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THE IMPACT OF MICA REGULATION IMPLEMENTATION ON THE POLISH CRYPTO-ASSET MARKET – CONSEQUENCES, REGULATORY CHALLENGES AND PROSPECTS FOR REFORM

KRZYSZTOF PIECH*
SYLWIA PANGSY-KANIA**

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Abstract

The aim of this article is to provide a critical assessment of the compliance of the Polish draft act implementing the MiCA Regulation with the objectives and the letter of the Regulation, and to verify the hypothesis that certain provisions constitute instances of gold-plating, increasing compliance costs without delivering proportionate benefits, while simultaneously leaving significant regulatory gaps unaddressed. The study applies a comparative legal analysis (Poland vs. selected EU Member States), a functional analysis (substance over form), and a regulatory impact assessment.

Findings. 1. Poland effectively shortened the transitional period for CASPs to six months; after this date, MiCA authorisation or passporting (Article 65) is required. The claim of an 'automatic 18-month' period for Poland is incorrect. 2. The draft introduces regulations exceeding the scope of MiCA (including a public domain register and preventive account freezes), which require a rigorous proportionality test and consistency with the DSA. 3. The fee model of up to 0.4% of revenues is not extreme by EU standards but may significantly burden entities with high volumes and low margins. 4. Identified gaps include: the absence of 'soft law' instruments and clear criteria for DeFi and NFTs; in the area of stablecoins, prudential and infrastructural issues and overlaps between the MiCA, PSD2, and EMD regimes remain key barriers.

* LLD, Professor of Lazarski University, Lazarski University in Warsaw (Poland), e-mail: e-mail: krzysztof.piech@lazarski.edu.pl, ORCID: 0000-0001-5503-8397

** LLD, Professor of University of Gdansk, University of Gdańsk (Poland), e-mail: sylwia.pangsy-kania@ug.gda.pl, ORCID: 0000-0002-7850-9101

The research hypothesis was largely confirmed: the Polish implementation is restrictive and, in parts, overly detailed, increasing both costs and uncertainty while failing to adequately address technologically sensitive areas (DeFi, NFTs, PLN-EMTs). It is therefore advisable to calibrate above-minimum instruments and close the identified gaps through soft-law measures and operational solutions. The second part of the conclusion presents systemic and operational recommendations.

Keywords: MiCA; crypto-assets; CASP; transitional period; passporting; gold-plating; KNF; DeFi; NFT; e- money token (EMT); AML / PSD2 / EMD, economy and finance

INTRODUCTION

Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets (hereinafter referred to as 'the MiCA')[1] is one of the key pillars of the Digital Finance Package and is a regulation of fundamental importance for the functioning of the European Union's single market. Its overarching objective is to establish a harmonised legal framework for crypto-assets, which until now have operated largely in an unregulated or only partially regulated environment. MiCA pursues a dual purpose: on the one hand, to support innovation and the development of the crypto-asset market by ensuring legal certainty for its participants, and on the other, to protect consumers and investors while safeguarding financial stability and market integrity (recital 6 MiCA).

MiCA is a directly applicable legal act across all Member States. Nevertheless, its effective implementation requires national legislators to take a number of complementary measures, including the designation of competent supervisory authorities, the establishment of sanctioning regimes, and the integration of new provisions into the existing legal order. In Poland, this process has taken the form of the draft Act on the Crypto-Asset Market (hereinafter referred to as 'the draft act').[2]

The central research focus of this article is a critical analysis of the compliance of the Polish draft act with the objectives and the letter of the MiCA Regulation. The research hypothesis assumes that certain provisions of the Polish draft act go beyond what is necessary for the implementation of MiCA, thereby giving rise to gold-plating and increasing compliance costs in a manner disproportionate to the expected benefits. At the same time, the draft does not fully address important regulatory gaps arising from the dynamic development of technology. This combination of over-regulation in some areas and under-regulation in others may have an adverse effect on the competitiveness and innovativeness of the Polish crypto-asset market, thus undermining MiCA's pro-innovation objectives.

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[1] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.06.2023, p. 40, as amended). In Western Europe, the abbreviation *MiCAR* (MiCA Regulation) is more commonly used.

[2] Government draft Act on the Crypto-Asset Market, adopted by the Council of Ministers on 25 June 2025, Sejm print No. UC2; https://www.sejm.gov.pl/sejm10.nsf/agent.xsp?symbol=RPL&Id=RM-0610-101-25 [accessed on 27 June 2025].

MiCA, as a regulation, is in principle an act of direct applicability and uniform effect throughout the European Union (Article 288 TFEU), meaning that it is binding in its entirety and directly applicable in all Member States. National measures are permissible only where they: (i) exercise competences explicitly left to Member States under MiCA (so-called national options or discretions); (ii) concern areas falling outside the scope of MiCA; or (iii) ensure uniform conditions for the implementation of EU acts (Article 291 TFEU), while respecting the principles of proportionality and the freedom to provide services.[3] This means that legislative intervention at national level is permissible only in areas expressly left to Member States ('open clauses' or executive competences), such as: (i) the designation of competent authorities and the allocation of supervisory responsibilities; (ii) the catalogue of supervisory and administrative measures and the sanctioning regime; (iii) supervisory fees and procedural matters; (iv) the organisation of licensing processes; and (v) the implementation of delegated and implementing acts (RTS/ITS)[4] once adopted by the European Securities and Markets Authority (ESMA) or the European Banking Authority (EBA). The boundary is set by the principles of primacy and uniform application of EU law: national provisions may not modify the substantive obligations established under MiCA or create overlapping obligations in a way that would violate the principle of proportionality. This implies that 'tightening' requirements in areas subject to full harmonisation under MiCA may infringe the principle of primacy of EU law, potentially giving rise to the phenomenon of gold-plating. In this article, the term is used to describe national solutions which, going beyond MiCA's authorisations, effectively increase regulatory burdens without demonstrating necessity in light of the principles of proportionality and internal market coherence.

To verify the research hypothesis, two complementary research methods were applied. The primary method is a doctrinal analysis, consisting in the interpretation of legal norms contained in MiCA and in the Polish draft act, as well as the assessment of their consistency with the general principles of EU law, such as proportionality, legal certainty, and the primacy of EU law. This is supplemented by a comparative legal analysis, in which the Polish legislative proposals are juxtaposed with implementation measures adopted in Germany and selected Central and Eastern European countries (Czechia, Slovakia, Lithuania, Latvia, Estonia). Such a perspective allows the Polish approach to be assessed in a broader regional context and enables identification of potential risks to the competitiveness of the domestic market.[5]

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[3] N. Moloney, *EU Securities and Financial Markets Regulation*, Oxford, 2023; D. Chalmers, G. Davies, G. Monti, *European Union Law*, Cambridge, 2019.

[4] Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) are technical standards prepared by ESMA and EBA under MiCA mandates and adopted as delegated or implementing regulations of the European Commission. They further specify substantive and reporting obligations of CASPs and issuers. See European Securities and Markets Authority, *Overview of Level 2 and Level 3 measures under Markets in Crypto-Assets (MiCA)*, 16 July 2025; https://www.esma.europa.eu/document/overview-level-2-and-level-3-measures-under-markets-crypto-assets-mica [accessed on 13 September 2025]. Note: for EMTs and ARTs (Titles III–IV MiCA), part of the RTS/ITS is developed by EBA rather than ESMA).

[5] See P. Craig, G. de Búrca, *EU Law: Text, Cases, and Materials*, Oxford, 2021; F. Annunziata, *The European Regulation on Markets in Crypto-Assets (MiCA)*, Cham, 2024.

The structure of the article is shaped by the adopted research objectives. The second part presents a detailed analysis of identified areas of potential over-regulation in the Polish draft act, including the transitional period, supervisory fees, powers of supervisory authorities, and the overall scale of the proposed regulation. The third part focuses on identifying regulatory gaps that have not been fully addressed either by MiCA or by the Polish legislator, with particular attention to decentralised finance (DeFi), non-fungible tokens (NFTs), and stablecoins linked to the Polish zloty. The article concludes with a summary of the main findings and formulates recommendations for the Polish legislator and supervisory authorities.

POLISH IMPLEMENTATION OF MICA – ANALYSIS OF POTENTIAL OVER-REGULATION (GOLD-PLATING)

The MiCA Regulation, as a directly applicable legal act, aims to create a uniform framework for the crypto-asset market across the European Union. Nevertheless, Member States retain a certain margin of discretion in its implementation, which gives rise to the risk of so-called gold-plating.[6] The authors aims to identify areas in which the Polish legislator may have gone beyond what is necessary for the implementation of MiCA and to assess the potential legal and economic consequences of such actions. The analysis is based on the text of the draft act and the accompanying 'reversed table of concordance',[7] which maps domestic provisions to their EU counterparts or other justifications. This analysis indicates several areas where the Polish legislator appears to be following precisely such an approach.

The explanatory memorandum and the Regulatory Impact Assessment attached to the draft emphasise above all: consumer protection and market stability, full coverage of the costs of new supervisory tasks, the alignment of domestic procedures with MiCA's supervisory architecture, and the mitigation of AML/CFT risks. In this article, these objectives are examined in light of their economic effects (compliance costs, market entry barriers, and concentration risks), with attention drawn to areas where the intensity of national measures may exceed what is strictly necessary, thereby justifying their qualification as gold-plating.

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[6] In this article, the term 'gold-plating' is used strictly to designate national solutions going beyond what is necessary to implement MiCA (Article 288 TFEU), not to describe every divergence from the Regulation. It does not include areas explicitly left to national legislators (designation of authorities, sanctions, procedures, fees), unless their scope creates disproportionate entry barriers or undermines MiCA's objectives of market integration and CASP passporting.

[7] A reversed table of concordance is a legislative tool which, unlike the standard table of concordance (demonstrating how EU provisions are transposed into national law), starts from national draft provisions and indicates their source or rationale in EU law, other national statutes or regulatory objectives. It facilitates understanding of the origins and functions of domestic provisions in a wider legal context.

TRANSITIONAL PERIOD: POLISH NOTIFICATION AND MARKET IMPLICATIONS

MiCA applies in stages: the main body of provisions – including the regime for crypto-asset service providers (CASPs) – applies from 30 December 2024, while the titles concerning asset-referenced tokens (ARTs) and e-money tokens (EMTs) have been applicable since 30 June 2024. For CASPs lawfully operating before 30 December 2024, a transitional mechanism is provided for in Article 143(3) MiCA: in principle until 1 July 2026 (i.e. 18 months) or until the authorisation or refusal of authorisation of a CASP. Member States could shorten this period (or even waive it altogether) by notifying the European Commission and ESMA by 30 June 2024. Poland notified a six-month transitional period for CASPs,[8] i.e. from 30 December 2024 to 30 June 2025.

In public debate, this notification has given rise to confusion. The EU limit of 18 months was mistakenly equated with Poland's actual transitional period. Some experts (e.g. Artur Bilski) argued that, in the absence of a Polish statute in force by 30 December 2024, Polish entities had acquired the right to the full 18-month period.[9] This argument was supported by references to the case law of the Court of Justice of the EU, according to which rights acquired under EU law cannot be curtailed by subsequent national legislation.[10] However, in reality, Poland cannot 'avail itself' of the 18-month period once it has notified six months.

Furthermore, this period expired on 30 June 2025. This means that as of 1 July 2025, entities operating in Poland should, in principle, either: (i) be authorised as CASPs by the competent authority of their home Member State in accordance with Articles 59 and 63 MiCA; or (ii) operate in Poland under a passport (the freedom to provide services cross-border or through a branch) after obtaining authorisation in another EU Member State and completing the relevant notifications. In practice, however, entities entered in Poland's VASP register before 30 December 2024 continue to operate.

As noted above, MiCA is directly applicable, the effective functioning of procedures (designation of the authority, fee schedules, sanctions, appeal routes) requires national legislation. In Poland, the draft Act on the Crypto-Asset Market was submitted for legislative work in 2025, but at the time of writing this article, the process remains ongoing. In practice, this means that:

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[8] European Securities and Markets Authority, *List of grandfathering periods decided by Member States under Article 143 of Regulation (EU) 2023/1114 Markets in Crypto-Assets Regulation (MiCA)*; https://www.esma.europa.eu/sites/default/files/2024-12/List_of_MiCA_grandfathering_periods_art._143_3.pdf [accessed on 14 September 2025].

[9] M. Misiura, 'Polski blamaż w Unii. Nie zdążyliśmy z ustawą o rynku kryptoaktywów, a oto konsekwencje', *bankier.pl*, 2023; https://www.bankier.pl/wiadomosc/Polski-blamaz-w-Unii-Nie-zdazylismy-z-ustawa-o-rynku-kryptoaktywow-a-oto-konsekwencje-8865542.html [accessed on 27 June 2025].

[10] See P. Mendez de Vigo, LinkedIn commentary, 2025; https://linkedin.com/posts/pedro-mendez-de-vigo_listofmicagrandfatheringperiodsart-activity-7343663284606177280-qML_ [accessed on 27 June 2025]. The author refers to established CJEU case law in this regard.

(a) CASP authorisation and supervision in Poland require the formal empowerment of a national authority and the establishment of procedures, which have not yet been adopted (during the transitional period);
(b) entities authorised in another EU Member State may already exercise passporting rights within the territory of Poland under MiCA;
(c) the absence of a national statute does not exempt domestic operators from holding MiCA authorisation after the transitional period has ended.

This means that, at the time of writing, as of 1 July 2025 in Poland, the following entities may legally operate in Poland:

- CASPs holding MiCA authorisation granted in another Member State, following cross-border notification by the home authority (Article 65(1)–(2) MiCA);
- financial institutions referred to in Article 60 MiCA (such as banks or investment firms), which may provide certain crypto-asset services without a separate CASP licence, after notifying their home authority; this also constitutes passporting (Article 60 in conjunction with Article 65 MiCA).

Entities without authorisation (neither CASP nor under Article 60) cannot provide services under Title V MiCA (Article 59). Violations may additionally entail sanctions.[11]

The Polish draft act also introduces transitional arrangements. Articles 162 and 163 of this draft provide that, following the entry into force of the act, entities listed in the register of virtual currency businesses and others may continue their operations for four months, or for nine months if they submit a complete CASP application within three months (with confirmation of completeness under Article 63(4) MiCA).[12] However, this cannot be regarded as a continuation of the EU-level 'grandfathering' period but rather a purely domestic administrative transition – the duration of this period is calculated only from the date of entry into force of the act (with a proposed *vacatio legis* of 14 days).[13] Doubts may arise as to the practical feasibility of this period. Statements by representatives of the Polish Financial Supervision Authority (KNF) during parliamentary hearings indicated that the expected duration of licensing procedures before the KNF could reach up to two years. In practice, this would mean that no entity would be able to obtain a licence within the proposed timeframe, leading either to market paralysis or

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[11] Under Article 111(1)(d) MiCA, the provision of services under Title V without authorisation (Article 59) or passporting (Article 65) qualifies as an infringement. Consequently, the Regulation requires Member States to ensure that the competent authority has at least the following powers (minimum EU standards):
(i) order cessation of infringement;
(ii) public announcement ('naming & shaming') – Article 111(2)(a)–(b);
(iii) administrative fines of at least:
  – EUR 700,000 for natural persons (management/board members) – Article 111(2)(d);
  – EUR 5 million or 5% of annual turnover for legal persons – Article 111(3)(a), (c);
(iv) temporary bans on management functions – Article 111(4).

[12] According to ESMA, 11 countries opted for the full 18-month transitional period, seven for 12 months, one for nine months, six (including Poland) for six months, and two failed to submit a notification. European Securities and Markets Authority, *List of grandfathering…*, op. cit.

[13] The explanatory memorandum to the draft act provides no substantive justification for the chosen deadlines. They are described, but no rationale is given.

forcing operators to act under conditions of legal uncertainty and potential conflict with the supervisory authority. This, in turn, may prompt some firms to pursue the passporting route by obtaining authorisation in another EU Member State.

Moreover, in the absence of an enacted statute, entities on the market currently preparing to apply for a CASP licence in Poland are unable to submit their applications, as no supervisory authority has yet been formally designated.

SUPERVISORY FEES AS A MARKET ENTRY BARRIER

Another area in which the Polish draft act shows a tendency towards over-regulation concerns the financial burdens imposed on supervised entities. The MiCA Regulation does not harmonise the level of supervisory fees, leaving their determination to the discretion of Member States. However, national measures remain subject to the general principles of EU law, including the principle of proportionality, which requires that the measures imposed (including fees) be appropriate to the objectives pursued and not impose excessive burdens – particularly those that could create barriers to accessing the single market.[14]

Articles 80–83 of the draft introduce a system of fees, including annual contributions to cover supervisory costs.[15] In the latest version of the draft (adopted by the Council of Ministers on 24 June 2025 and submitted to the Sejm two days later), the upper limit of the supervisory fee for CASPs was set at 0.4% of the average gross revenue over the past three years, with a minimum equivalent of EUR 500 in PLN.[16] A draft regulation of the Prime Minister complements these provisions by detailing the calculation method (though not without shortcomings).[17]

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[14] See recital 6 of MiCA. The principle of proportionality is a general principle of EU law; see, for example, Case C-331/88, *The Queen v. Minister of Agriculture, Fisheries and Food, ex parte Fedesa*, ECLI:EU:C:1990:391.

[15] The explanatory memorandum to the draft act does not clarify how the supervisory fees were calculated. During public consultations at the Ministry of Finance (Spring 2024), one of the co-authors of this article raised this question, but no response was provided. At a meeting of the 'Proste Podatki' [Simple Taxes] working group (Spring 2025), KNF representatives replied that the system had been modelled on Liechtenstein's approach. At subsequent meetings, they maintained that it was an adaptation of the brokerage fee system. The difficulty lies in the fact that brokerage firms in Poland compete locally with other similar entities, whereas cryptocurrency exchanges operate internationally or globally. Moreover, when defining the methodology for calculating the annual supervisory fee, no account was taken of the fact that, in the case of currency exchange offices, all transactions constitute revenue, effectively introducing a *quasi*-revenue tax.

[16] See Article 81 of the Government draft Act on the Crypto-Asset Market.

[17] According to the co-author, the following drafting issues arise:

(i) § 8 refers to § 4(2) and § 5(2) (costs and allocation), whereas it should refer to § 6(3) and § 7(3) (rates);
(ii) § 10 links the deadline for filing declarations to § 9 (payment), rather than to § 7(1);
(iii) in § 6, the symbol Pd_{n-1} is used inconsistently, denoting both the value of an individual firm and the total market sum – these should be distinguished and clarified;
(iv) a rule for calculating fees for entities operating in the market for less than three years should

A comparative analysis of supervisory fee models adopted in other EU Member States shows that the Polish proposal is relatively exceptional and among the most onerous for the market.

Most Member States that have already published their implementing regulations have adopted one of three supervisory fee models:

(i) Hourly rate with a cap – for example, the Netherlands: EUR 200 per hour, capped at EUR 100,000 for application review;[18] also used in Germany and the Netherlands in the cost-recovery model, where supervised entities share the actual annual costs incurred by the supervisory authority (e.g. BaFin, DNB) in a given year, often with a fixed minimum fee (EUR 6,500 in Germany).[19]

(ii) Fixed tariff schedules laid down in implementing acts, e.g. in Malta (an extensive fee grid);[20] France (EUR 10,000 annually); Italy (a minimum fee of EUR 5,790, increasing progressively with the number of services);[21] Czechia (one-time licensing fee between EUR 813 and EUR 2,033 with no annual fee); and Estonia (an annual fee amounting to at least EUR 3,500).[22]

(iii) A revenue-based model for supervisory contributions combined with a moderate licensing fee (e.g. Latvia: EUR 2,500 per application; supervisory cost up to 0.6% of gross revenue, with a minimum of EUR 3,000 per year).[23] Poland combines a low application fee with an annual supervisory contribution of up to 0.4% of the average gross revenues from the past three years (minimum EUR 500), exempting entities operating exclusively on a passporting basis (Article 60 in conjunction with Article 65 MiCA).

For CASPs comparing potential jurisdictions for MiCA authorisation, Latvia ranks among the most attractive in terms of low application fees and predictable, revenue-based supervisory charges. It is the only EU country, apart from Poland, that has opted for a percentage-based model (a 0.6% rate of gross revenue, set out

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be established.

[18] AFM, *Costs for non-recurring activities*; https://www.afm.nl/en/sector/beleggingsinstellingen/kosten-en-heffingen-voor-beheerders/kosten-voor-eenmalige-verrichtingen [accessed on 27 October 2025].

[19] See Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), *Finanzierung – Die Gebühren der BaFin*; https://www.bafin.de/DE/DieBaFin/GrundlagenOrganisation/Finanzierung/Gebuehren.html [accessed on 27 June 2025]; De Nederlandsche Bank (DNB), *Fees for registration, assessment and supervision*; https://www.dnb.nl/en/sector-information/open-book-supervision/open-book-supervision-sectors/crypto-service-providers/registration-of-crypto-service-providers/fees-for-registration-assessment-and-supervision/ [accessed on 27 June 2025].

[20] Leġiżlazzjoni Malta, *Regolamenti dwar Markets in Crypto-Assets Act (Fees)*, Legal Notice 295/2024; https://legislation.mt/eli/ln/2024/295/eng [accessed on 27 October 2025].

[21] *Décret n° 2025-169 du 21 février 2025 relatif aux marchés de crypto-actifs*, JORF n°0045 du 22 février 2025 (France); *Delibera Consob* n. 23352 del 22 gennaio 2025 (Italy).

[22] See Manimama Law Firm, *MiCA implementation in the Czech Republic*, 2025; https://manimama.eu/mica-implementation-in-the-czech-republic/ [accessed on 27 June 2025]; Regulated United Europe, *Crypto License in Estonia*; https://regulatedunitedeurope.com/crypto-licence/estonia/ [accessed on 27 June 2025].

[23] Latvijas Banka, *Crypto-asset service providers*; https://www.bank.lv/en/operational-areas/licensing/crypto-asset/crypto-asset-service-providers [accessed on 27 October 2025].

in a concise, ten-article implementing act).[24] The Netherlands may be categorised as a procedural jurisdiction (hourly rate with a cap), while Malta follows a tariff-based model (detailed schedule in Legal Notice 295/2024). Poland proposes a hybrid system with a moderate application fee and a 'ceiling' of 0.4% for the annual supervisory charge, excluding entities operating in Poland solely under passporting rights (Article 60 in conjunction with Article 65 MiCA).

The Polish model, based on gross revenue rather than margin or profit, disproportionately affects entities with high transaction volumes but low profitability (such as exchanges or currency offices). Simulations based on publicly available financial statements indicate that an entity with annual revenue of PLN 18.7 million (approx. EUR 4.25 million) would incur a fee of around PLN 75,000 (EUR 17,000) – several times higher than the fixed fees in Czechia or Estonia. This amount is nearly seven times higher than the fixed annual fee in France and more than double the minimum fee in Germany. For larger entities, with revenues of around PLN 100 million, the fee would reach PLN 400,000 (approx. EUR 90,000), a figure significantly exceeding European standards.[25]

Consequently such a structure may lead to:

- an increase in market entry barriers, discouraging new market participants from establishing in Poland;
- a restriction of competition by favouring large global players for whom Poland is only one part of their operations, to the detriment of local innovative companies;
- an increased risk of regulatory arbitrage (as acknowledged by the KNF itself), reflected in a tendency among market participants to choose jurisdictions with a more predictable and proportionate fee frameworks, thereby weakening Poland's position as a potential technological hub.

EXPANSION OF SUPERVISORY POWERS AND NEW INTERVENTION TOOLS

The Polish draft act provides for the implementation of a number of supervisory powers that have direct counterparts in MiCA (Article 94), including, among others, the ability to request the removal of content or restriction of access to online interfaces and, in extreme cases, the deletion of full domain names and the freezing (seizure) of assets. However, the method of implementation (for instance, the establishment of a domain register) goes beyond the minimum requirements set out in MiCA and must therefore be assessed in terms of proportionality, procedural safeguards, and consistency with the Digital Services Act (DSA). A comparative analysis of the legislation adopted in Germany, the Czech Republic, Lithuania, Latvia, and Estonia shows that none of these countries have introduced intervention tools of such far-reaching scope.[26]

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[24] See Z. Veidemane-Bērziņa, *Crypto-asset service providers are on the move to find their residence: will Latvia make the 'shortlist'?*, Ellex, 2024; https://ellex.legal/crypto-asset-service-providers-are-on-the-move-to-find-their-residence-will-latvia-make-the-shortlist/ [accessed on 27 June 2025].

[25] Authors' own elaboration based on publicly available financial reports and the draft Act on the Crypto-Asset Market (version of 25.06.2025).

[26] Authors' own elaboration based on analysis of laws and supervisory communications from Germany, Czechia, Lithuania, Latvia and Estonia. See e.g. F. Murar, J. Stastny, *Digital*

A particular example is the proposed creation of a National Register of Internet Domains Used for Activities in Breach of Regulation 2023/1114. The supervisory authority (the Commission) would maintain this register by listing domains offering, for example, crypto-asset services without authorisation. Telecommunications operators and hosting service providers would be required to block access to such websites or redirect users, without compensation.[27]

MiCA grants competent authorities the power to: (i) remove content or restrict access to an interface; (ii) order a hosting service provider to remove or disable such an interface; and (iii) instruct domain registries or registrars to delete a domain name and allow its registration by the authority (Article 94(1)(aa)). However, MiCA does not require the creation of a central domain register with mandatory blocking by internet service providers or hosting providers –this is a national solution that must be evaluated against the principles of proportionality, due process, and coordination with the DSA (Articles 9–10, 'orders to act / to provide information'). In the jurisdictions examined, interventions take the form of case-by-case orders under MiCA/DSA rather than a standing domain register.

It should be emphasised that earlier versions of the draft act envisaged even more extensive powers, including the possibility for the KNF to take ownership of domain names. This proposal was strongly criticised by industry stakeholders as a grossly disproportionate measure that could infringe the right to property under the Polish Constitution. Even in its softened version, however, the mechanism may raise constitutional doubts with regard to the freedom to conduct business and freedom of expression.

Another measure is the power to block accounts at the request of the Chair of the KNF. MiCA grants competent authorities powers to request the freezing or sequestration of assets (Article 94(3)(f)), as well as a catalogue of investigative, supervisory and intervention measures (Article 94(1)). The Polish draft specifies this instrument in terms of duration (up to 96 hours, with possible extensions up to six months) and competence. The key requirements in this respect are: (i) judicial oversight and the availability of an appeal procedure; (ii) application of a proportionality test and the existence of a concrete factual basis (e.g. suspected infringements of Articles 88–92 MiCA); and (iii) transparency obligations and notification to ESMA in cases involving public funds (see Article 102 and the relevant registry mechanisms). In other jurisdictions analysed, supervisory authorities base

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Finance Act: A new era for crypto-assets in the Czech Republic, Kinstellar, 2025; https://www.kinstellar.com/news-and-insights/detail/3213/digital-finance-act-a-new-era-for-crypto-assets-in-the-czech-republic [accessed on 27 June 2025]; T. Stamm, *What does the enforcement of the MiCA Regulation bring to cryptocurrency service providers in Estonia?*, Grant Thornton, 2023; https://www.grantthornton.ee/en/insights1/what-does-the-enforcement-of-the-mica-regulation-bring-to-cryptocurrency-service-providers-in-estonia/ [accessed on 27 June 2025].

[27] Article 69 of the Polish draft act was justified as an implementation of Article 94(1)(aa) of Regulation (EU) 2023/1114, which requires Member States to empower competent authorities to: (i) remove or restrict access to online interfaces; (ii) order hosting service providers to remove or disable such interfaces; and (iii) instruct domain registries or registrars to delete full domain names. However, unlike in other countries, Poland transposed this concept in the form of a 'domain register'.

their actions on the classical administrative sanctions provided for in MiCA, such as fines or licence withdrawals, avoiding the creation of additional, specifically national instruments of such an invasive nature.

It is therefore necessary to examine in greater detail whether such powers are proportionate and whether they duplicate or unduly extend the competences provided for under the Market Abuse Regulation (MAR), which MiCA partially adapts to the crypto-asset market.

The Polish draft also extends the range of authorities entitled to receive information. MiCA allows cooperation between the competent authority and other public bodies ('pursuant to Union or national law'), including tax and AML/CFT authorities and third-country regulators (Article 98), subject to professional secrecy (Article 100) and GDPR (Article 101). The expansion of this list in the Polish draft act (for example, to include the Police and Border Guard) is, in principle, consistent with MiCA, provided that it is accompanied by: (i) a clear objective and scope; (ii) proportionality; (iii) an appropriate confidentiality regime; and (iv) a strict functional link with MiCA-related tasks. Otherwise, the risk of excessive interference and gold-plating increases.

At the EU level, MiCA provides for temporary intervention measures: for ESMA (Article 103) in case of crypto-assets other than ARTs/EMTs, for EBA (Article 104) in case of ARTs/EMTs, and product intervention powers for national competent authorities (Article 105), coordinated by ESMA and EBA (Article 106). National instruments should remain consistent with this framework, particularly with respect to proportionality and the publication of measures.

LEGISLATIVE DELEGATIONS AND THE RISK OF EXCESSIVE CASUISTRY

MiCA as a harmonising regulation, sets out the framework of obligations for crypto-asset market participants while entrusting the European Supervisory Authorities (EBA and ESMA) with the development of detailed regulatory and implementing technical standards (RTS/ITS). This approach is designed to ensure uniform application of the rules across the European Union.

The Polish draft act, however, in several provisions (including Articles 4, 12 and 14), introduces broad statutory delegations empowering the minister responsible for financial institutions to define, by way of secondary legislation, detailed requirements for the activities of CASPs. These include, *inter alia*, the specification of technical and organisational requirements, the rules for securing claims, and the qualification criteria for natural persons providing advisory services. Although the rationale for such delegations may be to ensure regulatory flexibility, they create a risk of gold-plating if the resulting regulations become overly detailed or more restrictive than the EU-level standards eventually adopted. Such national casuistry may lead to several negative effects:

- legal uncertainty, since market participants may for an extended period operate without knowing the final shape of the detailed requirement, pending the adoption of numerous implementing regulations;

- higher compliance costs, as more detailed and potentially more restrictive domestic requirements may generate additional implementation expenses for CASPs;
- fragmentation of the EU internal market as regards the single market for crypto-asset services, should Polish executive acts diverge significantly from the standards adopted in other Member States (or from RTS/ITS), thereby hindering the cross-border provision of services.

Rather than introducing broad delegations on a national level, a more appropriate approach would be to rely as much as possible on the directly applicable provisions of MiCA and to await harmonised technical standards issued by the European authorities.

SANCTIONING REGIME AND PUBLICATION OF DECISIONS (MICA VS. NATIONAL SOLUTIONS)

MiCA establishes a catalogue of administrative measures and sanctions, as well as minimum thresholds for their severity. Competent authorities must have at least the power to order the cessation of infringements, to publicly announce decisions (including the identification of the entity and the nature of the infringement), to impose financial penalties, and to apply measures against individuals performing managerial functions (including temporary bans on holding such positions). For infringements of provisions relating to CASPs (in particular Articles 59, 60, 64 and 65–83 MiCA), the minimum sanctions include at least EUR 700,000 for natural persons and at least 5% of annual turnover (or, alternatively, EUR 5,000,000) for legal persons. MiCA also allows Member States to introduce criminal sanctions under national law, provided that administrative measures remain available in parallel.

As a rule, sanctioning decisions must be published by the competent authority, together with information on the type of infringement and the identity of the sanctioned entity. MiCA, however, provides for certain exceptions (for instance, where publication would cause disproportionate damage or infringe data protection rules), allowing for anonymisation, deferred publication, or non-publication, subject to appropriate justification. National authorities are required to periodically report aggregated sanctioning data to ESMA and EBA, while ESMA publishes an annual report, which also includes data on criminal sanctions where these have been introduced by Member States.

MiCA requires that the imposition of sanctions and measures respect procedural rights, including the right to appeal before a court (Article 113 MiCA). At the same time, Article 112 emphasises the need for competent authorities to possess effective powers of enforcement and sanctioning, ensuring proportionality and a deterrent effect.

The Polish draft act designates the KNF as the competent authority[28] and introduces a national sanctioning framework consistent with MiCA's minimum

[28] Each country must designate a supervisory authority. In some cases, two were designated; in others, central banks. In Poland, the KNF was designated (Article 58). The explanatory memorandum provides no rationale. This choice was criticised by certain MPs from PiS (Janusz Kowalski) and the Confederation.

standards. This includes the publication of sanctioning decisions and the right of appeal to an administrative court. The levels of administrative penalties under national law cannot be lower than MiCA's minimum thresholds. The draft also specifies procedural aspects (service of decisions, deadlines, anonymisation, and scope of publication) and clarifies the relationship with other sectoral statutes (for instance, obligations under AML/CFT rules), while maintaining the direct applicability of MiCA.

POLAND IN THE EU CONTEXT: ASSERTIVE ELEMENTS OF MICA IMPLEMENTATION AND COMPARATIVE ANALYSIS

The tendencies towards over-regulation (gold-plating) in the Polish draft act become particularly evident when compared with the approaches adopted by other Member States in implementing MiCA, especially Germany and the countries of Central and Eastern Europe. A comparative analysis of the key regulatory areas shows that Poland is pursuing a considerably more restrictive and complex path, which – as noted above – may adversely affect its competitive position.

First, the scale and length of Polish regulation are far greater than in neighbouring states. The government package submitted to the Sejm included not only the draft act but also numerous implementing regulations and extensive explanatory memorandum, with 1,227 pages in total. The draft act itself is 104 pages long, accompanied by an 86-page explanatory memorandum and additional regulations, amounting to 334 pages, even without the explanatory memorandum.[29] By contrast, as we have calculated, the Czech act implementing MiCA (Zákon 31/2025 Sb.) takes the form of a concise statute that primarily designates the powers of the ČNB and establishes the sanctioning framework, referring to MiCA without extensive casuistry, and is only 14 pages long. The Latvian Crypto-Asset Services Act consists of merely 10 articles spanning approx. 5 pages. Estonia's Crypto-Asset Market Act is a 30-page regulation, while in Cyprus the law is just one page long (other examples include: Finland – 10 pages, Hungary – 9, Slovenia – 5, and Romania – 10). The EU average is 27 pages. This means that the Polish draft is around five times longer than the regional average. Such casuistry and legislative overproduction in themselves creates a barrier for businesses, particularly SMEs and start-ups, generating legal uncertainty and higher legal service costs.

Second, Poland's supervisory fee model, based on a percentage of gross revenues, is atypical in the region. The vast majority of EU Member States base their systems on flat fees or cost-recovery models. Only Latvia has also adopted a revenue-based fee (0.6%). Poland's 0.4% rate may, as simulations show, be more

[29] A. Bilski, 'Nieuchwalenie ustawy o krypto do końca roku oznacza 18-miesięczny okres przejściowy, którego nie da się skrócić' [Failure to adopt the crypto law by the end of the year means an 18-month transitional period that cannot be shortened], LinkedIn commentary, 2025; https://www.linkedin.com/posts/abilski_nieuchwalenie-ustawy-o-krypto-do-ko%C5%84ca-roku-activity-7275195141802336256-9hFj/ [accessed on 15 September 2025].

onerous than in other jurisdictions, particularly for entities with high turnover but low profit margins.

Third, the range of additional supervisory intervention powers in Poland is unusually broad. The comparative analysis of MiCA implementation in Germany, Czechia, Lithuania, Latvia, and Estonia shows that none of these countries opted for such far-reaching measures as the Poland's National Register of Internet Domains Used for Activities in Breach of MiCA or the power to pre-emptively freeze accounts based solely on suspicion.[30] These countries rely to a much greater extent on harmonised supervisory and sanctioning tools under MiCA, such as fines or withdrawal of authorisation, avoiding the creation of additional, nationally specific tools of such an invasive nature.

Fourth, Poland's transitional period provisions are among the most restrictive. As noted earlier, Poland notified a six-month transitional period for CASPs, placing itself among the countries with the shortest durations in the EU; however, it failed to enact the implementing statute within that very period. By comparison, Germany also shortened the transitional period, but offset this by introducing simplified procedures for entities already holding a national license. Czechia adopted a flexible, two-stage mechanism that encouraged early submission of applications while allowing completion of the licensing process without the risk of an abrupt interruption of business activity.

In summary, the comparative analysis shows that the Polish legislator has adopted a maximalist strategy, creating one of the most restrictive and complex regimes for crypto-assets in the EU. While arguably motivated by a desire to ensure the highest possible level of security, it risks producing the opposite effect – weakening the competitiveness of the domestic market, hindering innovation, and prompting domestic operators to relocate to more accommodating jurisdictions.

REGULATORY GAPS AND DIRECTIONS FOR FURTHER REFORM

Despite the comprehensive nature of the MiCA Regulation and the significant effort devoted to preparing the Polish draft act, a comparative analysis of the provisions and the rapidly evolving market practice reveals several areas of misalignment or gaps that may affect the competitiveness of the Polish crypto-asset ecosystem and the level of protection afforded to market participants. As the first regulation of its kind, MiCA cannot, by its very nature, address all technological challenges. Identifying these gaps and proposing directions for further reform is therefore crucial to creating an optimal and forward-looking regulatory environment in Poland.

[30] Authors' own elaboration based on analysis of laws and supervisory communications from Germany, Czechia, Lithuania, Latvia and Estonia. See e.g. F. Murar, J. Stastny, *Digital Finance Act…*, op. cit.; T. Stamm, *What does the enforcement…*, op. cit.

DECENTRALISED FINANCE – A CHALLENGE FOR THE TRADITIONAL REGULATORY APPROACH

One of the most significant gaps – both in MiCA and, consequently, in the Polish draft act – concerns the decentralised finance (DeFi) sector. MiCA is, by design, based on a traditional, entity-centred regulatory model: it imposes obligations on identifiable legal persons or other undertakings, such as crypto-asset issuers or service providers (CASPs). In contrast, many DeFi protocols (for example, leading decentralised exchanges or lending platforms) operate through self-executing smart contracts, often without any clearly identifiable central entity that could be held responsible.[31]

As stated in recital 22 of MiCA, where crypto-asset services are provided in a fully decentralised manner without intermediaries, they should not fall within the scope of the Regulation. This reflects a deliberate policy decision by the EU legislator to defer the resolution of this complex issue. In practice, however, even limited elements of centralisation – such as control over the access interface, a material influence on governance, or the ability to unilaterally modify key parameters – may lead to the conclusion that a service is not 'fully decentralised' and thus falls within MiCA's scope.

Consequently, the Polish draft act implementing MiCA – being an instrument of limited, executive scope – likewise does not introduce any specific provisions addressing DeFi. It does not foresee, for instance, tools such as regulatory sandboxes or a statutory functional test (substance over form) aimed at identifying the actor exercising control or significant influence over a given service. Such mechanisms could help balance operational risk with the need for innovation in this area.

This situation creates a significant regulatory gap. In its October 2023 report, the European Securities and Markets Authority (ESMA) highlighted serious risks associated with DeFi, including the speculative nature of certain protocols and the absence of a clearly identifiable responsible entity, which suggests the need for further regulatory action.[32] For Poland to become a competitive and safe market for innovation in this field, proactive steps would be desirable.

Based on the above considerations, this article formulates several recommendations for further reforms in the DeFi area, namely:

- considering authorising the KNF to issue – in the form of communications or 'soft law' – minimum standards for DeFi protocols that have a significant impact on the Polish market (e.g. security audits of smart contracts, transparency of governance structures, fair disclosure of risks);

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[31] See e.g. D.A. Zetzsche, R.P. Buckley, D.W. Arner, 'Decentralized Finance', *Journal of Financial Regulation*, 2020, Vol. 6, No. 2, pp. 172–203.

[32] European Securities and Markets Authority, *ESMA assesses market developments in DeFi and explores the smart contracts system*, 2023; https://www.esma.europa.eu/press-news/esma-news/esma-assesses-market-developments-defi-and-explores-smart-contracts-system [accessed on 27 June 2025].

- establishing a legal framework for regulatory sandboxes, which would allow innovative DeFi solutions to be tested in a controlled environment while ensuring ongoing risk monitoring;
- maintaining a continuous, substantive dialogue between the KNF and the web3 industry on DeFi-related issues in order to clarify supervisory expectations and reduce regulatory uncertainty.

THE UNCLEAR LEGAL STATUS OF NON-FUNGIBLE TOKENS (NFTS)

Another area characterised by significant regulatory uncertainty is that of NFTs. MiCA, in recitals 10 and 11, generally excludes from its scope crypto-assets that are unique and non-fungible with other crypto-assets – such as digital artworks or collectibles – whose value derives from their unique characteristics and utility for the holder. However, the same regulation introduces an important qualification: the issuance of crypto-assets as NFTs in large series or collections is an indicator of their *fungibility*. Likewise, *fractionalisation* of a 'unique' NFT means that its parts can no longer be considered unique or non-fungible. The mere assignment of a unique identifier is therefore not sufficient to classify a crypto-asset as 'unique and non-fungible'.

Moreover, crypto-assets that qualify as *financial instruments* within the meaning of MiFID II remain outside the scope of MiCA (Article 2(4)). Any classification ambiguities should be resolved on a functional basis (substance over form), also in light of ESMA's guidelines on the classification of crypto-assets as financial instruments.

This blurred distinction gives rise to legal uncertainty for issuers and trading platforms.[33] The Polish draft act, following MiCA, does not specify the criteria for assessing the 'unequivocal non-fungibility' of NFTs, nor does it introduce a functional test that would allow for a more precise classification of such tokens. As a result, entities operating in this area may be exposed to the risk of supervisory measures or administrative sanctions (Articles 111–115 MiCA), even when they have, in good faith assumed that their assets fall outside the MiCA regime. Where an appropriate assessment leads to the conclusion that a given asset fails to meet the criteria of uniqueness and non-fungibility (for instance, due to issuance in series, collections, or fractionalisation), the obligations set out in Title II (including the white paper) shall apply to the issuer, while intermediaries fall under Title V. Any violations are subject to the measures and administrative penalties under Articles 111–115.

Regulatory uncertainty regarding the classification of NFTs may be mitigated through soft supervisory instruments. The French financial regulator (AMF), in its official publication on MiCA, emphasises that the criteria for qualifying NFTs under the Regulation will be further clarified in forthcoming ESMA guidelines.[34] Until

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[33] See e.g. CMS Law, *NFTs under MiCAR – regulated or not according to legal experts?*, 2023; https://cms.law/en/int/publication/legal-experts-on-markets-in-crypto-assets-mica-regulation/nfts-under-micar-are-they-regulated-or-not [accessed on 27 June 2025].

[34] Autorité des Marchés Financiers, *The European Regulation Markets in Crypto-Assets (MiCA)*, 29 November 2024; https://www.amf-france.org/en/news-publications/depth/mica [accessed on 11 September 2025].

then, the interpretative rules are derived directly from MiCA's recitals themselves. The AMF makes extensive use of soft law in the crypto-asset field (e.g. Instruction DOC-2019-23 on PSAN) and maintains a Fintech Forum (ACPR–AMF), which issues practical guidance (for example, on smart contract certification). This demonstrates how supervisory communication can serve as a practical 'bridge' between supervision and innovation.

In March 2025, ESMA published guidelines on the conditions and criteria for classifying crypto-assets as financial instruments (Article 2 MiCA), which are particularly relevant to the assessment of so-called *investment-like NFTs*. The *Overview of Level 2 and Level 3* (July 2025) confirms that further implementing measures under MiCA are in progress;[35] however, no separate, dated document dealing exclusively with NFTs has yet been published. Therefore, it is advisable to avoid rigid declarations regarding the timing or form of any future NFT-specific guidance.

In light of this, Poland could consider several steps in the NFT area:

- pending detailed ESMA guidance, and independently of national implementing measure, the KNF could issue a communication explaining how NFT projects should be assessed in light of recitals 10–11 MiCA and clarifying when MiFID II regime applies;
- KNF could recommend the use of a functional test that examines not only on the technical uniqueness of a token, but also its economic purpose, marketing, purchasers' expectations, and actual use. Such an approach, based on the principle of 'substance-over-form', is consistent with MiCA's rationale and enables a more effective distinction between digital collectibles and financial-type instruments;
- educational initiatives could be undertaken, aimed at issuers and investors, to clarify the consequences of misclassification and to promote good disclosure practices.

CHALLENGES FOR THE DEVELOPMENT OF PLN-LINKED STABLECOINS

MiCA introduces a detailed regulatory framework for so-called e-money tokens (EMTs), i.e. stablecoins pegged to a single official currency. While the objective is to enhance safety and trust, the current design of the rules may – paradoxically – hinder the development and competitiveness of stablecoins linked to the currencies of non-euro area Member States, including the Polish zloty (PLN).

Under MiCA, EMTs must be issued at par value and are redeemable at any time at face value; the granting of interest on EMTs is explicitly prohibited (Articles 49–50 MiCA). Funds received in exchange for EMTs must be safeguarded under mechanisms similar to those in the E-Money Directive, while MiCA further specifies that such funds must be invested in assets denominated in the same currency as the token (Article 54 MiCA). The key challenge is that only EMT issuers linked to the euro have potential access to deposit their reserves with the European

[35] European Securities and Markets Authority, *Overview…*, op. cit.

Central Bank, which significantly reduces operational costs and counterparty risk.[36] In Poland, by contrast, potential issuers of zloty-denominated EMTs are required to hold reserves with commercial credit institutions. Particularly in periods of low or negative interest rates (as in previous years), this requirement could generate additional costs and render a PLN-denominated stablecoin considerably less competitive compared with its euro- or dollar-based counterparts.

An additional challenge for the Polish e-money token (EMT) framework concerns the overlap of regulatory regimes. In its opinion of June 2025, the European Banking Authority confirmed the cumulative application of PSD2/EMD2 and MiCA with respect to certain payment services performed using EMTs, expressly excluding the possibility of 'double counting' capital. This means that a CASP offering EMT transfers may simultaneously be subject to capital requirements under both MiCA and PSD2, insofar as its activities fall within the scope of a regulated payment service.

There are also significant market challenges. Data clearly indicate the dominance of USD-linked stablecoins (e.g. USDT, USDC), which together account for 99.2% of total market capitalisation.[37] These are preferred by Polish users due to their high liquidity and global acceptance. At the same time, with the entry into force of MiCA, many exchanges and platforms operating within the EEA/EU have introduced restrictions on stablecoins not compliant with MiCA requirements (e.g. USDT).[38] – including Coinbase (December 2024), Crypto.com and Kraken (Q1 2025), and Binance (as of 31 March 2025 for EEA users).This creates a market gap that could be filled by a fully regulated, locally issued stablecoin. However, without adequate systemic support, high operational costs and initially low liquidity may cause a PLN-denominated stablecoin to remain a niche product.

To prevent the marginalisation of the zloty in the digital money environment, several reforms could be considered:

- creating a framework that would allow MiCA-compliant issuers of PLN stablecoins to deposit part or all of their reserves with the National Bank of Poland (NBP). Such a solution would reduce counterparty risk (e.g. insolvency of a commercial bank holding the reserves) and lower reserve maintenance costs, thereby enhancing trust and competitiveness of the Polish stablecoin;

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[36] Clarification: access to central bank accounts follows from the status of a credit institution (and, in the euro area, from relations with the Eurosystem), not merely from EMT issuance. Generally, e-money institutions do not hold central bank accounts and place reserves with commercial banks or other safe assets; an exception applies to credit institutions as EMT issuers. In Poland, the NBP may open accounts for banks and – with the Governor's consent – for other legal persons (Article 51 of the NBP Act), which *de lege ferenda* could allow specialised account solutions for PLN-denominated EMTs.

[37] Observation based on publicly available analytics (e.g. CoinGecko, CoinMarketCap) confirming USD stablecoin dominance. At the XII Digital Money & Blockchain Forum (Łazarski University, 11 June 2025), Jacek Czarnecki presented findings showing that dollar stablecoins accounted for 99.2% of total market capitalisation. See also K. Piech, *Stablecoins under Siege. How MiCA might dollarise Europe's digital future?*, Substack, 18 June 2025; https://kpiech.substack.com/p/stablecoins-under-siege [accessed on 27 June 2025].

[38] See e.g. Tangem, *MiCA-compliant Stablecoins: What You Need to Know*, 2025; https://tangem.com/en/blog/post/swap-mica-stablecoins/ [accessed on 27 June 2025].

- introducing tax relief on interest income generated by reserve assets or other fiscal incentives to partially offset issuance costs.

Undertaking such measures is essential to prevent the progressive 'euroisation' or 'dollarisation' of the Polish crypto-asset market and to create favourable conditions for the development of local innovation in this strategically important segment of the modern financial system.

THE NEED TO OPTIMISE REPORTING AND INVESTOR EDUCATION

The final area identified as requiring attention in the MiCA implementation process concerns operational and informational issues which, although less prominent, are nonetheless important for the effectiveness and safety of the market.

With regard to reporting, the draft act implementing MiCA imposes new reporting obligations on supervised entities. There is a risk of partial overlap between these obligations and the extensive AML/CFT requirements arising from the Act of 1 March 2018 on Counteracting Money Laundering and the Financing of Terrorism (hereinafter referred to as 'the AML Act').[39] The Regulatory Impact Assessment (RIA) attached to the draft indicates an increase in the total administrative time devoted to reporting, representing an additional burden, particularly for smaller entities. To avoid inefficiencies, it is advisable to implement the 'once-only' principle, understood as the re-use of the same reference data (data field taxonomy, client identifiers, transaction metadata) across different regulatory regimes, while preserving the separation of legal bases and reporting channels.[40]

Investor education is another important issue. MiCA imposes extensive disclosure obligations on market participants. For offers of 'other crypto-assets', Title II specifies the content of the white paper (including the characteristics, functions, and risks of the asset) as well as the requirements for marketing communications (notably Articles 6–7), including the obligation to include a warning that the communication has not been approved by a competent authority and to indicate the website address where the white paper is available. Analogous rules apply to ARTs (Title III, Article 29) and EMTs (Title IV, Article 53, including a clear statement of the right to redeem at par value). In addition, CASPs are required to act honestly, fairly, and professionally, and to provide information that is clear, fair, and not misleading (Article 66).

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[39] Act of 1 March 2018 on Counteracting Money Laundering and Terrorism Financing, consolidated text: Journal of Laws of 2023, item 1124, as amended.

[40] In particular:

- AML (SAR) – suspicious activity reports to the GIIF under the AML Act / ZMLR 2024/1624;
- MiCA – market abuse (STOR) reports to the KNF under Article 92 MiCA (Title VI) and ESMA standards;
- Travel Rule (TFR) – information exchange on crypto-asset transfers between CASPs (no threshold), and for self-hosted wallet transfers above EUR 1,000 – verification of ownership.

It would be advisable for the KNF and GIIF to develop a joint data taxonomy and technical interfaces to automate reporting, eliminate duplication and improve data quality, while maintaining confidentiality appropriate to each regime.

However, both academic literature and experience from traditional financial markets suggest that formal warnings alone become less effective as product complexity increases (OECD, 2019) – a finding particularly relevant for crypto-assets. Therefore, investor education measures should complement MiCA's minimum disclosure requirements and be designed with behavioural considerations in mind, using plain language, layered formats, comprehension testing, and *just-in-time* warnings within user interfaces.

The current version of the Polish draft act does not provide mechanisms to support investor education, nor does it envisage a nationwide information campaign on the risks associated with investing in crypto-assets. This regulatory gap may increase the likelihood that retail investors make uninformed or excessively risky decisions.

In this respect, the following complementary measures are proposed (*de lege ferenda* / supervisory practice):

- the KNF should recommend that marketing communications for 'other crypto--assets' include a standardised risk label and a mandatory disclaimer pursuant to Article 7 MiCA; for EMTs, a standard formula referring to the right of redemption under Article 53;
- the introduction of layered disclosure practices (a plain-language summary followed by detailed information) and A/B testing of warning effectiveness (e.g. comprehension thresholds, placement, and timing within the customer journey);
- a nationwide KNF-led programme, developed in cooperation with industry representatives and institutions such as UOKiK, the Ministry of Education and Science, and the Ministry of Digital Affairs, focusing on the risks of crypto--assets, differences in regulatory protection (MiCA vs. deposit insurance), and principles for verifying marketing materials in social media. Funding could be provided from a portion of supervisory fees. The French AMF model of cooperation with financial education stakeholders may serve as a useful reference.

CONCLUSION

The entry into force of the MiCA Regulation marks a milestone in the development of the EU single financial market. It represents one of the most ambitious legislative undertakings of the Union in the field of digital finance, comparable in scale to the MiFID framework in the capital markets. For the first time, a harmonised regime for crypto-assets has been established, offering both legal certainty and enhanced protection for investors and consumers.

The Polish draft act implementing MiCA, however, demonstrates a clear tendency towards regulatory maximalism. The shortened transitional period, the revenue-based supervisory fee model, the introduction of far-reaching intervention instruments (such as the domain register and account freezes), and extensive statutory delegations together place Poland among the most restrictive jurisdictions in the EU. In comparative perspective, the Polish approach is distinguished by its breadth, volume and intensity.

The analysis confirms the research hypothesis: the Polish draft act contains solutions that amount to gold-plating, raising compliance costs without delivering proportionate benefits, while at the same time leaving important regulatory gaps unaddressed. Among these are the absence of a framework for decentralised finance, the unresolved classification of NFTs, and barriers to the development of PLN-denominated stablecoins. Such an approach risks undermining the competitiveness and innovativeness of the domestic crypto-asset market and may drive firms to seek more favourable jurisdictions within the EU.

The findings therefore point to the need for corrective measures. National regulations should be proportionate, consistent with the principles of EU law, and properly calibrated to the structure of the domestic market. Above-minimum national requirements – such as supervisory fees or intervention powers – should be carefully reviewed in light of their economic consequences. At the same time, regulatory gaps should be addressed through soft law, supervisory guidance and experimental tools such as sandboxes.

The implementation of MiCA is not only a matter of transposing obligations but also of shaping the environment in which innovation will develop. By balancing security with openness to new technologies, Poland has the opportunity to fulfil its EU commitments while fostering an innovative and competitive domestic digital finance ecosystem.

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