

In January 2025, the AFM published its report '[Study into advertisements and information disclosure on costs by CASPs](#)'. In this report, the AFM sets out its expectations from CASPs regarding marketing communications to clients. We expect that the AFM will put much focus on this topic in its ongoing supervision of licensed CASPs and we see the same with respect to market parties applying for a MiCAR-licence. In this MiCAR Factsheet, we therefore provide CASPs with some practical insights.

### Relevant provisions

- Article 66(2) MiCAR (fair, clear and not misleading information and marketing communications).
- Article 24(3) MiFID II (implemented in Article 4:19(2) of the Dutch Financial Supervision Act, **DFSA**), as the AFM may take similarities into account.

### Marketing communications of CASPs: what should CASPs know?

CASPs have to comply with the MiCAR-requirement of fair, clear and not misleading information and marketing communications (see *Relevant provisions* on the left) to clients. Based on the AFM report, this means that – in practice – the AFM expects CASPs to, inter alia, do the following:

- Include a warning of risks associated with transactions in crypto-assets in advertisements and make sure that this warning is clear and specific.
- If historical returns are used, make sure to use a representative period.
- If possible advantages are mentioned – such as staking rewards – also mention associated risks and limitations.
- Advertisements on promotions in which e.g. transaction fees are waived above a certain trading volume, should show the relevant timespan in a fair and clear manner if a restricted validity period applies.
- Risks should not be 'trivialised' by using terms such as 'safely' trading in crypto-assets without any further explanation thereof.
- Do not mislead clients by terms such as 'savings' which are generally associated in the Netherlands with bank saving accounts to which the Deposit Guarantee Scheme applies.

### Don't forget about the Unfair Commercial Practices Act (*Wet OHP*)

In the Dutch Civil Code, certain rules have been laid down with respect to unfair commercial practices (e.g. misleading advertisements). For 'financial services or activities', the AFM can impose sanctions in case of unfair commercial practices. Currently, crypto-asset services are not included in the definition, making the ACM the competent authority instead of the AFM – the Dutch legislator is working to amend this for the AFM to be able to impose sanctions on non-compliant CASPs. Various guidance and case law exists in relation to the *Wet OHP*, such as what may be expected from market participants in terms of provision of information.

### Example 1: Warning on risks

**Don't:** add a 'generic' warning that investing in crypto-assets may involve risks.

**Do:** make clear what the relevant risk is, such as the possibility of the client losing its investment.

### Example 2: Staking rewards

**Don't:** only mention staking rewards per crypto-asset.

**Do:** also mention the relevant risks and limitations. For instance, a limitation can be that the CASP can change the reward at any moment and/or that certain eligibility conditions apply.

### Is there any other guidance which may be helpful for CASPs?

As the AFM has noted that it may take into account similarities between Article 66(2) MiCAR and Article 24(3) MiFID II (as implemented in Article 4:19(2) DFSA), it is advisable for CASPs to take note of the AFM's '[Policy Rule on Provision of Information](#)'. Although strictly speaking this Policy Rule does not apply to CASPs, it may be helpful in providing some colour on what the AFM deems fair, clear and not misleading, as well as some guidance in respect of the Unfair Commercial Practices Act.

## Questions? Reach out to our MiCAR-team below



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