

Regulating the Core of Crypto - Will MiCAR Include DeFi?

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Current Scope of MiCAR and Centralized Focus

MiCAR Adoption & Applicability

The EU Regulation on Markets in Crypto-Assets (MiCAR) was adopted in May 2023 and became fully applicable at the beginning of 2025.

Centralized Target

Existing MiCAR rules strictly regulate the centralized crypto market, focusing on centrally operating crypto-asset service providers (CASPs) and token issuers.

Exclusion of Pure DeFi

Fully decentralized protocols operating without a central entity as subject to regulatory supervision remain unregulated under the current legal framework.

Recital 22 Clarification

Recital 22 of MiCAR explicitly states that crypto-asset services provided in an exclusively decentralized manner without an intermediary fall outside its scope.

Public Consultation

The European Commission held a public consultation from May to September 2026 to review MiCAR rules and evaluate whether and how to include DeFi in the future.

Regulatory Concerns and "Decentralization Washing"

Push for Expansion

Both the European Securities and Markets Authority (ESMA) and the European Central Bank (ECB) advocate for bringing DeFi interactions under regulatory supervision.

Divergent Interpretations

ESMA points out differing views across EU Member States regarding what constitutes full decentralization under Recital 22.

Decentralization Washing

Legal uncertainty enables "decentralization washing," where providers disguise regulated activities as decentralized to avoid liability.

Regulatory Arbitrage

The exclusion of DeFi creates room for regulatory arbitrage as entities set up in Member States with less strict decentralization criteria.

Harmonization Need

Regulators emphasize that clear criteria are necessary to prevent fragmented supervisory standards across the European Union.

Proposed Regulatory Measures by ESMA and ECB

ESMA

Defining Decentralization

ESMA proposes amending MiCAR to establish clear legal parameters defining when full decentralization actually exists.

New Supervised Category

ESMA suggests introducing a new crypto-asset service category that subjects interactions with DeFi protocols to authorization and supervision.

ECB

Regulating Access Points

The ECB recommends regulating access points to DeFi protocols rather than attempting to regulate autonomous code.

Qualified Investors

The ECB suggests restricting access to DeFi protocols through regulated CASPs strictly to qualified investor groups.



Framework Integration: Both proposals aim to bridge the gap between decentralized protocols and the supervised European financial market.

Continuity of the Centralized Regulatory Approach

Focus on Central Entities

Proposed reforms maintain the foundational principle of requiring a centrally acting responsible party as the addressee of regulatory duties.

Smart Contract Exemption

Purely decentralized, smart contract-based services operating without an intermediary will remain structurally outside direct protocol supervision.

User Autonomy

Even if new proposals are implemented, self-responsible users can still interact directly with DeFi protocols from a supervisory standpoint.

Gatekeeper Approach

Supervisory obligations will primarily target "gatekeepers"—regulated CASPs that provide access to DeFi services.

Systemic Consistency

The overall regulatory design continues to rely on central intermediaries rather than trying to regulate decentralized software directly.

Closing Compliance Gaps and Future Outlook

Closing Regulatory Loopholes

Regulating gatekeepers aims to eliminate existing compliance blind spots regarding decentralized finance interactions.

Institutional Access

Regulated access frameworks could establish legally compliant avenues for institutions to participate in DeFi ecosystems.

Balancing Innovation & Rules

Future MiCAR updates will dictate how European regulators balance investor protection, AML compliance, and market innovation.

AML Verification Challenges

A primary issue under current rules is implementing Anti-Money Laundering (AML) identity and counterparty verification in DeFi protocols.

Shift Toward Supervision

The ongoing debate marks a transition from total DeFi exemption toward structured supervision of access and intermediaries.

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