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MiCAR: Purpose, Key Concepts & Timeline

Agneta Rumpa, Senior Associate
Riga

04.10.2023.



Significance of MiCAR (Markets in Crypto-Assets Regulation)

- First regional crypto-specific regulation
- uniform EU market rules for the crypto market, superseding local regimes
- Actual impact – time will tell

Purposes of MiCAR

to protect clients of crypto services	FTX 8 bn crash and many more...
to support market integrity and financial stability	Facebook's 2019 DIEM/Libra project backlash
to address EU legal framework fragmentation	compare e.g. Latvia & Estonia
to stimulate innovation	? 5 year legislative process
to facilitate CASP access to banking services	a significant issue e.g. in Latvia
to allow innovative and inclusive way of financing	especially now
address environmental concerns, etc.	energy consumption of mining

Subject matter of MiCAR



uniform requirements for crypto-asset

- (issuance and) offer to the public and trading on a trading platform
- and
- services' providers

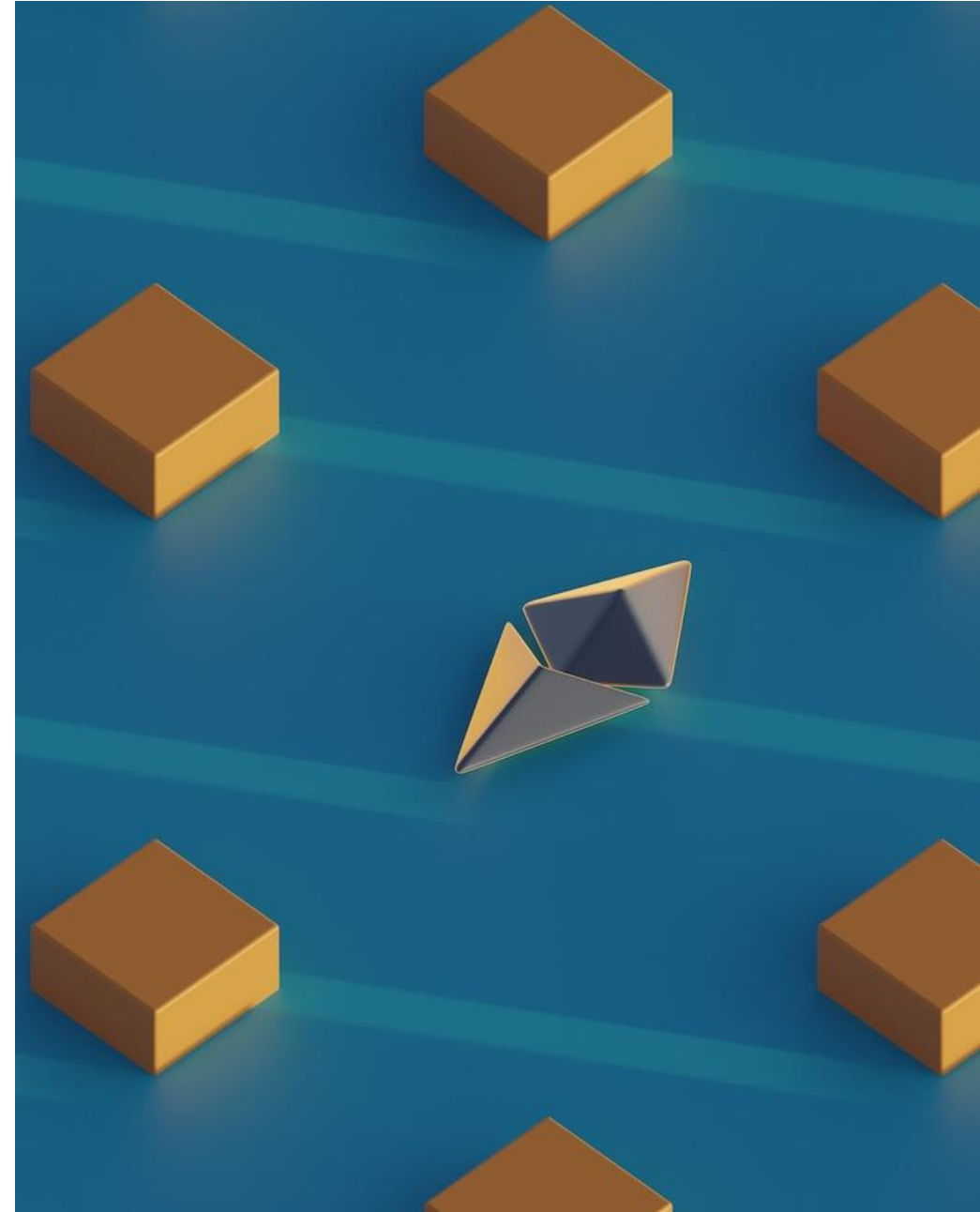
Subject matter of MiCAR

Particulars

- transparency and disclosure for crypto-asset issuance and offering
- authorisation, supervision, operation etc. requirements of crypto-asset service providers and issuers
- crypto-asset holders' protection requirements
- market abuse prevention measures

Key concepts

- crypto assets:
 - asset-referenced tokens
 - e-money tokens
 - other crypto-assets:
 - utility tokens
- distributed ledger technology (DLT)
- crypto asset services & crypto asset service providers (CASPs)



Key concepts

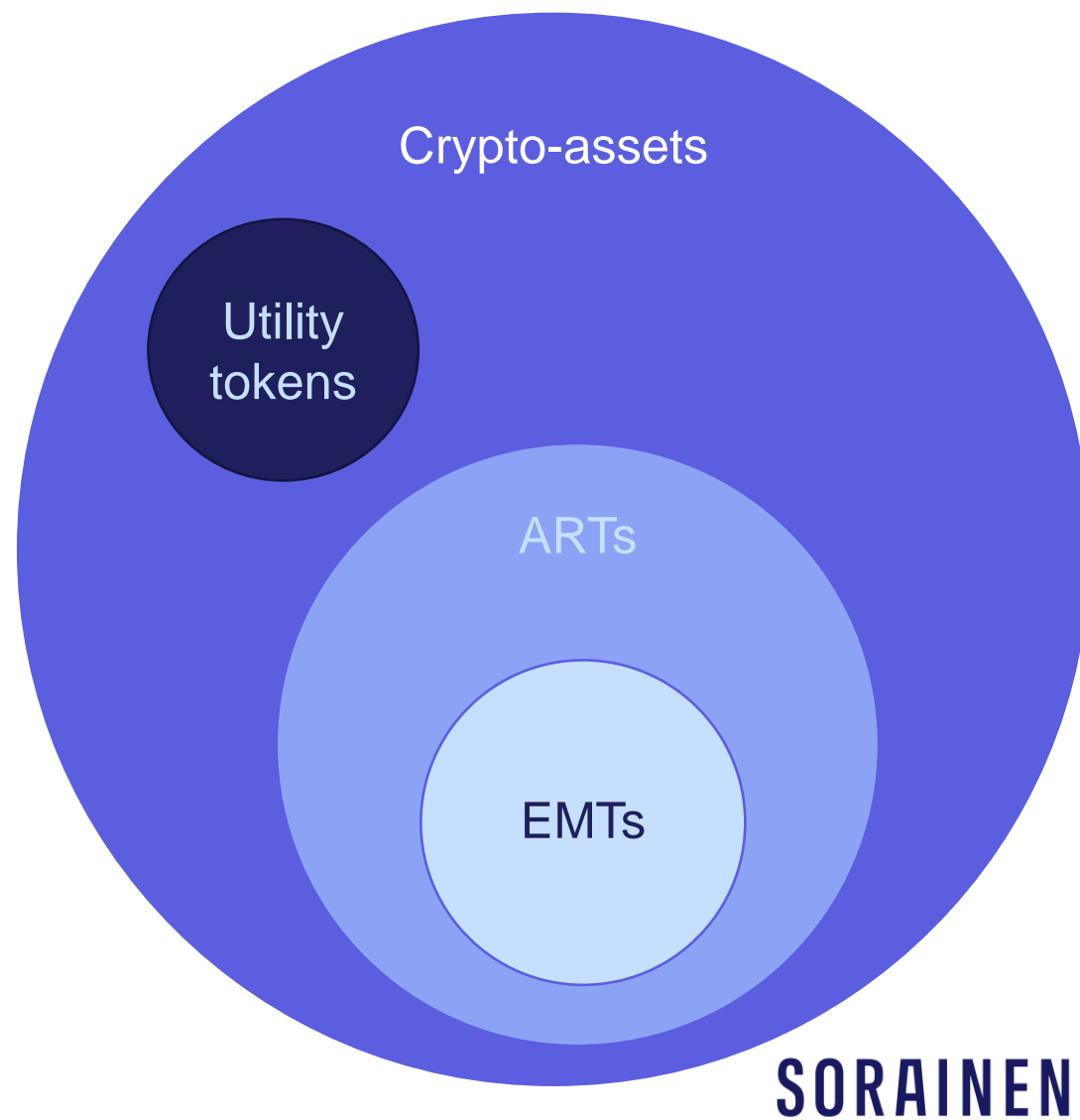
(I) Crypto-assets

Crypto-assets:

- 1) digital representation of value or rights
- 2) which may be transferred and stored electronically,
- 3) using DLT or similar technology

Types:

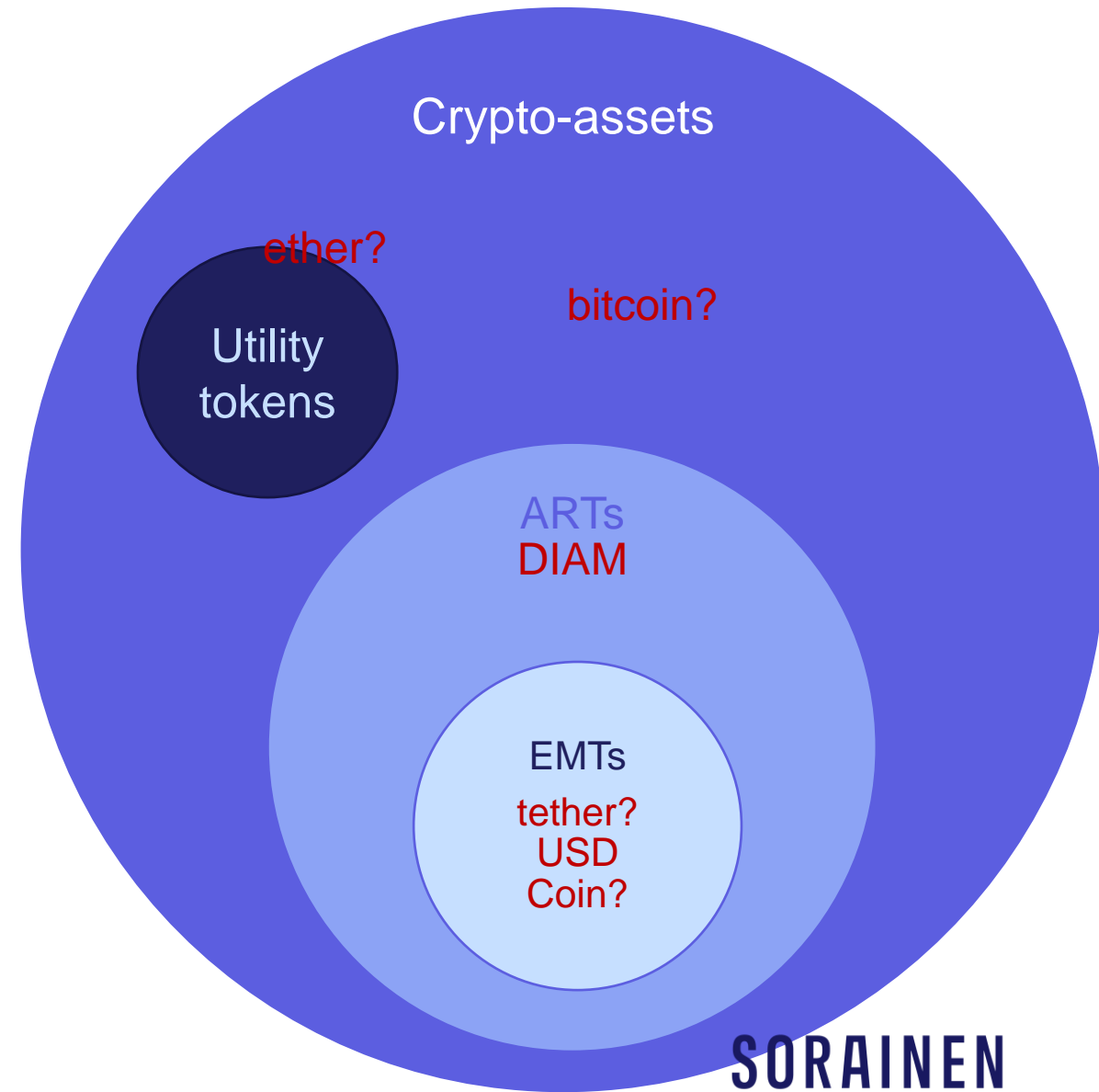
- (a) **e-money token (EMT)** – referring to a single official currency
- (b) **asset-referenced token (ART)** – referring to several currencies or other
- (c) all other – none of the above
 - (i) **utility tokens** – crypto-asset that is only intended to provide access to the issuer's good or service



Key concepts

(I) Crypto-assets

- Cryptocurrency?
- NOT the blockchain on which it is recorded (Bitcoin, Ethereum, etc.)



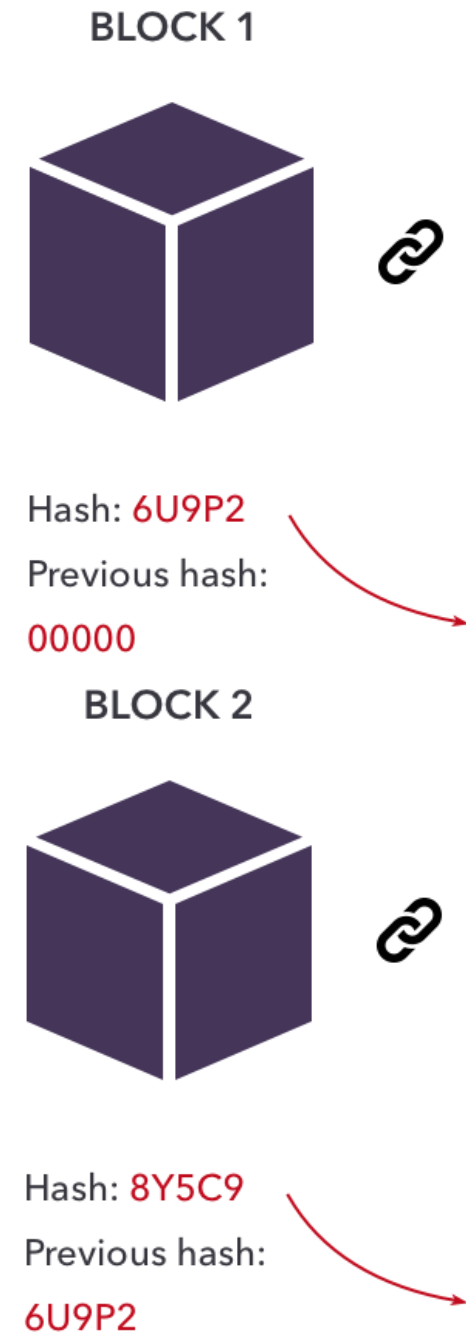
Key concepts

(II) Technology & DLT

MiCAR is technology-neutral and does not regulate technology itself. Yet:

- distributed ledger – information repository that keeps records of transactions across a set of DLT network nodes
- distributed ledger technology (DLT) - a technology that enables the operation and use of distributed ledger
- consensus mechanism – the rules by which a transaction is validated

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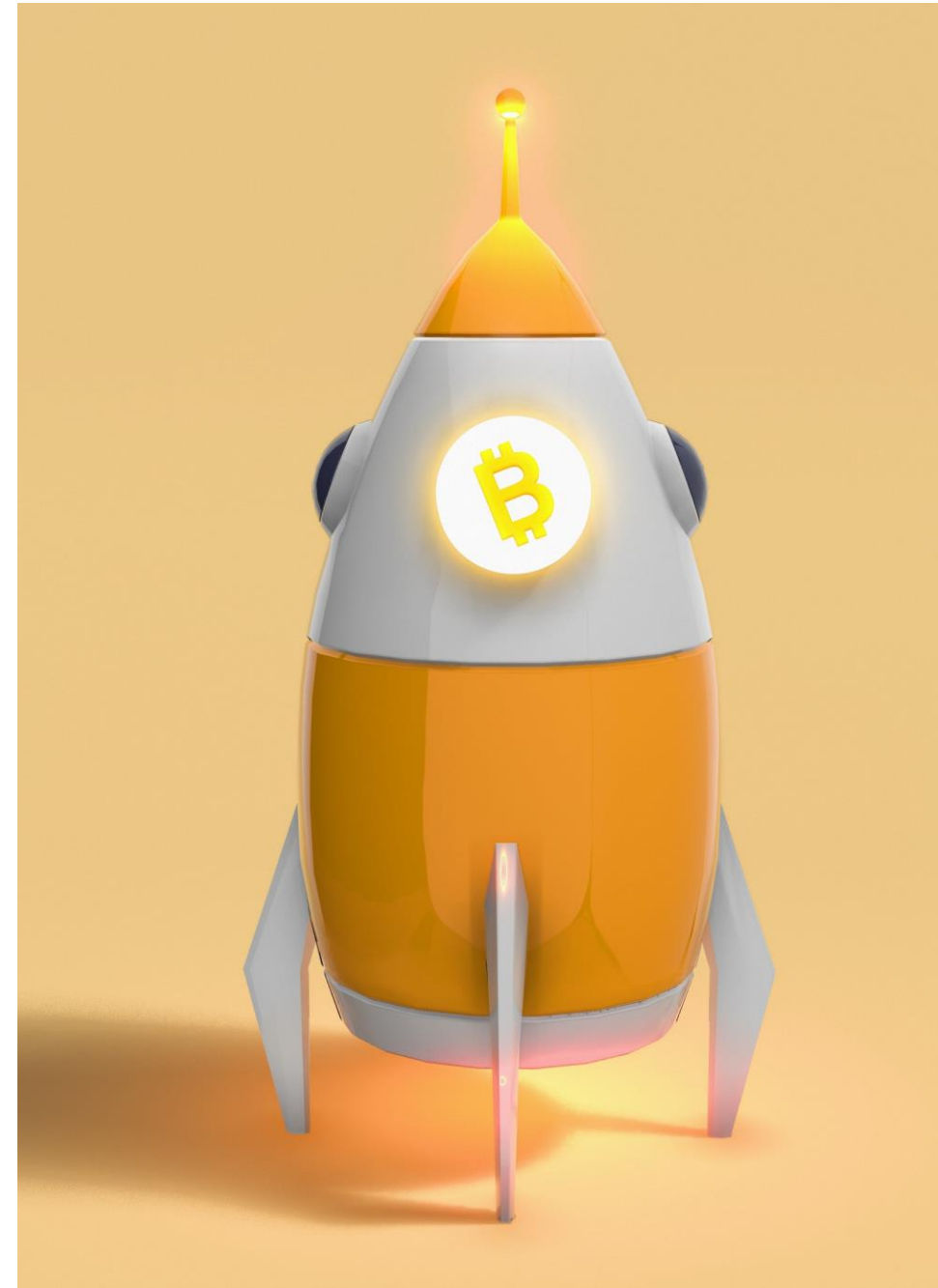
Key concepts & definitions:

(III) Services and providers

Crypto asset services – any of the following services involving crypto-assets:

- custody and administration
- operation of a trading platform
- exchange services fiat-to-crypto
- exchange services crypto-to-crypto
- execution of orders
- placing
- reception and transmission of orders
- providing advice
- portfolio management
- transfer services

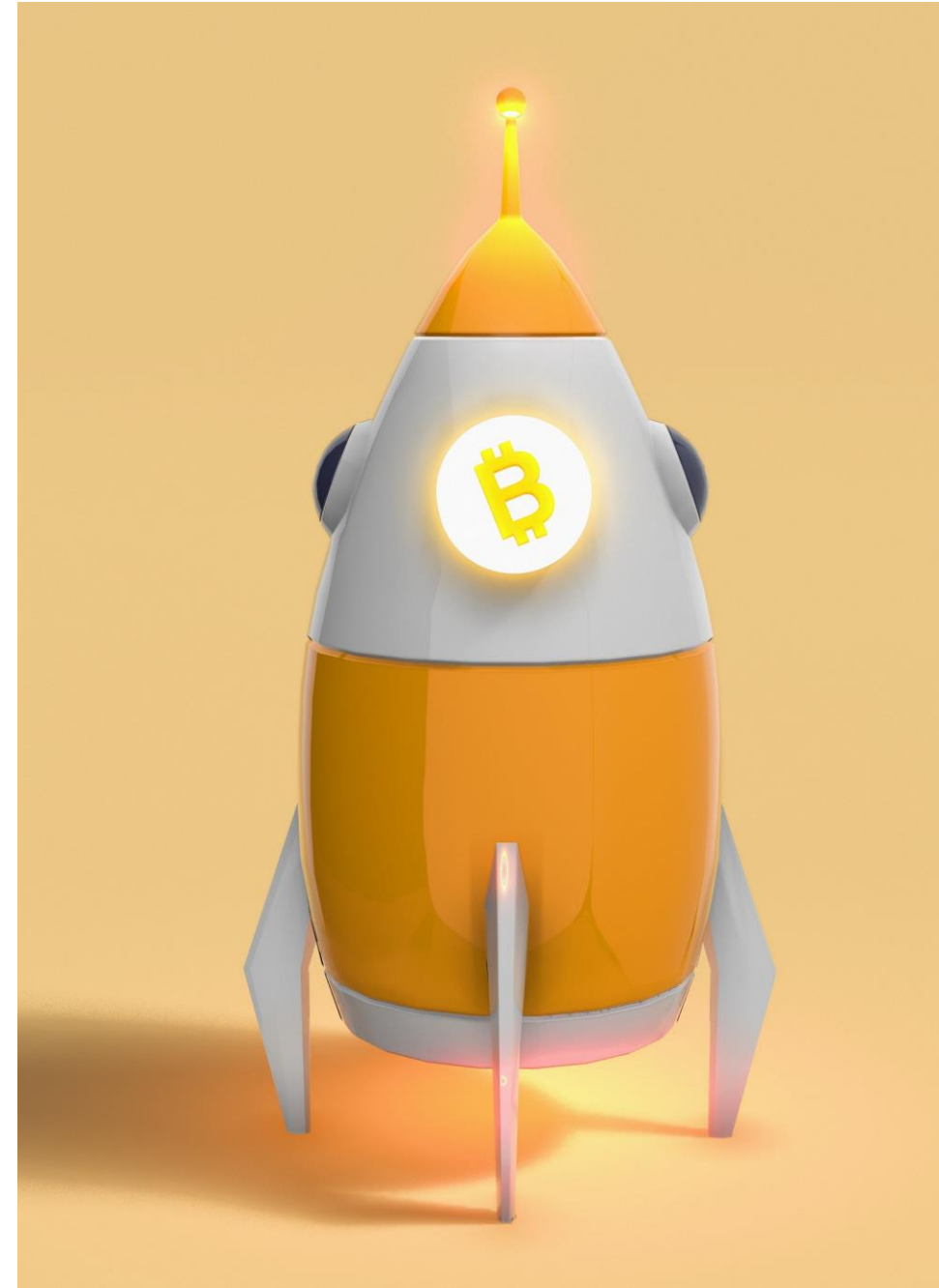
Crypto asset service provider (CASP) – person authorised to provide any of the above services on a professional basis



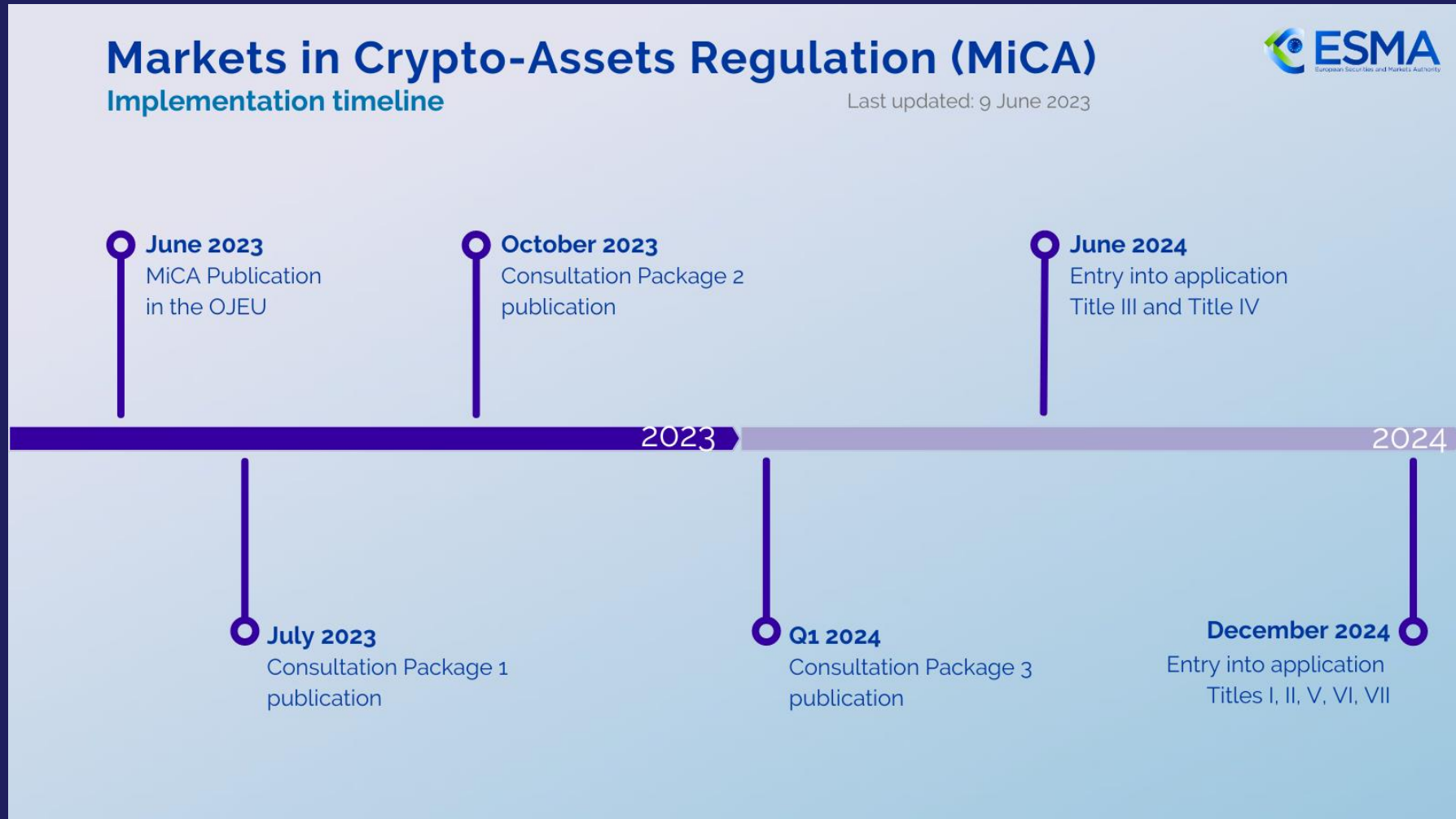
Key concepts & definitions:

(III) Services and providers

- Binance, Coinbase, formerly FTX, other – likely CASPs
- Authorisation & establishment in the EU



Timeline



Source: [ESMA](#)

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Timeline

Details

- Publication - 9 June 2023
- Entry into force
 - *29 June 2023* – limited provisions (re EBA, ESMA guidelines etc.)
 - *30 June 2024* – provisions on ARTs' & EMTs' issuance, offering & services
 - *30 December 2024* – the rest, including issuance, offering & services of other crypto-assets
 - *max 1 July 2026* – transition for institutions licenced under prior regimes
- Consultation packages:
 - [1: 1 July 2023](#)
 - 2: October 2023
 - 3: Q1 2024

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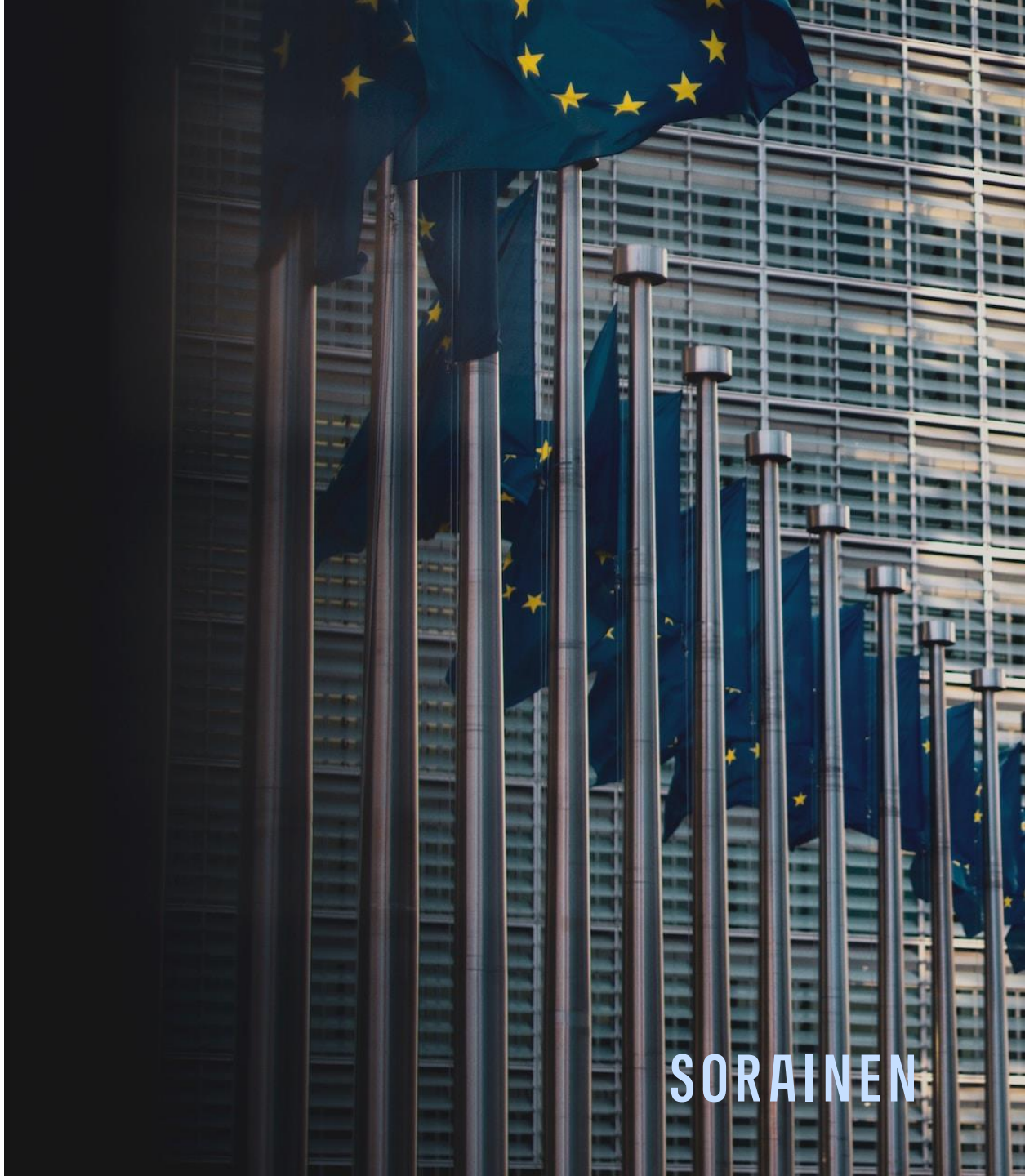
Types of issuers,
requirements for
offering and
admission to trading

Krista Ševerev, Associate
Tallinn, Estonia

04.10.2023

Applicability

Issuance of digital assets not regulated
per se – offer to the public or
admission to trading is.

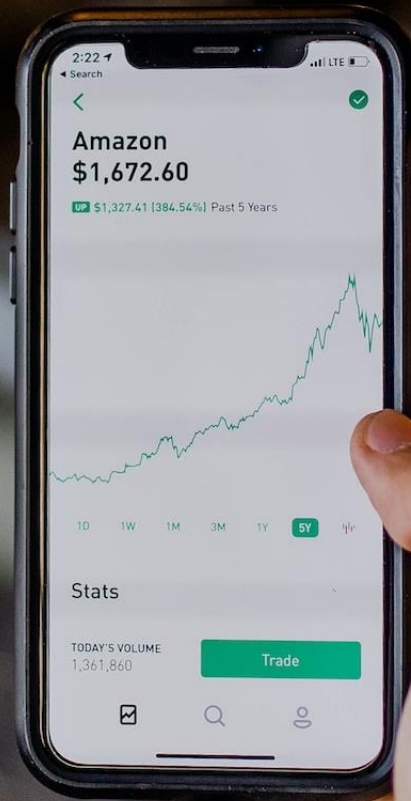


Offer to the public

„a **communication** to persons in **any form**, and **by any means**, presenting **sufficient information on the terms of the offer** and the crypto-assets to be offered *so as to enable prospective holders to decide whether to purchase those crypto-assets*“

MiCAR public offering structure:

- Offering asset-referenced tokens
- Offering e-money tokens
- Offering crypto-assets other than asset-referenced tokens or e-money tokens



Offering of crypto-assets other than asset-referenced tokens or e-money tokens

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Offer to the public: crypto-assets other than asset-referenced tokens or e-money tokens

*Not free where personal data is provided in exchange for the token or the offeror receives *any fees, commissions, monetary or non-monetary benefits in exchange*

Exemption does not apply where it is made known that there is an intention to seek admission to trading

Exemptions (not public offering):

- the crypto-asset is offered for free*
- the crypto-asset is automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions (staking)
- the offer concerns a utility token providing access to a good or service *that exists or is in operation*
- the holder of the crypto-asset has the right to use it only in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror

Offer to the public: crypto-assets other than asset-referenced tokens or e-money tokens

**Qualified investors defined in MiFID II, i.e. banks, investment firms, investment funds, large undertakings*

Exclusion does not apply where it is made known that there is an intention to seek admission to trading



Exclusions (private offering):

- an offer to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account
- over a period of 12 months, from the beginning of the offer, the total consideration is up to EUR 1 000 000, or the equivalent amount in another official currency or in crypto-assets
- an offer is addressed solely to qualified investors where the crypto-asset can only be held by such qualified investors*

Offer to the public: crypto-assets other than asset-referenced tokens or e-money tokens

Public vs private offering: the issuer must

	Private offering	Public offering
Be a legal person	x	x
Draft marketing communications	x	x
Publish marketing communications		x
Draw up and publish a crypto-asset white paper		x
Notify the local competent authority of the crypto-asset white paper		x
- notification accompanied by explanation re qualification		x
Act honestly, fairly and professionally	x	x
Communicate in a fair, clear and not misleading manner	x	x
Identify, prevent, manage and disclose any conflicts of interest that might arise	x	x
Maintain all of their systems and security access protocols in conformity with the appropriate Union standards (ESMA and EBA guidelines by 30 December 2024)	x	x

The public offering requirements apply to a person seeking to admit crypto-assets to trading.



Offering of asset-referenced tokens

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Offer to the public: asset-referenced tokens

Offer to the public made or admission to trading can be sought by issuer who is:

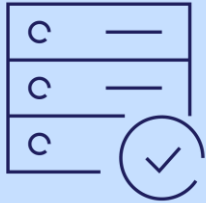
- legal person or other undertaking established in the Union and authorised to offer to the public or seek the admission to trading of asset-referenced tokens;
- a credit institution (MiCAR applies).

Exclusions (private offering):

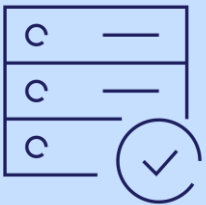
- over a period of 12 months, from the beginning of the offer, the total consideration is up to EUR 5 000 000, or the equivalent amount in another official currency or in crypto-assets;
- the offer is addressed solely to qualified investors and the asset-referenced token can only be held by such qualified investors.

Where exclusion applies, a requirement applies to draw up a crypto-asset white paper and notify that crypto-asset white paper and, upon request, any marketing communications, to the competent authority of their home Member State.

Offer to the public: asset-referenced tokens



Application for authorisation includes the white paper and the legal opinion.



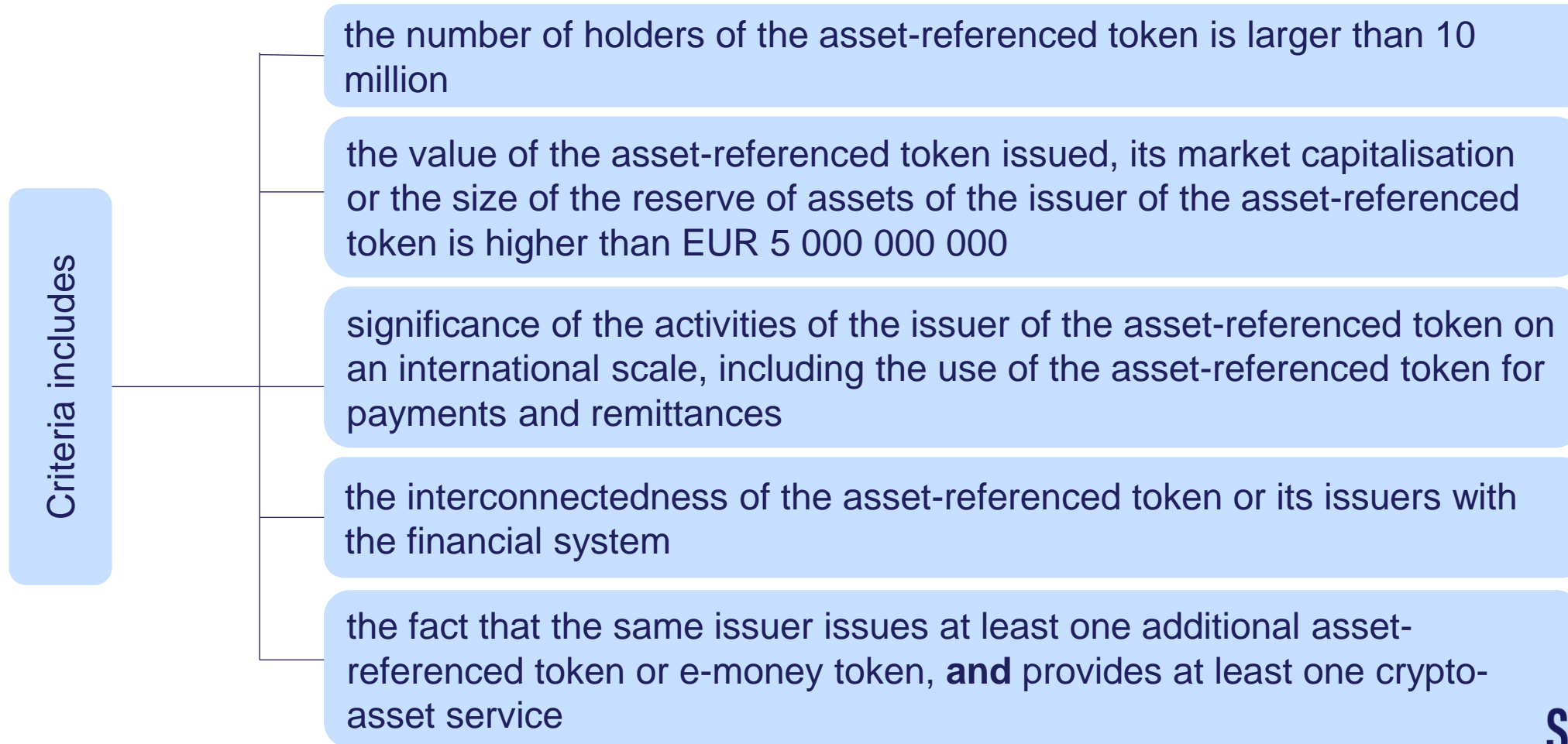
Credit institutions must only submit the white paper for approval together with the legal opinion.



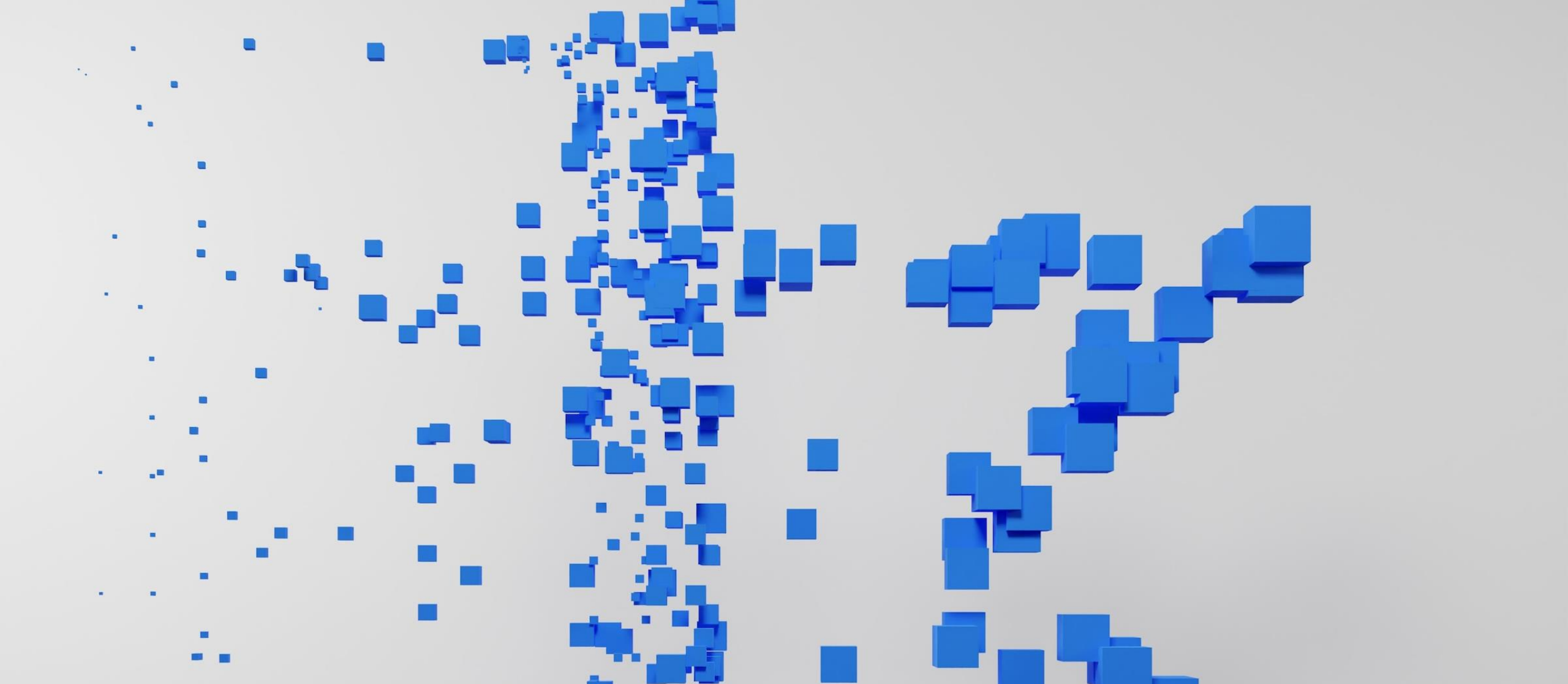
For the issuance of another asset-referenced token by the same issuer, authorisation must be obtained again but there is no need to submit repeating information.

Offer to the public: asset-referenced tokens

Significant asset-referenced tokens



At least three criteria must be met. Result: supervision by EBA and additional obligations.



Offering of e-money tokens

Offer to the public: e-money tokens

Offer to the public made or admission to trading can be sought by issuer who is:



- a credit institution or e-money institution
AND
- has notified and published a crypto-asset white paper

E-money tokens shall be deemed to be electronic money. An e-money token that references an official currency of a Member State shall be deemed to be offered to the public in the Union.

Certain requirements from the E-Money Directive (Directive 2009/110/EC) apply, including voluntary exemptions (*private offering*)

Obligations in respect of investment of funds received in exchange for e-money tokens apply.

Private offering subject to obligation to draw up and notify a white paper.

Offer to the public: Asset-referenced and e-money tokens

Significant tokens

As with asset-referenced tokens, certain e-money tokens may be considered as significant. The criteria and consequences applicable to significant asset-referenced tokens apply.

Other similarities

Right of redemption

E-money tokens and asset-referenced tokens must be redeemable at any time by the issuer

Prohibition to grant interest

CASPs are not allowed to grant interest in respect of asset-referenced or e-money tokens (wide interpretation of interest)

Offer to the public: white paper requirements

Requirements to the content of the white paper	“General” crypto-asset	Asset-referenced token	E-money token
Information about the issuer	X	X	X
Information about the offeror or person seeking admission to trading, if different from the issuer	X		
Information about the operator of the trading platform in cases where it draws up the crypto-asset white paper;	X		
Information about the crypto-asset project;	X		
Information about the offer to the public of the crypto-asset or its admission to trading;	X	X	X
Information about the crypto-asset;	X	X	X
Information on the rights and obligations attached to the crypto-asset;	X	X	X
Information on the underlying technology;	X	X	X
Information on the risks;	X	X	X
Information on the reserve of assets;		X	
Information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset.	X	X	X

The crypto-asset white paper shall contain a brief and non-technical summary and not contain any assertions as regards the future value of the crypto-assets.

Offer to the public: white paper requirements

The crypto-asset white paper shall contain a clear and unambiguous statement that:	“General” crypto-asset	Asset-referenced token
The crypto-asset may lose its value in part or in full;	x	x
The crypto-asset may not always be transferable;	x	x
The crypto-asset may not be liquid;	x	x
Where the offer to the public concerns a utility token, that utility token may not be exchangeable against the good or service promised in the crypto-asset white paper, especially in the case of a failure or discontinuation of the crypto-asset project;	x	
The crypto-asset is not covered by the investor compensation schemes under Directive 97/9/EC	x	x

Offer to the public: liability



- Information in the white paper which is not complete, fair or clear or that is misleading gives rise to liability by the offeror and the members of its administrative, management or supervisory body for any loss incurred due to that infringement
- Any contractual exclusion or limitation of civil liability is void

Burden of proof lies with the holder of the token.

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**Authorisations:
under MiCAR**

Hetti Lump
Tallinn, Estonia

04.10.2023

Types of authorisations:



Electronic money institution (EMD)



Credit institution (CRD)



Asset-reference token issuer (MiCAR)



Crypto asset service provider (MiCAR)



Investment firm (MiFID)

Key questions



- Provided by a person on a professional basis *versus* fully decentralised?
- Which crypto-assets?
- Which (crypto-asset) services?
- Any applicable exceptions?
- Grandfathering? Simplified procedure?
- Where to apply for an authorisation?
- When to apply for an authorisation?

Non-MiCAR crypto-assets

Financial instruments in DLT

Securitisation
positions in DLT

Deposits in
DLT

Funds in
DLT

Certain
insurance
products in
DLT

Certain
pension
products in
DLT

MiCAR crypto-assets

Asset referenced tokens

E-money tokens

Utility
tokens

Other crypto-assets

NFT-s?



Crypto-asset services under MiCAR

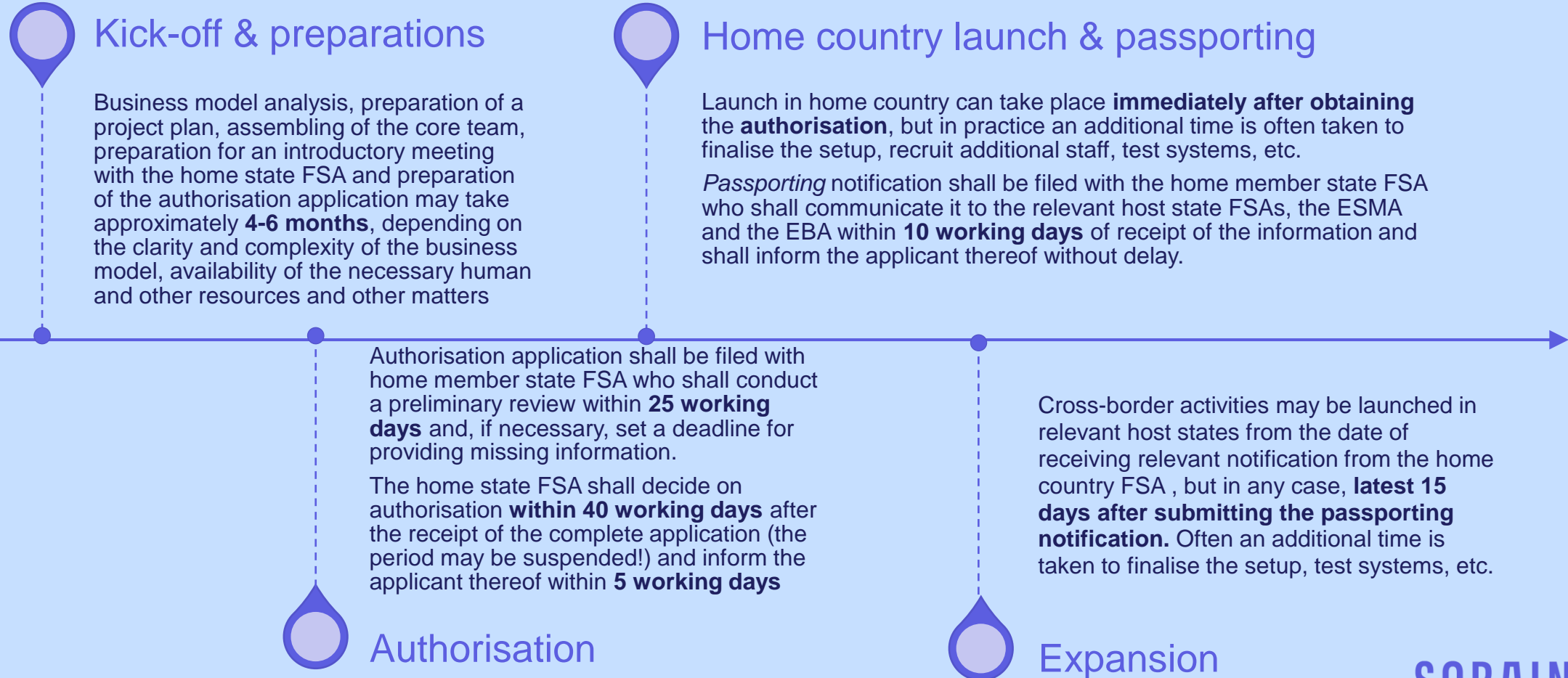
1. Custody and admin of crypto assets on behalf of third parties
2. Operation of trading platforms for crypto assets
3. Exchange of crypto assets for fiat currencies
4. Exchange of crypto assets for other crypto assets
5. Placing of crypto assets
6. Reception and transmission of orders for crypto-assets on behalf of third parties
7. Execution of orders for crypto assets on behalf of third parties
8. Providing transfer services for crypto-assets on behalf of clients
9. Providing advice on crypto assets
10. Providing portfolio management on crypto-assets

A vertical stack of several thick, white paper-bound volumes or folders, likely containing legal or regulatory documents, is shown on the left side of the slide. The pages are slightly aged and the spines are visible.

CASP authorisation: scope

1. Applicant
2. Crypto-asset services and clients
3. Markets, marketing strategy and market share
4. Prudential requirements, financial data and forecasts
5. Qualified shareholders, managers, key function holders
6. Auditor and internal auditor?
7. Risks profile, appetite and management
8. Organisational structure, governance and internal control
9. Outsourcing arrangements
10. ICT systems and security arrangements (DORA!)
11. Segregation of assets and custody arrangements
12. Business continuity
13. Internal rules covering selected services and internal processes, including AML/CFT, conflicts of interest, complaints handling, outsourcing, accounting, etc
14. Trading platform operating rules (if relevant)

CASP authorisation: process overview



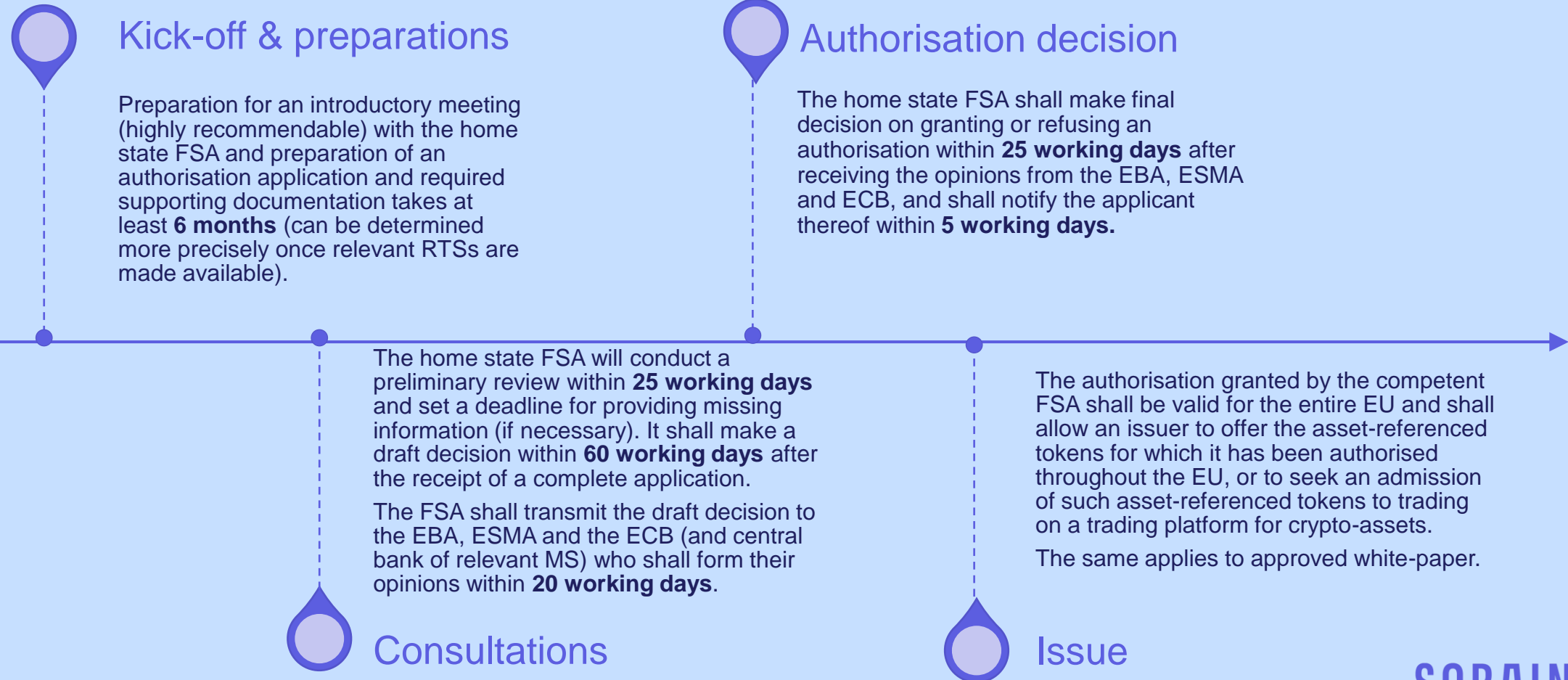


ART issuer authorisation: scope

1. Issuer
2. Qualified shareholders and managers
3. Auditor and internal auditor
4. Crypto-asset whitepaper and legal opinion
5. Programme of operations
6. Internal governance
7. Risk management
8. Internal control
9. Cooperation arrangements
10. Business continuity
11. Technical administration and security
12. Internal policies and procedures

To be specified by relevant RTS (not yet issued)

ART issuer authorisation: process overview



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MiCAR:
Conduct of business,
safeguarding,
conflict of interest,
complaints handling

Akvilė Jurkaitytė, Associate
Vilnius

04.10.2023

Key topics



- Complaints handling (Art. 31 and 71);
- Conflict of interest (Art. 32 and 72)
- Safeguarding of funds (Art. 70);
- Reserve of assets (Art. 36);
- Specific requirements for CASPs;
- Market integrity and abuse (Art. 86 - 92).

Complaints-handling procedure (Art. 31 and 71)

- Applicable to both ART Issuers and CASPs, notably, more stringent requirements for Issuers;
- Free of charge;
- Template for filing complaints must be provided to clients;
- Keeping the record of complaints;
- Draft RTS is already provided on 12 July 2023 by ESMA and EBA.



Identification, prevention, management and disclosure of conflicts of interest (Art. 32 and 72)

- Applicable to both Issuers and CASPs;
- The policy should cover the conflicts between issuers and CASPs and specific list of subject OR two or more clients whose mutual interests conflict;
- General nature and sources of conflicts of interests, including the steps to mitigate them must be published on their website;
- The policy must be reviewed at least annually;
- Draft RTS is already provided on 12 July 2023.

Reserve of assets for issuers of asset-referenced token (ART) (Art. 36)

- Legally and operationally segregated from issuers' estate;
- Legally and operationally segregated from the reserve of assets of other ART;
- In case of two ARTs, the pools of reserve of assets to be maintained separately;
- Policy of the stabilisation mechanism of ART;
- Independent audit every six months;
- Reserve of assets of ARTs can invest part of the pool;
- EBA will have to draft the regulatory technical standards (RTS) for the reserve of assets and submit to the European Commission by 30 June 2024.

Safekeeping of clients' crypto-assets and funds (Art. 70)

- Applicable to CASPs;
- By the end of the business day following the day on which clients' funds other than e-money tokens were received, place those funds with a credit institution or central bank;
- Clients' funds other than e-money tokens must be held in an account separately identifiable from any accounts used to hold funds belonging to CASPs.



Specific requirements

<u>Providing custody and administration of crypto-assets on behalf of clients</u> (Art. 75)	Custody and administration agreement, custody policy, concluding balances, separation of funds, wind-down plan
<u>Operation of a trading platform for crypto-assets</u> (Art. 76)	<u>Transparent operating rules</u> , public prices, wind-down plan
<u>Exchange of crypto-assets for funds or other crypto-assets</u> (Art. 77)	Non-discriminatory commercial policy, price methodology publishing, wind-down plan
<u>Execution of orders for crypto-assets on behalf of clients</u> (Art. 78)	Execution policy, information disclosure requirements, wind-down plan
The <u>placing of crypto-assets</u> (Art. 79)	Stringent conflict of interest requirements, wind-down plan
<u>Reception and transmission of orders for crypto-assets on behalf of clients</u> (Art. 80)	Procedures on prompt and proper transmission
<u>Providing advice on crypto-assets and/or portfolio management</u> (Art. 81)	Policy on collection and assessment of all information, mandatory knowledge
<u>Providing transfer services for crypto-assets on behalf of clients</u> (Art. 82)	Relevant agreements with clients

Market Integrity and Abuse (Art. 86-92)

- Unlawful disclosure of inside information;
- Insider trading;
- Disruption or manipulation of crypto-assets.



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Scope of MiCAR &
interplay between
MiCAR and other
financial regulation

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Riga

04.10.2023



Excluded from scope

- Decentralised finance (DeFi)
- Central bank digital currencies
- Crypto-assets that are unique and not fungible with other crypto-assets (e.g. NFTs)
- Crypto assets that do not have any identifiable issuer (limited applicability)

Excluded from scope – other financial regulation

- Financial instruments
- Electronic money
- Deposits
- Funds
- Insurance products, pension products etc.



AML regulation and guidance – present

- EU

- 4th/5th AML Directives

Obligated entities:

- providers engaged in exchange services between virtual currencies and fiat currencies
- custodian wallet providers

‘virtual currency’ means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically;

‘custodian wallet provider’ means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.

AML regulation - future



Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (Transfer of Funds Regulation)

- Entered into force on 30 June 2023 and will apply from 30 December 2024
- Part of the upcoming EU AML package

Transfer of Funds Regulation

Amendments to the
4th AML Directive

Crypto travel rule

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AML regulation – future/crypto travel rule

○ Transfer of Funds Regulation

The crypto-asset service provider of the originator should ensure that transfers of crypto-assets are accompanied by the following information:

On the originator:

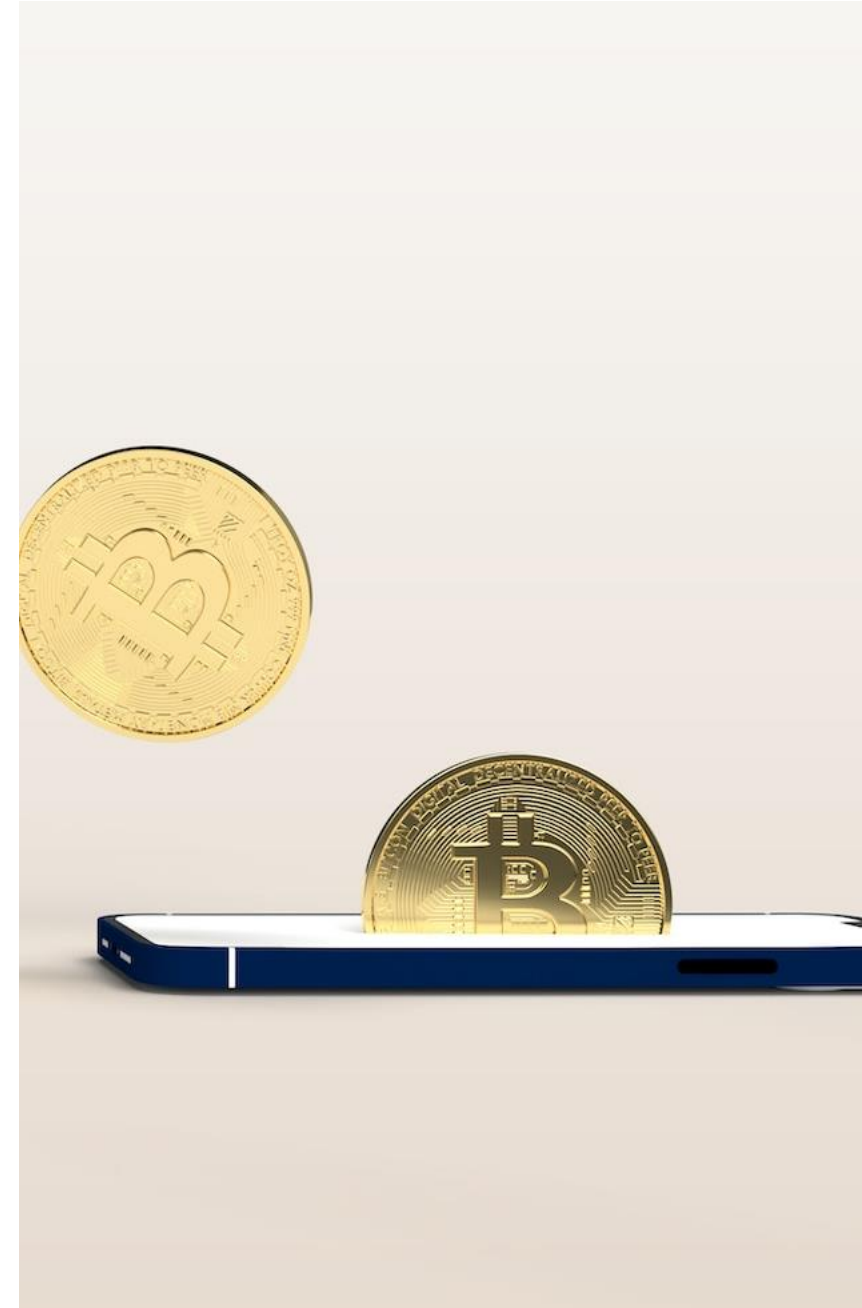
- name
- distributed ledger address or crypto-asset account number
- address
- personal document number and customer identification number
- LEI code (if any)

On the beneficiary:

- name
- distributed ledger address
- crypto-asset account number
- LEI code (if any)

AML regulation – future/crypto travel rule

The crypto-asset service provider of the beneficiary shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the information on the originator and the beneficiary is included in, or follows, the transfer or batch file transfer of crypto-assets.



AML regulation - future

- Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing
- Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849
- Part of the upcoming EU AML package
- Occasional transactions involving crypto-assets > EUR 1,000 = duty to conduct customer due diligence
- Enhanced due diligence measures regarding crypto-assets transactions involving a self-hosted address
- Prohibited:
 - correspondent relationships with unregistered or unlicensed entities providing crypto asset services
 - anonymous crypto-asset wallets as well as any account otherwise allowing for the anonymisation of the customer account holder
 - acceptance of anonymous transfers of crypto-assets > EUR 1,000 (limited to businesses)

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Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (**DORA**)

/Entered into force on 16 January 2023 and will apply from 17 January 2025/

DORA

Main areas of regulation:

- Information and communication technology (ICT) risk management
- ICT third-party risk management
- Reporting of major ICT-related incidents to the competent authorities
- Digital operational resilience testing
- EU-level oversight arrangement for critical ICT third-party service providers

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