

The Markets in Crypto-Assets Regulation (MiCA)

An exponential growth in the cryptocurrency market all around the world made the EU Commission aware of the need to harmonise the regulatory framework in areas relating to blockchain-based applications to increase investments and ensure consumer and investor protection.

In light of this, the EU Commission published a proposal for the regulation of crypto assets, the Markets in Crypto-Assets Regulation (“MiCA”). This proposal, together with the proposal on a DLT (distributed ledger technology) pilot regime, represents the first specific action in this area. MiCA is in fact part of the Digital Finance package that supports the digital transformation of the financial sector and the use of new financial products in the EU.

In particular, the MiCA proposal has four main objectives. The first is to provide legal certainty. As mentioned, currently there is no harmonized legal framework in this field but rather increasing regulatory fragmentation within the EU. In fact, while a few Member States have already implemented a tailored regime to cover specific crypto-asset service providers, in most Member States they operate outside any regulatory framework. This should change with MiCA. The second objective is to support innovation and fair competition in order to promote the development of crypto-assets and the wider use of DLT. Another purpose is to instil appropriate levels of consumer and investor protection and, lastly, to ensure financial stability since crypto assets are continuously evolving.

Since the field of crypto assets is subject to continuous innovation and technological development, MiCA adopts a very broad definition of

crypto-assets. Article 3(1)(2) of the MiCA proposal defines it as “*a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology*”. In this way, the proposal ensures that the regulation will be applicable to all types of crypto-asset, including those outside the scope of current regulations and those that do not exist yet but may be created in the future.

The MiCA proposal distinguishes between three main categories of crypto-asset. The first category is the “*utility token*” (including Filecoin token, Basic Attention Token, etc.); this is a crypto-asset intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token (Article 3(1)(5) of MiCA). The other category is represented by the “*asset-referenced token*”, which is a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or more commodities or one or more crypto-assets, or a combination of such assets (Article 3(1)(3) of MiCA). The third category is the “*electronic money token*” that represents a type of crypto-asset whose main purpose is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender (Article 3(1)(4) of MiCA). The distinction between different types of crypto-asset is essential since the MiCA proposal provides different rules applicable to the offer and admission to trading of the crypto-assets in question. It follows that, depending on the crypto-asset category, different regulatory duties and requirements will also apply to issuers.

According to the proposal, MiCA will apply to a group of crypto-asset service providers (CASPs)



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and issuers of crypto-assets who offer these assets to third parties. Under the proposal, crypto-asset services can only be provided by legal entities that have their registered office in a Member State and have been authorised by the competent authority of the Member State where that registered office is located. Title V of the proposal sets out the provisions on authorization and operating conditions of CASPs. There are general obligations on crypto-asset services providers and specific obligations for each type of service provided. These obligations are related to requirements, organisational requirements, the implementation of measures to protect crypto-assets and client funds and prevention, management and the disclosure of conflicts of interest. Furthermore, more stringent additional requirements will be imposed on issuers of asset-referenced tokens and e-money tokens.

No definitive date for the Regulation's entry into force has yet been set. However, the EU expects it will happen within the next three years: *"By 2024, the EU should put in place a comprehensive framework enabling the uptake of distributed ledger technology (DLT) and crypto-assets in the financial sector... It should also address the risks associated with these technologies."*

For more information

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