCA, the rules on asset-referenced tokens (ARTs) and e-money tokens (EMTs) apply beginning 30 June 2024. VASPs should assess whether the offer or use of stablecoins on their platforms is consistent with the MiCA rules on ARTs and EMTs.

The MiCA Decree identifies the Italian authorities that will be responsible for supervising CASPs in Italy and the supervisory powers they can consistently exercise under MiCA. It also identifies certain national discretions envisaged under the MiCA, including with respect to the Italian transitional regime.

From VASPs to CASPs – The Process

Under the Italian legislation currently in force, VASPs are subject to a light-touch supervisory regime based on a registration procedure with the Italian competent authority (*Organismo Agenti e Mediatori*) (OAM), which normally takes 15 days.

Following enrolment in the OAM register (the VASP Register), Italian VASPs can provide their services to Italian customers. They must comply with Italian anti-money laundering obligations as well as with quarterly OAM reporting obligations.

Pursuant to Art. 143 of MiCA, crypto-asset service providers that have provided their services according to the applicable legislation before 30 December 2024 may continue to do so until 1 July 2026, or until issuance or refusal of an authorisation pursuant to Art. 63 of MiCA, whichever is earlier. However, the same article states that Member States may decide not to apply the transitional regime, or to reduce its duration, if they determine that their national regulatory framework applicable before 30 December 2024 is less strict.

Aligning with the recommendations received from the European Securities and Markets Authority (ESMA), Italy exercised the option of reducing the transitional period under Art. 143(3) of MiCA.

As a result, after the final entry into force of MiCA (from 30 December 2024), all VASPs duly registered in the Italian OAM that register by 27 December 2024 may continue to operate for a period of six months – i.e., until 30 June 2025 – under the regulations currently in Legislative Decree no. 141 of 2010 and its implementing provisions. In addition, the same parties, if they apply for authorisation by 30 June 2025 as a CASP in Italy or in another Member State, may continue to operate pending authorisation issuance or rejection, and in any case no later than 30 December 2025.

According to the MiCA decree, persons who do not intend to apply as a CASP by 30 June 2025 must cease their Italian operations by that date, terminate existing contracts, and return the crypto-assets and funds belonging to customers, following instructions given by the customers themselves.

Companies registered in the VASP register must inform customers and post online how they intend to comply with MiCA. If they do not intend to apply for authorisation to operate as a CASP, they should disclose how they intend to end existing relationships. Companies should make these disclosures as soon as they define the plans and measures, but not later than 31 May 2025. They should also clarify that until they receive approval or stop operating, activities will continue to be subject to VASP regulations, not MiCA.

From VASPs to CASPs – The New Standards

The transition to MiCA may be a challenge for Italian VASPs, as the regulatory standards envisaged for CASPs are significantly higher than those currently applicable to Italian VASPs, particularly:

- CASPs shall be established in the form of joint stock company, partnership limited by shares, limited liability company, or cooperative company;
- the members of the CASP's management body must satisfy the same fit and proper requirements applicable to the members of the management body of Italian banks;
- any person owning a qualifying shareholding in an Italian CASP must satisfy the same good standing, honorability, and competency requirements as those applicable to the relevant shareholders of Italian investment firms;
- CASPs will be required to draft their financial statements in compliance with IAS/IFRS, appoint an external auditor according to the rules applicable to other regulated financial institutions, and comply with the Italian rules on whistleblowing.

The MiCA Decree also introduces a segregation regime for crypto-assets and funds held by CASPs while performing crypto-asset services and the related ancillary activities. These crypto-assets and funds are segregated by law from all other assets of the relevant CASPs, as well as from the assets of any other CASP customer. They cannot be subject to enforcement actions by CASP creditors (or in their interest) or by the creditors of the custodian (or any sub-custodian) (or in their interest). The customers' creditors can exercise their enforcement actions within the limits of the assets held by such customers. CASPs cannot use the crypto-assets and funds held on behalf of the customers for their own account.

CASPs Authorization Process

All applications to be authorized as CASPs must be submitted to the *Commissione Nazionale per le Società e la Borsa* (Consob), which regulates the Italian securities market. Consob will grant or deny authorization after consulting the Bank of Italy.

Investment firms, banks, asset managers, and other financial institutions wishing to provide crypto-asset services under MiCA must send their notifications to Consob or the Bank of Italy, as specified in the MiCA Decree.

Sanctions

Providing crypto-asset services without MiCA authorization, offering or negotiating ARTs or EMTs, or issuing EMTs in breach of the relevant MiCA requirements, constitute criminal offenses under the MiCA

Decree, punishable by imprisonment for a period between six months and four years, as well as a fine between EUR 2,066.00-10,329.00.

But as with other recent Italian financial regulations, other provisions of the MiCA Decree are also enforced by administrative sanctions that apply to both the legal entity and the members of its management body and personnel. In monetary terms, the administrative sanctions may be more severe than the criminal sanctions, punishable up to EUR 15 million or 15% of the entity's total annual turnover, whichever is higher.

Consob's 12 September 2024 Communication

In its communication on 12 September, Consob pointed operators to some of the relevant provisions pursuant to MiCA and the MiCA Decree.

In particular, Consob has invited VASPs to promptly and sufficiently in advance plan their adaptation to MiCA and to guarantee maximum transparency to their customers and the public regarding the plans and measures they will undertake to start offering services under MiCA or to promptly plan the orderly closure of existing relationships.

Consob has warned operators who intend to start providing services for crypto-assets that they must adopt organisational and procedural safeguards, including internal controls, to comply with the obligations to act honestly, correctly, and professionally in customers and potential crypto-asset holders' best interests. Consob also drew attention to the need to promptly prepare effective devices, crypto-assets systems, and procedures to prevent, identify, and report possible market abuse.

Due to the unique characteristics of the services related to crypto-assets, and considering their innovative content deriving from the applied technology, Consob recommended that operators provide potential customers with clear and correct information on the services provided and the crypto-assets processed, including marketing communications and subsequent communications to customers.

Consob also reminded operators that they will need to ensure that the personnel in charge of carrying out crypto-asset services have suitable knowledge, competencies, and adequate experience in the sector. In addition, operators should adopt effective procedures to identify, prevent, and manage conflicts of interest arising from the nature and type of crypto-asset services provided, while also considering the complexity of the adopted operating model.

With reference to managing crypto-asset trading platforms, Consob pointed out that interested operators must establish, maintain, and implement clear and transparent operating rules, as well as effective systems, procedures, and devices to ensure that trading systems comply with the provisions of Art. 76 of MiCA and the related technical standards ESMA developed.

To facilitate adaptation, Consob is available for preliminary discussions with interested parties about future applications for authorisation and notifications within Consob's remit, or provide clarifications on the information and documentation needed for the applications.

Key Takeaways

For Existing VASPs

While companies can continue following the transitional regime until 30 June 2025 and submit the CASP application by that date, they may not obtain authorisation by the 30 December 2025 deadline. If

companies submit MiCA applications in May or June 2025, Italian regulators may not complete the authorisation process by the deadline, given the time normally needed for regulators to review and process similar applications.

As a result, Italian VASPs should consider submitting their MiCA applications well before the 30 June 2025 deadline to minimize the risk of not being able to operate in Italy or having to suspend operations after 30 December 2025.

For New Players

Operators intending to enter the Italian market should ensure that their corporate structure, corporate bodies, and their activities as issuers and/or service providers align with the new rules.

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