

European CASP Supervision – Will ESMA Replace BaFin in MiCAR Supervision?

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MiCAR Regulatory Update

Introduction to Centralized CASP Supervision

MiCAR Impact

The Markets in Crypto-Assets Regulation (MiCAR) has made the supervision of crypto-asset service providers (CASPs) a daily priority for European authorities.

National Expertise

Authorities like BaFin have already built significant expertise in crypto assets and market operations.

Proposed Shift

The EU Commission is considering transferring the supervisory mandate from national authorities to the European Securities and Markets Authority (ESMA).

Licensing Authority

Under the proposal, ESMA would become directly responsible for license applications according to Art. 62 MiCAR.

Ongoing Oversight

After licensing, ESMA would also take over day-to-day supervision from national regulators.

Regulatory Scope

Scope of ESMA's Jurisdiction

1 Pure CASPs

ESMA would be the competent authority for all companies authorized specifically under Article 62 MiCAR.

2 Art. 60 Entities

Credit institutions and investment firms using the notification procedure initially remain under national supervision (e.g., BaFin).

3 Turnover Reporting

These notified companies must submit annual turnover data to ESMA, highlighting the percentage from crypto services.

4 Main Business Rule

If crypto services become the company's primary business, supervision transfers from the national authority to ESMA.

5 Financial Basis

Decisions on supervisory transfer are based on the company's latest approved annual financial statements.

Cross-Border Operations

EU Passporting and Operational Changes



Integrated Passporting

The MiCAR passporting regime will be directly integrated into the ESMA authorization process.



Union-wide Services

Authorized CASPs will be permitted to provide their services throughout the entire European Union.



Language Standards

Supervisory discussions and correspondence are expected to take place primarily in English.

Centralized Hub

Supervision moves from national capitals to a central international institution based in Paris.

Efficiency Goals

The approach aims to simplify cross-border operations by having a single supervisor for all crypto-related business.

Analysis

Benefits and Challenges **Benefits****Harmonization**

A major benefit is the unified interpretation of granular MiCAR rules across all member states.

Consistent Rigor

Centralization counteracts differences in the supervisory strictness of various national authorities.

 **Challenges****SME Practicability**

It is questionable if Paris-based supervision is practical for small and medium-sized CASPs.

Investor Protection

Internationalization may create hurdles for customers who can no longer contact local-language representatives.

Language Barriers

The shift to English-only communication could cause difficulties for smaller market participants.

What's Next

Status and Future Outlook

1

Draft Stage

The proposed changes are currently part of an EU Commission draft for amending MiCAR.

2

Consultation Status

The period for market participants and associations to comment on the proposal has recently expired.

3

Evaluation Pending

The EU is currently evaluating the feedback received before proceeding.

4

Legislative Process

The proposals must still pass through the full EU legislative process.

5

Potential Revisions

It is expected that the draft will undergo significant changes before it is finally implemented.



Key Takeaway: The centralization of CASP supervision under ESMA represents a significant structural shift in European crypto regulation. Market participants should closely monitor the legislative process as the draft is expected to undergo significant changes before final implementation.

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