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MICA

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The Crypto-Asset Markets Regulation (MiCA), the Pilot Regime and the Digital Operational Resilience Regulation (DORA) are key elements of the EU's Digital Finance Package published on 24 September 2020. MiCA forms with the Pilot Regime the two major legislative proposals on digital assets proposed by the European Commission. The Commission's objective, through these proposals, is to encourage innovation based on the technology underlying this device, namely the "Distributed Ledger Technology" (DLT) while preserving financial stability, market integrity and investor protection.

1. Overview

a. Key aspects of the Regulation

Markets in Crypto-assets (MiCA) Regulation, introduced in 2020, provides a sound legal framework for crypto-asset markets to develop within the EU by clearly defining the regulatory treatment of crypto-assets that are not covered by existing financial services legislation.

MiCA will therefore support innovation and fair competition by creating a framework for the issuance, and provision of services related to crypto-assets. In addition, it aims to ensure a high level of consumer and investor protection and market integrity in the crypto-asset markets, as well as address financial stability and monetary policy risks that could arise from a wide use of crypto-assets and Distributed Ledger Technology (DLT) based solutions in financial markets. Finally, MiCA includes measures against market manipulation and to prevent money laundering, terrorist financing and other criminal activities.

A majority of crypto-assets which are not already governed by other regulations will fall under the scope of the Crypto-Asset Markets Regulation, such as e-money token, utility token and asset-referenced tokens.

Issuers of crypto-assets falling under the scope of MiCA will be subject to several obligations, including the publication of a white paper, the necessity to be authorized to issue crypto-assets and to comply with certain prudential rules.

Entities providing crypto-asset services will qualify as crypto-asset service providers.

b. Scope of Application

MiCA regulates primary market activities (issuance, public offerings) and access to the secondary market (listings) as well as the provision of certain crypto-related services. With regard to the latter, MiCA provides a catalog of 10 services defined as "crypto-asset services" (Art. 3 (1) No. (9) MiCA). The list includes services such as the custody and administration of crypto-assets on behalf of third parties and the operation of a trading platform. It is inspired by the list of investment services under MiFID II ([Markets in Financial Instruments Directive 2014/65/EU](#)).

MiCA regulates activities involving "crypto-assets", broadly defined as any "digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology (DLT) or similar technology" (Art. 3 (1) No. (2) MiCA).

MiCA establishes separate frameworks in respect of three distinct categories of crypto-assets: e-money tokens, asset-referenced tokens and other crypto-assets :

1. **EMTs for Electronic money tokens or e-money tokens** are crypto-assets that aim "to maintain a stable value by referencing to the value of one official currency" (Art. 3 (1) No. (4) MiCA). Like traditional e-money, EMTs are electronic substitutes for coins and banknotes and can be used for payment purposes.
2. **ARTs for Asset-referenced tokens** aim "to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies" (Art. 3 (1) No. (3) MiCA). For example, ARTs could be backed by a basket of different fiat currencies, commodities or crypto assets.
3. **All other crypto-assets** that are not EMTs or ARTs. It covers a wide variety of crypto-assets, including non-pegged payment tokens (for instance cryptocurrencies like Bitcoin or Ether) and utility tokens. MiCA lays down a few specific rules for utility tokens, defined as "a type of crypto-asset which is only intended to provide access to a good or a service supplied by the issuer of that token" (Art. 3 (1) No. (5) MiCA).

These three categories of crypto-assets are subject to different requirements adjusted to the risks they entail. Issuers of crypto-assets that meet the criteria under the applicable regime will be permitted to offer those crypto-assets to the public or admit them to trading anywhere in the EU. Conversely, any person issuing crypto-assets worldwide that could be subscribed for in the EU may be subject to these requirements.

Both ARTs and EMTs are variants of "stablecoins". Under MiCA, ARTs and EMTs may be designated as significant by the European Banking Authority (EBA) based on a prescribed set of criteria such as the number of holders, market capitalization, gatekeeper status of their issuer or interconnectedness with the financial system. Issuers of significant ARTs (sARTs) and EMTs (sEMTs) are subject to more rigid rules —for instance regarding capital requirements— and will generally be supervised by EBA instead of national authorities. This is similar to the classification of banks as systemically important to address the financial stability concerns of regulators.

MiCA does not apply to crypto-assets captured by existing financial services legislation (eg, security tokens qualifying as financial instruments under MiFID II). Further, it does not apply to crypto-assets that are unique and not fungible with other crypto-assets (Art. 2 (2a) MiCA ; so-called Non-Fungible Tokens (NFTs)). However, NFTs that are issued "in a large series or collection" may be considered fungible and thereby covered by MiCA. Fractional parts of NFTs also do not fall under the exclusion.

c. Obligations for Issuers and Service Providers

• Issuers of the three types of crypto-assets: white papers

One core obligation under MiCA is that issuers of all three types of crypto-assets must issue white papers before they may offer a token to the public or list it on a trading platform. A white paper is a kind of prospectus for crypto-assets, informing potential holders of the characteristics of the issued crypto-asset. MiCA introduces minimum standards for these white papers to achieve a standardization and reliability (so far lacking). Under MiCA, white papers must include information on the issuer, the crypto-asset project or token, risks and the rights and obligations attached to the crypto-asset but also the adverse environmental and climate related impacts of the consensus mechanism used to issue the crypto-asset...

Unlike with a prospectus, there is no general requirement for a competent authority to approve the whitepaper. Further, the [Prospectus Regulation 2017/1129/EU](#) contains more detailed rules on the required content, such as the material risk factors, including their weighting.

For crypto-assets other than ARTs or EMTs, MiCA mainly stipulates disclosure, transparency and governance rules. Offering such crypto-assets to the public or listing them on a trading platform does not require prior authorization. Rather, issuers only need to notify and publish the white paper up front. Notably, MiCA grants retail holders a right to withdraw from the purchase of such a token on the primary market within 14 days, if the respective crypto-asset was not yet traded on a trading platform at the time of purchase.

- **Issuers of stablecoin variants ARTs and EMTs**

For issuers of the stablecoin variants ART and EMT, MiCA provides for stricter rules due to financial stability and monetary sovereignty concerns. In the EU, the public offering or listing ARTs or EMTs generally requires prior approval and can only be carried out by the issuer itself, unless the issuer gives written permission to another person to do so.

EMTs may only be offered/listed by authorized credit institutions or e-money institutions upon prior notification of their supervisory authority as well as notification and publication of the required white paper. It is interesting to note that an EMT will automatically be considered as being offered in the EU and will therefore be subject to the strict rules of the MCA when referring to an EU currency. Due to the similarity between EMTs and e-money, lawmakers chose to work with broad references to the [e-money Directive 2009/110/EC](#) to regulate the rights and obligations of EMT issuers, including references to capital requirements and rules on the safeguarding of received funds. MiCA itself mainly stipulates certain exceptions to the e-money regime as well as some additional rules, for example for the investment of received funds.

Further, issuers of ARTs must be established in the EU to receive authorization and—in contrast to the rules for the other MiCA-tokentypes— have to submit the required whitepaper for prior approval to the competent authority before publishing it. In this respect, ARTs are more similar to the approval process under the Prospectus Regulation than the other crypto-assets. As a result, ART issuers are subject to a detailed set of obligations and rules stipulated in MiCA itself, which includes extensive transparency and governance rules, as well as capital requirements. While EMTs issuers must safeguard the funds received, the rules applicable to ARTs include an obligation to maintain a reserve of assets. As MiCA stipulates a right of EMTs and ARTs investors to redeem their tokens at any time, the reserve requirements will ensure issuers won't run into any liquidity risks when faced with a large number of simultaneous redemption requests. Therefore, the reserve always needs to match the full value of the total outstanding holders' claims.

Furthermore, and subject to much debate, MiCA effectively limits the daily average number of transactions and trading volume associated as means of exchange to 1 million (for use of EMTs) and EUR 200 million (for use of ARTs). For an EMT, this only applies where the token is denominated in a currency which is not an official currency of an EU member state. It has been feared that these rules may put popular USD-pegged stablecoins like Tether's USDT, Circle's USD coin and Binance's Binance USD at risk of being stifled in the EU due to their high trading volumes. However, the Regulation specifies that not all types of transactions will be considered to be associated to uses as a means of exchange.

- **Crypto-Asset Service Providers (CASP)**

In the EU, the provision of crypto-asset services will generally require prior authorization as a CASP "crypto-asset service provider" (Art. 53 et seq. MiCA) and a seat in the EU. MiCA stipulates a broad set of general and service specific rules CASPs will need to adhere to. These include governance, capital/ insurance and transparency requirements. In terms of transparency, CASPs are - among other things - required to inform about adverse environmental and climate-related impacts of the consensus mechanism used to issue the crypto-asset. CASP are automatically classified by law as significant (sCASP) when they reach a threshold of 15 million active users within the EU (average in one year). However, unlike sARTs and sEMTs, sCASPs are not subject to stricter rules than regular CASPs.

- **Obligations for management bodies**

Some of the EU's current law proposals (such as NIS2 (the Network and Information Society Directive) and DORA) appear to increasingly focus on board accountability. MiCA also specifies a number of obligations for management bodies. For example, it requires the management bodies of ART issuers and CASPs to "assess and periodically review" the effectiveness of the policy arrangements and compliance procedures (Art. 30(2a), 61(5) MiCA). Moreover, management bodies of ARTs and sEMTs issuers must ensure effective and prudent management of the asset reserves and that the issuance or redemption of tokens is always matched in

the reserves (Art. 32(3), 52(1)(a) MiCA). Violations may result in significant administrative fines for the management body. In addition, to further protect holders of crypto-assets, the management body of an entity may be held separately responsible for information provided to the public through the crypto-asset whitepaper (Art. 14(1), 22(1), 47(1) MiCA).

- **Market Abuse Rules (MAR)**

MiCA also seeks to establish market abuse rules for crypto-asset markets modeled after the existing rules for the traditional capital market under the Market Abuse Regulation (MAR, Art. 76 et seq. MiCA). Under the proposal, crypto-assets that are admitted to trading on a crypto-asset trading platform that is operated by a crypto-asset service provider would be subject to the new rules. The rules include requirements relating to the disclosure of inside information as well as prohibitions on insider dealing, unlawful disclosures of inside information and market manipulation. Lawmakers decided not to transfer the full set of rules that we know from MAR to the crypto market. For instance, the legislator has so far not made it compulsory that intentional and serious offenses of insider dealing, unlawful disclosure of inside information and market manipulation under MiCA be punished as criminal offences. It has been left up for discretion of the individual member states.

2. Chronology of events : key dates

- September 24, 2020 : First proposal of MiCA by the European Commission
- October 5, 2022: validation by the European Parliament's Committee on Economic and Monetary Affairs (ECON)
- October 10, 2022: validation by the European Parliament's Economic Affairs Committee (COREPER)
- April 20, 2023: adoption by the European Parliament
- June 9, 2023: publication in the OJ of the European Union.

The text must now be approved in plenary session of Parliament and then translated by lawyers and linguists; its publication in the official journal of the European Union is expected for the beginning of 2023 with entry into force 20 days after this publication. The provisions of MiCA must enter into application 18 months at the latest after the entry into force (ie Q3 2024) with the exception of the provisions relating to Asset-Referenced tokens and E-money tokens which must be effective 12 months after entry into force (ie Q1 2024).

3. Reference text(s)

- 24.9.2020 Proposal: https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f01aa75ed71a1.0001.02/DOC_1&format=PDF
- 24.9.2020 Annex: https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f01aa75ed71a1.0001.02/DOC_2&format=PDF
- E-Money Directive: [Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48 /EC and repealing Directive 2000/46/ ECText with EEA relevance \(europa.eu\)](#)
- 9.6.2023 MiCA final publication : [Regulation \(EU\) 2023/ 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 \(europa.eu\)](#)