

The Crypto Custody Agreement According to MiCAR

**What Must Crypto Custodians Mandatorily
Agree Upon With Their Customers?**

Introduction to MiCAR & Crypto Custody

- The custody and management of crypto assets for others is a regulated crypto asset service under MiCAR.
- This service can only be provided by companies that are authorized as crypto asset service providers.
- In addition to general requirements (e.g. sufficient regulatory initial capital, fit and proper managers, proper business organization), crypto custodians must also fulfill specific regulatory compliance obligations.
- An important specific requirement is the obligation to conclude a custody agreement with customers with the minimum content required under Article 75(1) of MiCAR.

Mandatory Content of Crypto Custody Agreements

MiCAR-compliant custody agreements must contain specific minimum information pursuant to Article 75(1) of MiCAR.

This includes the identity of the contracting parties and a description of the type of crypto service offered.

Contracts must also cover the means of communication, how customers authenticate and the applicable law.

Details on the custody strategy, the security systems used, as well as fees and costs are also crucial information.

Understanding the Custody Strategy in the Contract

MiCAR does not specify the exact details for the custody strategy that must be explicitly agreed with custody clients.

Crypto custody clients have the right to receive a summary of the custody strategy in electronic form from their custodians.

The development and implementation of a custody strategy is primarily a regulatory obligation for crypto custodians to demonstrate to the supervisory authorities.

It is not required to display the complete strategy in the contract. This is to avoid renegotiations due to changes. The contract should only contain objectives/guidelines, not specific technical measures or names.

Detailing of the Security Systems in the Contract

- Crypto custody agreements must include a description of the security systems used by the custodian.
- There is little room for negotiation regarding these details, as custodians will likely not give customers much leeway.
- The key information includes technologies for storing private keys, vulnerability testing/security audits, customer authentication mechanisms, and other measures to minimize the risk of loss.
- Information must also be provided on how crypto assets are segregated from the custodian's own holdings and protected from insolvency, without needing to name specific sub-custodians.

Key Insights

Regulated Service

Crypto custody under MiCAR is a highly regulated service that requires specific authorization and compliance with strict obligations.

Transparency through Contracts

Mandatory custody agreements are fundamental to ensuring transparency and they are outlining the core aspects of the service for customers.

Balanced Information

The contracts focus on providing summaries and general descriptions for complex elements like custody strategy and security systems, balancing customer information with operational flexibility.

Focus on Security

A significant emphasis is placed on robust security measures and the clear segregation of customer assets to minimize risks such as loss or insolvency.

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