

Consob/Bank of Italy Summary Note of 29 October 2024

Distribution of responsibilities between Consob and Banca d'Italia under MiCAR

1 Introduction

The responsibilities of Consob and Banca d'Italia with regard to crypto-assets are outlined in the decree implementing Regulation (EU) 2023/1114 on Markets in Crypto-assets (MiCAR).¹ The decree implementing Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets, also known as the Transfer of Funds Regulation recast, or 'TFR recast',² lays out further responsibilities for Banca d'Italia; the entry into force of these decrees will mark the completion of the national implementation process.³

For information purposes, the responsibilities of Consob and Banca d'Italia for applying the new rules are illustrated below and summarized in Table 1 at the end of the note.⁴

2 Implementation of MiCAR and TFR recast: the role of Consob and Banca d'Italia

In compliance with the implementing decrees, Consob and Banca d'Italia were appointed as the national competent authorities under MiCAR. Banca d'Italia will also be the competent authority for AML/CFT supervision. In particular, its mandate will include:

- **prudential supervision and crisis management**, with reference to issuers of asset-referenced tokens (ARTs), issuers of electronic money tokens (e-money tokens or EMTs) and crypto-asset service providers (CASPs);
- **supervising transparency, fair conduct and investor protection** in relation to EMT issuers;
- **supervising CASPs**, as well as banks and other financial intermediaries acting as issuers of ARTs and EMTs **for the purposes of anti-money laundering and countering the financing of terrorism**;
- **product intervention** on EMTs and – when necessary to ensure the stability of the whole or

¹ The MiCAR Regulation has introduced a harmonized framework in the European Union for the issuance and offering to the public of crypto-assets and the provision of services involving crypto-assets that are not related to financial instruments or services already regulated by existing EU legislation.

² The TFR recast: i) extended to crypto-assets the obligation (already in force for transactions in legal tender) to accompany transfers of funds with information on the originator and the beneficiary, in order to ensure their traceability and detect any suspicious transactions; ii) amended the fourth Anti-Money Laundering Directive (AMLD4) to include CASPs as financial intermediaries and thus subject them to the enhanced anti-money laundering and counter-terrorist financing (AML/CFT) control requirements established for this category of obliged entities.

³ The decree implementing MiCAR (Legislative Decree 129/2024) was published in the Official Journal of the Italian Republic on 13 September 2024, and entered into force the next day (see Article 48 of the Decree); the TFR recast should be fully implemented by December 2024.

⁴ Banca d'Italia already outlined its responsibilities in its [Communication of 22 July 2024](#) on the characteristics of the different types of crypto-assets and enabling technologies and their suitability, or not, to perform a payment function, and in its [operational instructions published on 13 September 2024](#) for entities intending to issue EMTs or ARTs.

part of the financial system – on ARTs and crypto-assets other than EMTs and ARTs.⁵

The same implementing rules make Consob the competent authority for:

- **supervising transparency, fair conduct, orderly trading and investor protection** in relation to ART issuers and CASPs;
- **supervising the offering to the public and admission to trading** of crypto-assets other than ARTs and EMTs;
- **product intervention** on ARTs and crypto-assets other than ARTs and EMTs, when necessary to ensure investor protection, orderly trading and the integrity of crypto-asset markets; and
- **preventing and prohibiting market abuse** involving crypto-assets.

This is without prejudice to the exclusive powers of Banca d'Italia concerning the oversight of the payment system, which it exercises both as a member of the Eurosystem and at national level pursuant to Article 146 of the Consolidated Law on Banking (TUB).

2.1. Supervision of ART issuers

Banca d'Italia: i) receives notifications from banks and class 1 investment firms for the issuance, offering to the public and seeking of admission to trading of ARTs; ii) approves, in agreement with Consob, the white papers⁶ and amendments to the white papers for ARTs issued by banks and class 1 investment firms; iii) authorizes, in agreement with Consob, the issuance, offering to the public and seeking of admission to trading of ARTs by specialized issuers, investment firms other than those belonging to class 1, electronic money institutions (EMIs) and payment institutions (PIs).

Consob: i) supervises compliance with the provisions on the content and publication of white papers; ii) approves Banca d'Italia's authorization proposal, for matters within its remit, with regard to the approval of white papers for ARTs issued by banks and class 1 investment firms and for the assessment of the information notified by these entities; iii) approves Banca d'Italia's authorization proposal, for matters within its remit, with regard to the authorization of specialized issuers of ARTs for the issuance, offering to the public and seeking of admission to trading of ARTs (and the approval of the white papers accompanying them).

With regard to these activities, compliance with the provisions set out in Title III of MiCAR is monitored by Banca d'Italia, with respect to risk mitigation, capital stability, and sound and prudent management, and by Consob with respect to transparency, fair conduct, orderly trading and the

⁵ It is worth noting that the offer to the public of crypto-assets other than ARTs and EMTs is not subject to an authorization and prudential regime; Consob receives the notifications for the white papers accompanying these crypto-assets and supervises the content of the white papers. It is not required to approve these documents and communications, but has the power to request amendments to them. The provision of services (e.g. custody, transfer, trading) relating to crypto-assets other than ARTs and EMTs is in any case covered by MiCAR.

⁶ A crypto-asset white paper for asset-referenced tokens or e-money tokens is an information document containing, among other things, disclosures on the issuer, the characteristics of the token (including the rights and obligations attached to it), the underlying technology and the associated risks. The content of the white papers is specified in the Regulation.

protection of ART holders.

For the **prudential purposes** set out above, Banca d'Italia monitors compliance with the MiCAR provisions⁷ that govern, in particular:

- a) capital adequacy and risk mitigation;
- b) corporate governance, general organizational requirements, administrative and accounting procedures, internal controls, outsourcing of operational functions, arrangements with third parties for the management, investment and custody of the reserve of assets, and going concern;
- c) the holding, composition, management, custody and investment of the reserve of assets, redemption policies and procedures, and the prohibition of granting interest;
- d) corporate representatives and shareholders; and
- e) recovery and redemption plans.

For the **purposes of transparency, fair conduct and investor protection** referred to above, Consob monitors compliance with the MiCAR provisions that govern, in particular:

- a) the content and publication of crypto-asset white papers;
- b) the obligation to act honestly, fairly and professionally in the best interest of ART holders, including having the related organizational and internal control procedures in place;
- c) marketing communications;
- d) the disclosure to ART holders;
- e) complaints-handling procedures; and
- f) the identification, prevention, management and disclosure of conflicts of interest.

Banca d'Italia is also the competent authority for classifying ARTs as significant (Articles 43 and 44 of MiCAR) and transmitting the relevant information to the EBA, the ECB and, where applicable, the central bank of the Member State concerned, if that State is not part of the Eurosystem. Where an asset-referenced token has been classified as significant, the ART issuer operates under the supervision of the EBA.

With regard to **the crisis management** framework, 'specialized' issuers of ARTs – just like issuers that are already supervised entities – are subject to compulsory liquidation and special administration. With reference to these procedures, Banca d'Italia exercises the ordinary powers conferred upon it by the TUB.

⁷ For specialized entities, these provisions are contained in MiCAR, whereas for financial intermediaries already subject to sectoral legislation on the matter (e.g. CRD/CRR for credit institutions) MiCAR provides for specific exemptions (e.g. from MiCAR provisions on own funds) and refers to the applicable sectoral legislation.

Given that **monitoring compliance with the provisions on transparency, fair conduct, orderly trading and investor protection** in relation to ART issuers falls within Consob's remit, any complaints regarding ART issuers are to be addressed to Consob. Banca d'Italia, therefore, has no investor protection powers in relation to the issuance of ARTs.

Its mandate includes **AML/CFT supervisory tasks and powers** exclusively over the banking and financial intermediaries authorized to issue ARTs, as well as monitoring compliance with the obligations laid down in primary and secondary legislation and the overall adequacy of the relevant organizational and control structures.⁸ Conversely, other issuers of ARTs ('specialized' issuers) are not subject to AML/CFT supervision, because they are not classified as 'obliged entities' under EU legislation.⁹ However, when these operators are authorized to issue ARTs, the competent authority (which in Italy is Banca d'Italia) assesses whether their business model exposes the issuer or the sector to serious risks of money laundering and terrorist financing and, if so, refuses authorization (Article 21(2) of MiCAR).

2.2. Supervision of EMT issuers

Banca d'Italia monitors compliance with the provisions on EMTs, as provided for by Title IV of MiCAR. In particular, Banca d'Italia receives notifications from banks and EMIs for the issuance, offering to the public and seeking of admission to trading of EMTs and the notification of the white papers accompanying the tokens, for which prior approval is not required.

Banca d'Italia monitors compliance with the **prudential supervisory** provisions applicable to issuers on the basis of the respective sectoral legislation and of Title IV of MiCAR (especially the provisions governing recovery and redemption plans and the investment of funds received in exchange for EMTs).

Where an EMT issued by an EMI has been classified as significant in accordance with Article 56 or 57 of MiCAR, the EBA supervises the EMT issuer's compliance with the provisions on recovery and redemption plans, as well as with the additional obligations for issuers of significant EMTs.¹⁰

As regards the **crisis management** framework for banks and EMIs, which are exclusively authorized to issue EMTs, they will both continue to be subject to compulsory liquidation and special administration under the TUB. Banca d'Italia exercises the powers provided for therein.

Banca d'Italia **monitors compliance with the provisions on transparency, fair conduct, and investor protection** in relation to EMT issuers laid out by MiCAR and by Directive 2009/110/EC on electronic money. Its mandate includes, in particular: i) the content, form and publication of white

⁸ These entities are therefore subject to AML requirements, especially with regard to the redemption phase, during which they interact with token holders and must put adequate AML/CFT safeguards in place (e.g. due diligence).

⁹ The decision not to apply AML requirements to issuers of ARTs other than banking and financial intermediaries (which are already subject to them in relation to their overall business) stems from the low risk of money laundering inherent in the mere issuance of ARTs, whose potential use for illicit purposes is only associated with their circulation, which is handled by CASPs (which are AML-supervised entities).

¹⁰ The additional obligations relate, among other things, to the composition, custody and investment of the reserve of assets.

papers; ii) marketing communications; and iii) the redeemability of e-money tokens. Any complaints relating to EMT issuers are to be addressed to Banca d'Italia, which may also exercise the powers provided for in Article 94 of MiCAR in relation to EMTs (e.g. it may request amendments or additions to the white papers or to marketing communications, or suspend or prohibit marketing communications).

Banca d'Italia exercises **AML/CFT supervisory tasks and powers** over banks and EMIs authorized to issue EMTs and monitors compliance with the requirements laid down in primary and secondary legislation and the overall adequacy of the relevant organizational and control structures.

2.3. Supervision of issuers of crypto-assets other than ARTs and EMTs

Consob monitors compliance with the provisions on crypto assets other than ARTs and EMTs, which are governed by Title II of MiCAR. In particular, Consob:

- a) receives **white paper notifications** relating to the offering to the public and seeking of admission to trading of crypto-assets other than ARTs and EMTs and **supervises the content, form and publication** of these papers, for which prior approval is not required;
- b) monitors compliance with the provisions on **transparency, fair conduct and investor protection** in relation to crypto-assets other than ARTs and EMTs, as provided for by MiCAR, including marketing communications;
- c) exercises the **supervisory and investigatory powers** provided for under Article 94 in order to fulfil the tasks set out in MiCAR.

Any complaints relating to transparency involving issuers of crypto-assets other than ARTs and EMTs and applicants for admission to trading and public offering of those crypto-assets are to be addressed to Consob.

Consob exercises the **enforcement activities provided for under MiCAR** in relation to the offer/admission to trading of crypto-assets other than ARTs and EMTs for which no prior white paper notification was received.

2.4 Supervision of CASPs

Crypto-asset services may be provided both by new entities specifically authorized under MiCAR (specialized CASPs, i.e. crypto-asset service providers that are not already subject to a special regime by virtue of their status as already supervised entities) and by financial intermediaries. In particular, financial intermediaries (already supervised) will be able to provide certain services simply by notifying the competent authority ('notifiable services'), while the provision of other services will require the latter's authorization ('non-notifiable services').¹¹

In this context, Consob: i) receives notifications from central securities depositories, investment firms other than those belonging to class 1, and operators of regulated markets that intend to provide 'notifiable services'; ii) authorizes, in consultation with Banca d'Italia, CASPs specializing in the

¹¹ Credit institutions may provide all crypto-asset services as 'notifiable services'; different rules apply to other categories of intermediaries (see Article 60 of MiCAR).

provision of crypto-asset services; iii) authorizes, in consultation with Banca d'Italia, investment firms other than those belonging to class 1 to provide 'non-notifiable' services; iv) issues opinions to Banca d'Italia on the authorization for EMIs to provide 'non-notifiable' services; and v) issues opinions to Banca d'Italia on the authorization for PIs to provide crypto-asset services.

Consob monitors compliance with the provisions of Title V of MiCAR, with regard to transparency, fair conduct, orderly trading and investor protection in respect of all entities that may provide crypto-asset services.¹² For the **purposes of transparency, fair conduct and investor protection** referred to above, Consob, in particular, monitors compliance with the provisions relating to:

- a) the obligation to act honestly, fairly and professionally in the best interests of clients;
- b) procedures, including those relating to internal control, for fair conduct and transparency in the provision of crypto-asset services, requirements for the staff in terms of knowledge, competence and experience, and record keeping;
- c) the identification, prevention, management and disclosure of conflicts of interest;
- d) complaints-handling procedures; and
- e) transparency and fair conduct obligations relating to specific services under Chapter 3 of Title V of MiCAR.

Any complaints regarding entities that may provide crypto-asset services are to be sent to Consob.

Consob is also solely responsible for monitoring compliance with the requirements laid down in Article 76 of MiCAR, relating to the **operation of trading platforms for** crypto-assets, regardless of the operator and including the way the platforms are set up and any outsourcing of operations (Article 17(5) of the decree implementing MiCAR).

Consob exercises the enforcement powers envisaged by MiCAR in relation to the provision of crypto-asset services, without the need for prior authorization, on the part of specialized CASPs.

Banca d'Italia: i) receives notifications from banks, class 1 investment firms, EMIs, and asset management companies that intend to provide 'notifiable' services; ii) authorizes, in consultation with Consob, EMIs to provide 'non-notifiable' services; iii) authorizes, in consultation with Consob, PIs to provide crypto-asset services; iv) issues opinions to Consob for the authorization of specialized CASPs; and v) issues opinions to Consob regarding the authorization for investment firms other than those belonging to class 1 to provide 'non-notifiable' services;

In relation to these activities, Banca d'Italia monitors compliance with the provisions of Title V of MiCAR in terms of risk mitigation, capital stability, and sound and prudent management.

For the **prudential purposes** set out above, Banca d'Italia monitors, in particular, compliance

¹² These powers are exercised by Consob also when the crypto-asset services offered relate to EMTs.

with the provisions¹³ relating to:

- a) capital adequacy and risk mitigation;
- b) corporate governance and general organizational, administrative and accounting requirements, internal controls, outsourcing of operational functions, business continuity, as well as measures for the holding and segregation of clients' crypto-assets and funds.
- c) corporate representatives and shareholders; and
- d) an orderly wind-down plan.

As regards the **crisis management framework** applicable to specialized CASPs, here too the application of compulsory liquidation and special administration is governed by the TUB and supervised by Banca d'Italia.

Banca d'Italia exercises **AML/CFT supervisory tasks and powers** and monitors compliance with the obligations laid down in primary and secondary legislation and the overall adequacy of the relevant organizational and control structures, both for specialized CASPs and for banking and financial intermediaries providing crypto-asset services.

2.5 Product intervention powers

Banca d'Italia exercises the powers set out in Article 105 of MiCAR with respect to EMTs.¹⁴

With reference to ARTs and crypto-assets other than ARTs and EMTs, Banca d'Italia and Consob exercise the powers provided for by Article 105 of MiCAR, after consulting with each other based on their respective mandates. In detail:

- Consob is the competent authority for ensuring investor protection and the orderly functioning and integrity of crypto-asset markets;
- Banca d'Italia is the competent authority for ensuring the stability of the whole or part of the financial system.

More specifically, when necessary to safeguard the stability of the whole or part of the financial system, Banca d'Italia may exercise these powers, after consulting with Consob, also in relation to ARTs and crypto-assets other than ARTs and EMTs. Consob, in consultation with Banca d'Italia, exercises its product intervention powers when necessary to ensure investor protection and the orderly functioning and integrity of crypto-asset markets.

¹³ For specialized entities, these provisions are contained in MiCAR, whereas for financial intermediaries already subject to sectoral legislation on the matter (e.g. CRD/CRR for credit institutions) MiCAR provides for specific exemptions (e.g. from MiCAR provisions on own funds) and refers to the applicable sectoral legislation.

¹⁴ The competent authority may prohibit the marketing, distribution or sale of certain crypto-assets or of crypto-assets with certain specified features; it may also prohibit certain kinds of activity or practice in connection with crypto-assets, as provided for by MiCAR.

2.6 Supervision of market abuse and disclosures

The decree implementing MiCAR gives Consob exclusive powers to prevent and detect market abuse in relation to crypto-assets; in this context, Consob is also competent in the event of a delay in the public disclosure of inside information and receives the documentation sent to it at its request, to demonstrate compliance with the conditions for delaying the disclosure.

Similarly, Consob is the competent authority for the supervision of disclosure to ART holders.

2.7 Oversight of the payment system

The decree implementing MiCAR expressly recognizes Banca d'Italia's exclusive powers relating to the oversight of the payment system, which it exercises both as a member of the Eurosystem and at national level pursuant to Article 146 of the TUB. The Eurosystem's PISA framework is also relevant. It extends the scope of oversight, alongside schemes and arrangements for traditional payment instruments, to token-based payment solutions, including stablecoins.

Table 1. Summary of the allocation of responsibilities for the activities governed by MiCAR¹⁵

	Offer to the public of crypto-assets other than ARTs or EMTs (Title II)	Issuance, offer to the public and seeking of admission to trading of ARTs (Title III)	Issuance, offer to the public and seeking of admission to trading of EMTs (Title IV)	Provision of crypto-asset services (Title V)
Market access	<ul style="list-style-type: none"> • Consob as the recipient of white papers (no formal approval is required) 	<ul style="list-style-type: none"> • Banca d'Italia as the recipient of notifications and Banca d'Italia in consultation with Consob for the assessment of the disclosures included in the notifications, within their respective remits, and the approval of the white papers (and any subsequent amendments) submitted by banks and class 1 investment firms; • Banca d'Italia, in consultation with Consob for the authorization of specialized ART issuers (and for approving the white papers accompanying the tokens); • Banca d'Italia, in consultation with Consob for the authorization of PIs, EMIs and investment firms other than those belonging to class 1 (and for approving the white papers accompanying the tokens); 	<ul style="list-style-type: none"> • Banca d'Italia as the recipient of notifications and white papers from banks and EMIs (no formal approval is required) 	<ul style="list-style-type: none"> • Banca d'Italia as the recipient of notifications from banks, class 1 investment firms, EMIs and asset management companies for the provision of notifiable services under Article 60; • Banca d'Italia, in consultation with Consob, for the authorization of EMIs for non-notifiable services under Article 60; • Banca d'Italia, in consultation with Consob, for the authorization of PIs to provide services; • Consob, in consultation with Banca d'Italia, for the authorization of specialized CASPs; • Consob, in consultation with Banca d'Italia, for the authorization of investment firms other than those belonging to class 1, for the provision of non-notifiable services under Article 60; • Consob as the recipient of notifications from investment firms other than those belonging to class 1, central securities depositories and operators of regulated markets for the provision of notifiable services under Article 60.
Prudential supervision	Not applicable	<ul style="list-style-type: none"> • Banca d'Italia • EBA for significant ARTs 	<ul style="list-style-type: none"> • Banca d'Italia • EBA only for the application of certain provisions applicable only to EMIs issuing significant EMTs (e.g. recovery and redemption plans) 	<ul style="list-style-type: none"> • Banca d'Italia

¹⁵ The decree implementing MiCAR recognizes Banca d'Italia's exclusive powers in the oversight of the payment system.

Supervision of transparency, fair conduct, and investor protection in relation to crypto-assets	• Consob	• Consob • EBA for significant ARTs	• Banca d'Italia	• Consob
AML/CFT supervision	Not applicable	• Banca d'Italia on banking and financial intermediaries issuing ARTs • Not applicable to specialized issuers, with the only exception of the assessment of the business model exposure to ML/TF risks	• Banca d'Italia	• Banca d'Italia
Exercise of product intervention powers	• Consob, in consultation with Banca d'Italia, for the powers relating to investor protection, and the orderly functioning and integrity of crypto-asset markets; • Banca d'Italia, in consultation with Consob, for the powers connected to safeguarding the stability of the financial system (or part of it).	• Consob, in consultation with Banca d'Italia, for the powers relating to investor protection, and the orderly functioning and integrity of crypto-asset markets; • Banca d'Italia, in consultation with Consob, for the powers connected to safeguarding the stability of the financial system (or part of it).	• Banca d'Italia	Not applicable
Exercise of powers to counter abusive practices	• Consob for the potential issuance/offering/admission to trading of crypto-assets other than ARTs and EMTs without a notified white paper			• Consob for the potential provision of crypto-asset services by specialized CASPs for which no authorization is required
Market abuse supervision during the market access and following phases (Supervision of the orderly conduct of trading)	• Consob	• Consob	• Consob	• Consob