

MiCAR - AFM update

15 December 2023

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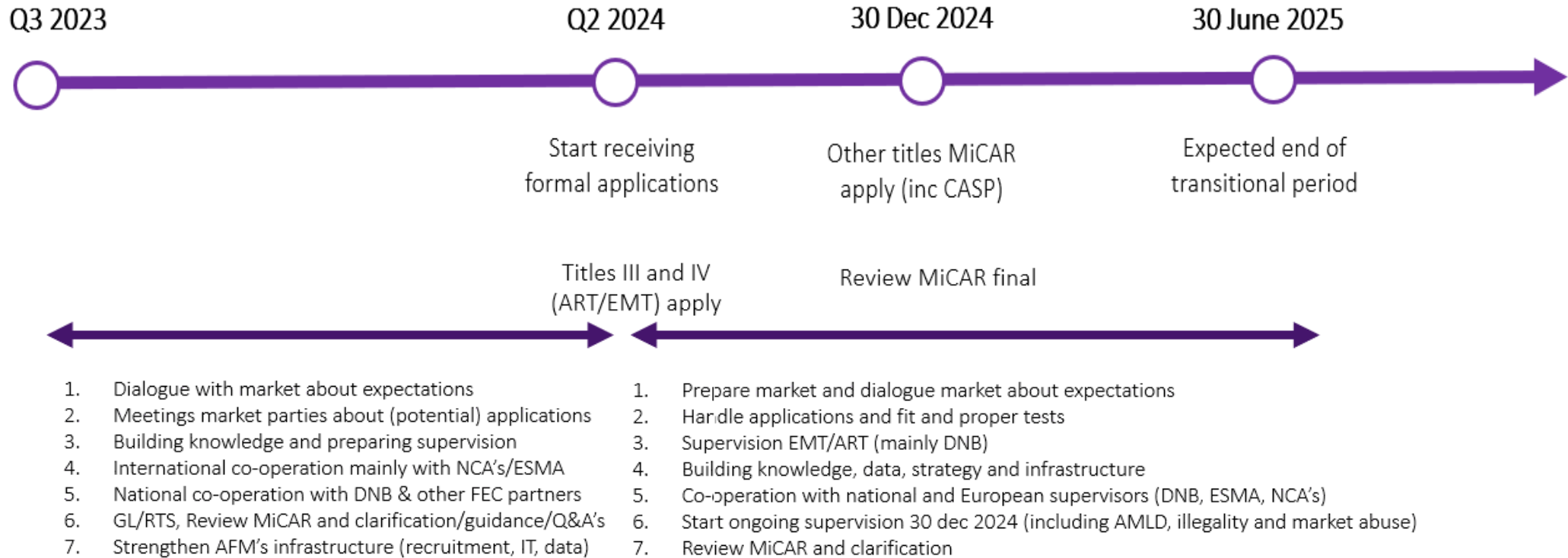




Overview of MiCAR preparation at AFM

Timeline MiCAR preparations

ESMA organized 3 packages of GL/RTS. Package 1 and 2 are already consulted. Package 3 will be consulted in Q1 2024. AFM has an active role regarding GL/RTS. It is however expected that further clarification on specific points is necessary.



Main goals MiCAR preparation

Authorizations: AFM is prepared to receive and handle license applications (including Fit & Proper testing) and notifications properly and in time for MiCAR/transitional period

Ongoing supervision: AFM is prepared to deliver a high standard of ongoing supervision (inc enforcement of illegality)

Data and application: AFM has a good view on data applications for supervision. AFM supports European co-operation regarding data management

Knowledge: AFM increases her knowledge to understand the (potential) risks, changes and trends in the market regarding MiCAR regulation

Prepare the market: Market participants know what to expect from the AFM. AFM has a high standard for supervision and is transparent and predictable regarding her supervision

Co-operation and level playing field: AFM is committed to effective national (DNB, FIOD, OM etc.) and international co-operation (ESMA, NCA's, EBA) regarding MiCAR supervision and invests in convergence within Europe

Some of our challenges

New market participants: MiCAR is more extensive than AMLD5 regime

Dutch government to decide on final aspects: transitional period and division AFM/DNB

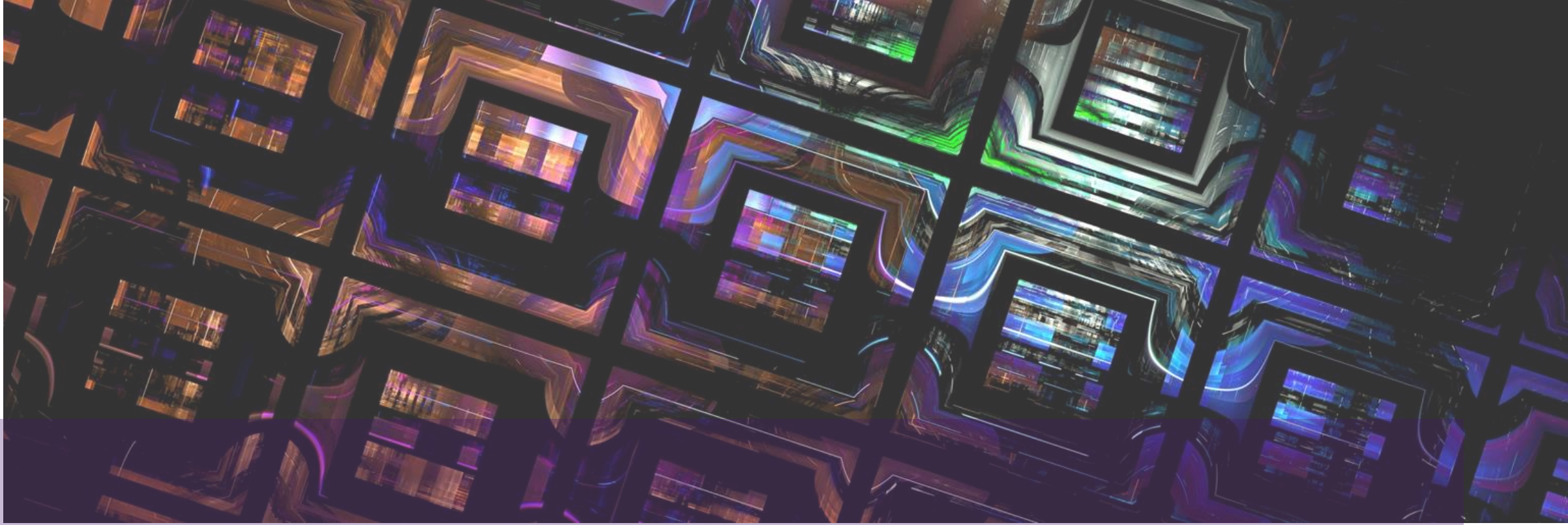
GL/RTS not final yet and MiCAR demands several clarifications

Different speed of implementation between countries: transitional period and context differ

Uncertain how many authorizations, notifications and issuers to expect (and what impact that has on resources)

Lack of reliable transaction data and arbitrage make supervision of market abuse more challenging than regular markets

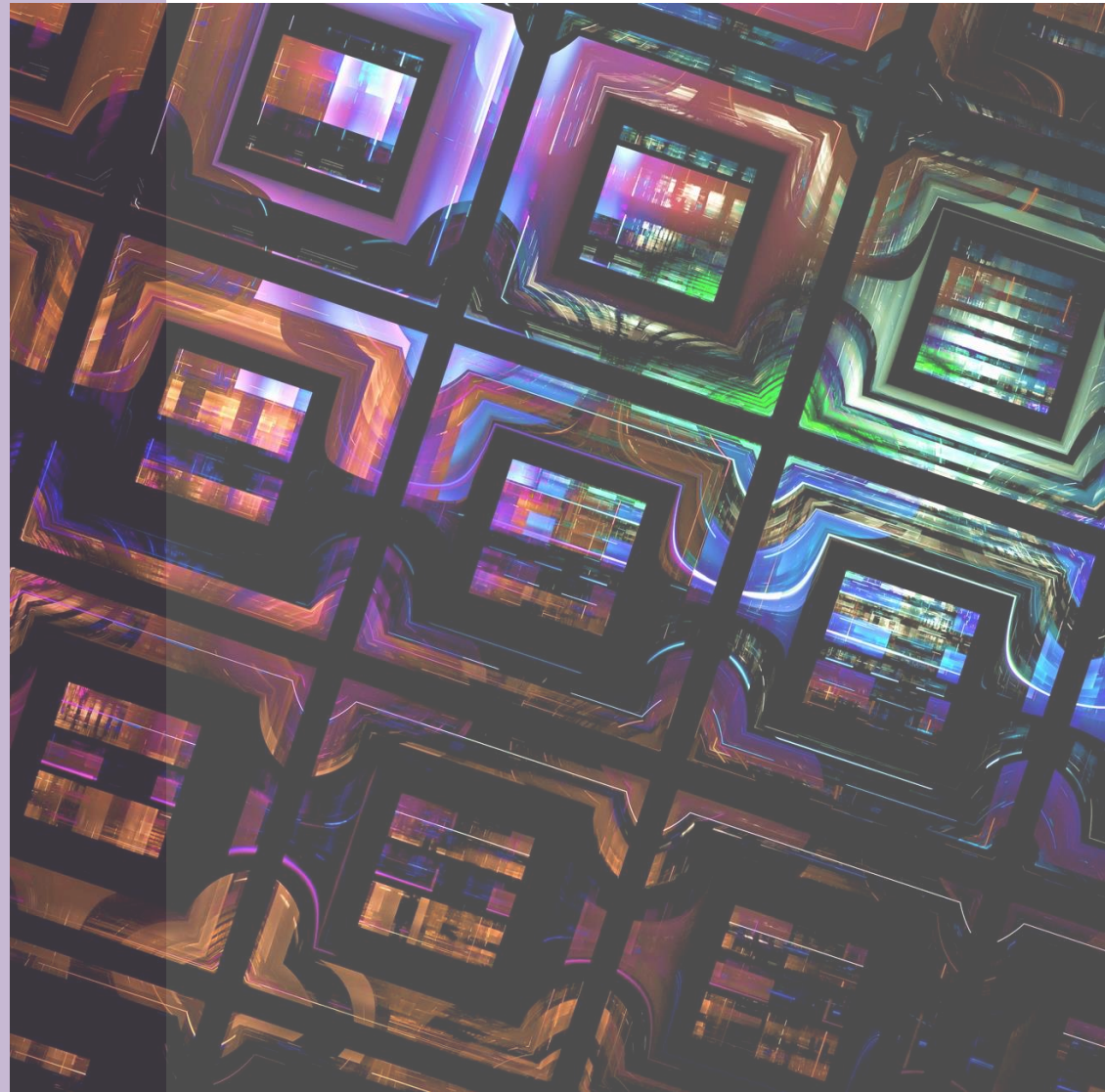
Building knowledge (market parties, products, data and DNB registrations/AMLD supervision)



Update on authorization procedure

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3. Pre-scan
4. CASP authorization
 - Document overview
 - License application procedure
 - Notification procedure
 - Examples of risk-based focus areas
 - Good practices
5. Q&A



1. Introduction

Under MiCAR, the following types of authorizations exist

Organizations who qualify as a Crypto Asset Service Provider (**CASP**) → Article 63 MiCAR

- License application to AFM, including:

- Fit and proper testing of board members and shareholders
- Prudential assessment

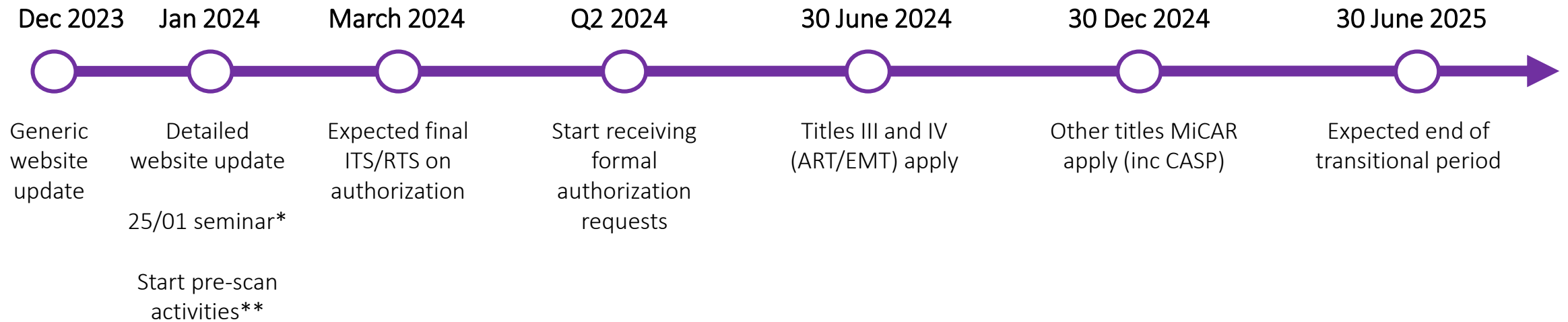
Regulated financial institutions who wish to be a CASP for equivalent services → Article 60 MiCAR

- Notification procedure to AFM, smaller documentation scope than CASP license application

- No fit and proper testing and prudential assessment

- For example: banks, investment firms (MiFID2), funds managers (AIFM/UCITS), e-money institutions

2. General timeline



* On 25 January, the AFM will host a seminar for market participants, including (legal) advisors

** The pre-scan procedure is available for parties who are preparing a CASP license application at the AFM



3. Pre-scan

The AFM will facilitate a voluntary pre-scan procedure for parties who are preparing for a CASP license application at the AFM, to contribute to a more efficient formal authorization procedure and build knowledge on both sides on important topics. In general, the idea is to have supervisory meetings to align on the most important topics in an efficient manner.

If you are already preparing for a formal license application at the AFM and are interested in the pre-scan, please contact us at crypto@afm.nl.



4. CASP authorization

Content

Document overview

Authorization procedure

Notification procedure

Examples of risk-based focus areas

Good practices

4. CASP authorization: document overview

A good quality documentation package will reduce the need for iterations and enable a more efficient authorization procedure for both the AFM and the applicant. The authorization form should focus on clear argumentation on how the applicant complies with MiCAR-rules and include specific references (page numbers) to supporting documentation to evidence this claim.

List of topics in the **authorization form** (based on draft ITS):

- General information
 - Programme of operations
 - Prudential requirements
 - Governance arrangements and internal control mechanisms
 - Business continuity
 - Detection and prevention of money laundering and terrorist financing
 - Identity and proof of good repute, knowledge, skills, and experience and of sufficient time commitment of the management board members
 - Information on shareholders or members with qualifying holdings
 - ICT systems and related security arrangements
 - Segregation of clients' crypto-assets and funds
 - Complaints-handling
- If applicable:*
- *Operating rules of the trading platform and market abuse detection*
 - *Custody and administration policy*
 - *Exchange of crypto-assets for funds or other crypto-assets*
 - *Execution policy*
 - *Provision of advice or portfolio management on crypto-assets*
 - *Transfer services*

Supporting documentation

Supporting documents are aligned with the information in the authorization form and include for example internal policies, (control) procedures, risk analyses, (risk/compliance/financial) reports, screenshots of tooling or account information, examples of client flows and marketing communications.

4. CASP authorization: document overview

For the Fit & Proper testing, applicants must submit the following documentation:

- **Prospective appointment notification form** (always applicable, even when already appointed) *
 - *NB. After authorization, as part of ongoing supervision, board members first need to be tested before they can be appointed*
- **Integrity screening form** (only if not previously screened by the AFM or DNB or in case of new facts after previous screening) *
- **Statement no new relevant integrity related facts** (only if previously screened by the AFM or DNB) *
- **Suitability matrix for policy makers** *
 - *Including questions on knowledge of relevant regulations, so we expect substantiation on adequate knowledge on MiCAR, AML/TFR, DORA, etc.*
- **Suitability matrix for supervisory board members** (if applicable) *
- **Standardized curriculum vitae** *
- **Copy ID**
- **Considerations regarding appointments**
- **Job profile**

* These forms are AFM templates that can be downloaded from our website (MiCAR-versions expected to be available end of January 2024)
> In the meantime, similar forms for investment firms can be analyzed to see which data needs to be gathered ([see link](#))
> General guidance on fit and proper testing can be found on our website ([see link](#))
> The MiCAR-versions of forms will most likely include specific questions on the MiCAR-services and relevant regulations (e.g., AML, DORA)



4. CASP license application

A CASP license application will take several months. Based on our experience, even in a best-case scenario it will take at least 5 months. A best-case scenario generally means that the application is complete and of good quality, the services and products are not very complex or high-risk and there are no significant organizational changes needed.

In practice, often longer is needed, for example due to required changes the applicant must make.

4. CASP license application procedure

1. Applicant submits license application through mail (via Cryptshare)
 - Start of legal term for the completeness check (**25 working days**)
2. AFM shall **acknowledge receipt** of the license application **within 5 working days** and will share the contact details of your case manager who will be your first point of contact during the authorization procedure
3. AFM performs first completeness check
4. AFM **request for missing information** and sets a deadline, usually between **5-20 working days**
5. AFM continues the completeness check
 - **AFM may refuse to review applications** if they remain incomplete after the set deadline in the previous step
6. AFM notifies applicant that the license application is complete
 - Start of legal term for the assessment (**40 working days**).
7. AFM requests any necessary further information to complete the assessment, **within first 20 working days** of assessment period
 - Suspension of legal assessment term for **maximum of 20 working days**
8. AFM will take a **decision granting or refusing the license** and shall notify the applicant of their decision within 5 working days of date of that decision

Iterative process

The AFM and applicant will communicate on an ad-hoc basis about the process or small questions.

There will be approximately 1-3 supervisory meetings dependent on the nature, scale and complexity of the applicant.

4. CASP notification procedure

1. Notifying party submits notification through mail (via Cryptshare)
 - Start of legal notification period before providing specified MiCAR services (**40 working days**)
2. AFM shall **acknowledge receipt** of the notification **within 5 working days** and will share the contact details of your case manager who will be your first point of contact during the notification procedure
3. AFM performs first completeness check
4. AFM **request for missing information** within **20 working days** and sets a deadline of maximum **20 working days**
5. AFM continues the completeness check, whereas any further information requests will not result in a suspension of the legal notification period
6. The crypto-asset service provider shall not begin providing the crypto-asset services as long as the notification is incomplete.
7. AFM will take a **decision on whether the provided information is complete** and shall notify the applicant

Iterative process

The AFM and notifying party will communicate on an ad-hoc basis about the process or small questions.

If necessary, supervisory meetings will be planned.

4. CASP authorization: examples of risk-based focus areas

We are currently drafting our risk-based approach towards the MiCAR-requirements. This means that the below list and our prioritization may change. Current risk-based focus areas, including example supervisory questions, are:

- **Scope of MiCAR authorization**
 - Is it well substantiated, preferably with support of a legal opinion, for which MiCAR-services a license is requested?
- **Governance**
 - Is there a clear overview of all entities involved, including interrelations, and is there an effective risk control framework?
 - Is it clear which persons are in scope for the fit and proper testing? Is each fit and proper testing form filled in properly?
 - Is the local presence (substance) of the CASP sufficient for effective management and compliance with EU/national rules?
- **Outsourcing**
 - Are all intra/extra-group outsourced activities managed properly? How does the CASP remain in control?
- **Segregation of funds/crypto assets**
 - Are funds/crypto assets of clients adequately protected, on an ongoing basis and in case of insolvency of the CASP?
- **Information to clients**
 - Are clients sufficiently made aware by the CASP on the nature, costs and risks of the provided services and products?
- **Risk management and compliance**
 - Is the OPIT-risk management compliant with DORA, and does risk/compliance have sufficient capacity and mandate?

4. CASP authorization: good practices

- A. Determine which MiCAR-rules apply to your organization (**scope determination**), preferably based on legal advice from a specialized law firm.
 - For example: determine whether your services classify as operating a trading platform or a broker and if you are providing investment advice.
- B. **Develop knowledge** related to the MiCAR-rules and determine to which extent your organizational structure and/or business operations need to be adjusted.
 - For example: conduct a gap-analysis on your current situation and a MiCAR-compliant situation and plan to timely implement the necessary changes.
- C. **Obtain advice** for your MiCAR-preparations where necessary,* whilst staying fully responsible and knowledgeable for the content of your license application.
 - For example: advice on the design and implementation of control measures.
- D. **Contact the AFM** in a timely manner on topics with a high impact and/or long lead time, by sending an email to crypto@afm.nl (even before starting the formal application).
 - For example: questions on the scope determination, set-up of the control structure, or choice of asset segregation procedures.
- E. **Prepare to timely answer questions** from the AFM (and DNB) and implement any necessary changes within your organization.
 - For example: further elaborating on topics in writing or in a supervisory meeting or strengthening your risk/compliance framework.
- F. **Submit a comprehensive** license application, with good argumentation as to why you are MiCAR-compliant and with clear alignment to your internal procedures.
 - For example: provide a summary and clear references (incl. page numbers) to supporting documentation such as policies and procedures, and ensure you correctly fill all the right forms for Fit & Proper testing.

** If you are supported by an advisor, we would like to receive the details*

In case of questions, contact us

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