

Application des six ensembles d'orientations européennes par l'AMF

Le 9 mai 2025, l'Autorité des marchés financiers (AMF) a annoncé l'application de six ensembles d'orientations relatives au règlement MiCA (Markets in Crypto-assets). Ces orientations élaborées par l'ESMA ainsi que d'autres autorités européennes de supervision, l'EBA et l'EIOPA, visent à harmoniser et renforcer le cadre réglementaire des services sur crypto-actifs et à renforcer la protection des investisseurs au sein de l'Union européenne. Elles précisent et complètent également les obligations pour les acteurs du secteur dans l'Union européenne. L'entrée en vigueur sera progressive à partir de mai et juin 2025.

1. Qualification des crypto-actifs comme instruments financiers

Ces orientations visent à clarifier la délimitation entre les crypto-actifs qui relèvent de la réglementation MiCA et ceux considérés comme des instruments financiers sous d'autres réglementations telles que, entre autres, MiFID II, AIFM ou OPCVM. Elles précisent les critères permettant de déterminer de quelles réglementations relèvent certains crypto-actifs et de faire la différence entre ceux entrant dans le champ de MiCA et ceux considérés comme des instruments financiers.

2. *Reverse solicitation* (ou sollicitation inversée)

Les orientations précisent également certains éléments relatifs à la *reverse solicitation* (ou sollicitation inversée) en définissant les conditions dans lesquelles une entreprise de pays tiers et donc en dehors de l'UE peut fournir des services sur crypto-actifs à des clients de l'UE sans agrément, à condition que la demande soit faite exclusivement à l'initiative du client et sans aucune sollicitation commerciale. Toute forme de démarchage commercial actif, y compris via des sites web, des réseaux sociaux ou des influenceurs, est considérée comme une sollicitation nécessitant un agrément sous la réglementation MiCA.

3. Transfert de crypto-actifs

L'objectif des orientations élaborées par les autorités européennes est également d'encadrer les services de transfert de crypto-actifs, y compris concernant des aspects clés tels que la protection des clients, les délais d'exécution, ou encore la gestion des rejets de transferts ainsi que la responsabilité des prestataires. Les obligations des prestataires de

services sur crypto-actifs (PSCA) lors des transferts pour le compte des clients sont, entre autres, la fourniture d'informations détaillées sur chaque transfert avant son exécution, telles que les parties impliquées, les délais, les coûts ou encore les spécificités technologiques. La gestion des rejets et/ou suspensions et la responsabilité du prestataire font également partie des obligations reprises dans les orientations. La transparence, l'irréversibilité des transferts et la communication sont des éléments clés de ces obligations.

4. Adéquation et relevé périodique

Parmi les éléments à retenir concernant ces orientations, il est également à noter qu'elles précisent les exigences en matière d'adéquation et de relevés périodiques pour les PSCA offrant des services de conseil ou de gestion de portefeuille en crypto-actifs, l'objectif étant de garantir une information transparente et standardisée aux clients. Les PSCA offrant ce type de services doivent collecter et analyser les informations détaillées de leurs clients, telles que l'expérience, les connaissances, la situation financière et les objectifs. Ces informations doivent également être mises à jour régulièrement. Parmi les obligations des PSCA, des relevés périodiques mentionnant les performances du portefeuille, les frais et les transactions réalisées doivent être fournis aux clients.

5. Protocoles d'accès de sécurité

Ces orientations imposent des exigences minimales en matière de sécurité informatique incluant une gouvernance adaptée, la gestion restreinte des accès aux systèmes, le contrôle et la gestion rigoureuse des clés cryptographiques et des accès physiques restreints avec un contrôle strict relatif aux infrastructures critiques. Ces exigences visant à prévenir les risques liés aux technologies de l'information s'appliquent aux offreurs et demandeurs d'admission à la négociation de crypto-actifs, hors stablecoins.

6. Modèles d'explications et tests de classification

Ces orientations élaborées conjointement par les autorités européennes de supervision introduisent également des modèles standardisés pour les explications accompagnant les *white papers* ou livres blancs de crypto-actifs, les avis juridiques relatifs aux jetons se référant à un ou des actifs, et un test normalisé de classification des crypto-actifs. L'objectif de ces outils est, entre autres, d'aider les émetteurs et les offreurs à déterminer si un crypto-actif est couvert par MiCA ou par d'autres réglementations.

En conclusion, ces orientations visent à l'harmonisation et au renforcement de la régulation des crypto-actifs en Europe et en France tout en visant à assurer une meilleure protection des investisseurs et à garantir l'intégrité du marché.

Sources :

<https://www.amf-france.org/fr/actualites-publications/actualites/crypto-actifs-lamf-applique-six-ensembles-dorientations-elaborees-par-les-autorites-europeennes-de>

Application of six sets of European guidelines by the AMF

On 9 May 2025, the Autorité des marchés financiers (AMF) announced the application of six sets of guidelines relating to the Markets in Crypto-assets (MiCA) Regulation. These guidelines, drawn up by ESMA and the other European supervisory authorities, EBA and EIOPA, aim to harmonise and strengthen the regulatory framework for crypto-asset services and enhance investor protection in the European Union. They also specify and complete the obligations for players in the sector in the European Union. They will come into force progressively from May and June 2025.

1. Qualification of crypto-assets as financial instruments

These guidelines aim to clarify the demarcation between crypto-assets that fall under MiCA regulations and those considered as financial instruments under other regulations such as, among others, MiFID II, AIFM or UCITS. They specify the criteria for determining which regulations certain crypto-assets fall under and for differentiating between those falling within the scope of MiCA and those considered to be financial instruments.

2. Reverse solicitation

The guidelines also specify some elements regarding the reverse solicitation by defining the conditions under which a company from a third country, and therefore outside the EU, may provide services on crypto-assets to customers in the EU without authorisation, provided that the request is made exclusively on the customer's initiative and without any commercial solicitation. Any form of active commercial canvassing, including via websites, social networks or influencers, is considered a solicitation requiring authorisation under MiCA regulation.

3. Transfer of crypto-assets

The aim of the guidelines drawn up by the European authorities is also to provide a framework for crypto-asset transfer services, including key aspects such as customer protection, execution times, the management of rejected transfers and the liability of service providers. The obligations of Crypto-Asset Service Providers (CASPs) when carrying

out transfers on behalf of customers include providing detailed information on each transfer before it is carried out, such as the parties involved, the timeframes, the costs and the technological specificities. The management of rejections and/or suspensions and the responsibility of the service provider are also among the obligations set out in the guidelines. Transparency, irreversibility of transfers and communication are key elements of these obligations.

4. Adequacy and periodic reporting

Among the elements to be retained concerning these guidelines, it should also be noted that they specify the requirements in terms of adequacy and periodic statements for CASPs offering advisory or portfolio management services in crypto-assets, the objective being to guarantee transparent and standardised information to clients. CASPs offering this type of service must collect and analyse detailed information about their clients, such as experience, knowledge, financial situation and objectives. This information must also be updated regularly. As part of their obligations, CASPs must provide clients with regular statements of portfolio performance, fees and transactions.

5. Security access protocols

These guidelines impose minimum requirements in terms of IT security, including appropriate governance, restricted management of access to systems, rigorous control and management of cryptographic keys and restricted physical access with strict control over critical infrastructures. These requirements aimed at preventing IT-related risks apply to providers of and applicants for admission to trading in crypto-assets, excluding stablecoins.

6. Explanatory models and classification tests

These guidelines, drawn up jointly by the European supervisory authorities, also introduce standardised templates for explanations accompanying crypto-asset white papers or white papers, legal opinions relating to tokens referring to one or more assets, and a standardised crypto-asset classification test. The purpose of these tools is, among other things, to help issuers and providers determine whether a crypto-asset is covered by MiCA or other regulations.

In conclusion, these guidelines aim to harmonise and strengthen the regulation of crypto-assets in Europe and France, while also aiming to provide better protection for investors and guarantee the integrity of the market.

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