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Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Applicability of DORA and TFR Requirements to VASPs Not Classified as CASPs Under MiCAR

Subject Matter
Applicability of DORA and TFR Requirements to VASPs Not Classified as CASPs Under MiCAR

Question

Do the requirements of the Digital Operational Resilience Act (DORA) apply to Virtual Asset Service Providers (VASPs) that are not classified as Crypto-Asset Service Providers (CASPs) under the Markets in Crypto-Assets Regulation (MiCAR) as of December 30, 2024 and are benefiting from the MiCAR transition period?"

ESMA Answer

08-12-2024

Original language

Virtual Asset Service Providers (VASPs), that are not classified as Crypto-Asset DORA applies, according to Article 2(1), point (f), to “crypto-asset service providers as authorised under” MICAR and Article 3(55) of DORA provides that DORA applies to CASPs as defined in the relevant provision of MiCAR. In this respect, Article 3(1), point (15) of MICAR defines CASPs as “a legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services in accordance with Article 59” of MiCAR. Article 59 of MICAR reserves the provision of crypto asset services to: (i) persons or undertakings authorised as CASPs in accordance with Article 63 of MiCAR or (ii) specific financial entities that are already authorised under sectoral acts (for instance, credit institutions, market operators, investment firms etc.) and are allowed to provide certain crypto-asset services in accordance with the procedure of notification included in Article 60 of MiCAR.

The transitional period established in Article 143(3) of MiCA, on the contrary, allows VASPs that before 30 December 2024 were providing crypto-asset services in accordance with national applicable law to continue to do so in the relevant Member State(s) and until the transitional regime applies in such Member State (or until the VASP is granted or refused an authorisation pursuant to Article 63 of MiCAR).

Therefore, VASPs that operate on the basis of the transitional period are not ‘authorised under’ MICAR and are not subject to DORA. According to Article 2(1)(f) of DORA such entities become subject to DORA where they become CASPs authorised under MiCAR.