



Proposal for a Regulation on Markets of Crypto-assets

One of the first steps to regulate the Crypto-assets Market (MiCA) was taken by the European Union on 24 September 2020, through the publication of a Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets.

In this article we present what is being discussed for the future of the Crypto-assets European Market.

Concepts to retain

For a better understanding of our Article and the language used with reference to the Crypto-assets Market, it is important to retain the following concepts:

CRYPTO-ASSET: A digital representation of value or rights that can be transferred and stored electronically using distributed ledger technology (“DLT”) or other similar technology.

ASSET-REFERENCED TOKEN: a type of crypto-asset that seeks to maintain a stable value by referring to the value of several currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets.

ELECTRONIC MONEY TOKENS or EMONEY TOKEN: a type of crypto-assets whose main purpose is to be used as a means of exchange and which seeks to maintain a stable value by reference to the value of a legal tender currency.

UTILITY TOKEN: a type of crypto-asset intended to provide digital access to a good or service, available on DLT, and accepted only by the issuer of that crypto-asset.

CRYPTO-ASSET SERVICE: any of the services and activities listed below related to any crypto-active:

- i. Custody and administration of crypto-assets on behalf of third parties;
- ii. Operation of a trading platform for crypto-assets;
- iii. Exchange of crypto-assets for fiat currency that is legal tender;
- iv. Exchange of crypto-assets for other crypto-assets;
- v. Execution of orders relating to crypto-assets on behalf of third parties;
- vi. Placing of crypto-assets;
- vii. Reception and transmission of orders for crypto-assets on behalf of third parties;
- viii. Advice on crypto-assets.

The objectives of MiCA regulation

First objective - Legal security: the first objective reflects the need to legally frame the activity of crypto-asset markets, clearly defining the regulatory treatment of all crypto-assets not covered by the current legislation on financial services.

Second objective - Support innovation: it is necessary to provide security to all players in the crypto-asset market in order to encourage innovation and eliminate obstacles to the application of new technologies.

Third objective - Incorporate adequate levels of market integrity and consumer and investor protection: The third objective recognizes the risks associated with crypto-assets and the importance of establishing standards that protect both consumers and investors.

Fourth objective - Financial stability: the fourth and last objective is related to the use of the so-called “stable coins” and the constant evolution of crypto-assets.

To whom will apply the Regulation

According to the Proposal, the Regulation will apply to persons that are engaged in the issuance of crypto-assets or provide services related to crypto-assets in the European Union.

However, and with several exceptions, it will not apply to crypto-assets that qualify as financial instruments (as defined in Directive 2014/65/EU), electronic money (as defined in Directive 2009/110/EC, unless it is comparable to electronic money tokens), deposits (within the meaning of Directive 2014/49/EU, structured deposits (within the meaning of Directive 2014/65/EU), and securitisations (within the meaning of Regulation (EU) No. 207/2402 of the European Parliament and the Council).

Other exceptions are foreseen, such as the case of credit institutions that issue asset-referenced tokens, which are not subject to certain obligations provided for in the Regulation.

Information to be provided and the White Paper

The Regulation Proposal foresees the need to inform potential buyers of crypto-assets about the characteristics, functions and risks of the crypto-assets they intend to acquire.

When making a public offer of crypto-assets in the Union or requesting the admission of crypto-assets to trading on a crypto-asset trading platform, issuers of crypto-assets must prepare, notify the respective competent authority and publish an information document containing the mandatory disclosure information.

The "**White Paper on crypto-assets**" must contain general information about the issuer, the project to be carried out with the capital raised, the public offer of crypto-assets or their admission to trading on a trading platform, the rights and obligations attached to crypto-assets, the underlying technology used for these assets and the associated risks.

Issuers established in a third country must notify their white papers on crypto-assets to the competent authority of the Member State where they intend to make the offer of crypto-assets or where they seek to obtain their admission to trading on a trading venue.

In addition to the requirements referred to above, the Proposal for a Regulation also provides for various information obligations depending on the type of crypto-asset.

Crypto-assets service

Crypto-asset services may only be provided by legal entities having their registered office in a Member State and who have been authorized as providers of crypto-asset services by the competent authority of the Member State where that registered office is located.

Regarding the provision of services by companies from third countries:

- a) When crypto-asset services are provided on the own initiative of a person established in the European Union, such services shall not be considered as provided in the Union.
- b) If a third country company acquires customers or potential customers in the Union or promotes or advertises crypto-asset services or activities in the Union, this should not be considered as a service provided on the customer's own initiative. In that case, the third country company must be authorized as a crypto-asset service provider.

We also highlight the obligations to apply to crypto-asset service providers that provide the service of custody and administration of crypto-assets on behalf of third parties.

The Proposal of Regulation provides for the obligation to maintain a contractual relationship with clients, who must be subject to mandatory contractual provisions, and the duty to draw up and implement a custody policy.

Crypto-asset service providers shall also be held liable for any damages resulting from an ICT related incident, including an incident resulting from a cyber attack, theft or any malfunction.

Final considerations

The Proposal for a Regulation on the Crypto-asset Market translates into a real regulation of this market, which has not yet existed, giving the Regulatory Entities a relevant role in order to guarantee that the operators of the crypto-asset market are subject to specific authorizations and rules.

Although one of the objectives of the Regulation is to encourage innovation, there is a clear concern to preserve financial stability and protect investors from the risks associated with these markets.

The new rules will thus have a very significant impact as they may apply to providers located in any territory.

The document was presented in September 2020 and is under discussion in the Council of the European Union. It will be directly applicable in all Member States 18 months after its entry into force, with the exception of the provisions relating to asset-referenced crypto tokens and electronic money crypto tokens, which will apply immediately ●

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