

## European Parliament Endorses the New Markets in Crypto-Assets Regulation (MiCA)

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On April 20, 2023, the European Parliament greenlighted the first, harmonized European Union (EU) framework governing crypto-assets, known as the Markets in Crypto-Assets Regulation (MiCA), with 517 votes in favor, 38 votes against, and 18 abstentions.

MiCA is part of the larger digital finance package, which aims to develop a European approach that fosters technological development and ensures financial stability and consumer protection. In addition to MiCA, the package contains a digital finance strategy, a Digital Operational Resilience Act (DORA), and a proposal for a distributed ledger technology (DLT) pilot regime for wholesale use. The package aims to support innovation and the adoption of new financial technologies while providing an appropriate level of consumer and investor protection.

In particular, MiCA aims at harmonizing rules for crypto-assets at the EU level, thereby providing legal certainty for crypto-assets not covered by existing EU legislation. By enhancing the protection of consumers and investors as well as transparency and financial stability, the regulation pushes for innovation and use of crypto-assets.

### MiCA Scope

MiCA regulates activities involving “crypto-assets,” which are defined as “digital representation of value or rights which may be transferred and stored electronically, using DLT (or similar technology).”

MiCA identifies and covers three types of crypto-assets that are subject to different requirements, and are as follows:

- Asset-referenced tokens (ARTs) are 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
- Electronic money tokens or e-money tokens (EMTs) are a type of crypto-asset that purport to exchange and maintain a stable value by referring to the value of a fiat currency that is legal tender
- Other crypto-assets not covered by existing EU law, as a catch-all category, are not EMTs or ARTs

It should be noted that ARTs and EMTs are often described as “stablecoins.” Under MiCA, ARTs, and EMTs may be designated as significant by the European Banking Authority (“EBA”) based on a set of criteria, such as the size of the customer base, the ARTs’ value or market capitalization, or the number of transactions. Additional obligations are applicable to issuers of significant EMTs.

## Key Takeaways

### **Obligations for Issuers of Crypto-Assets**

Issuers of all three types of crypto-assets (as aforementioned) must issue a white paper that contains certain information to inform potential holders of the characteristics of the issued crypto-asset before they may offer crypto-assets to the public or list it on a trading platform. MiCA introduces minimum standards for these white papers in order to achieve standardization.

### **Obligations for Issuers of EMTs and ARTs**

For issuers of the EMTs and ARTs, MiCA sets stricter rules due to related concerns regarding financial stability and monetary sovereignty.

As such, to be authorized to operate in the EU, issuers of ARTs should be incorporated in the form of a legal entity established in the EU and authorized in the EU, and they must publish a crypto-asset white paper approved by their competent authority.

As for EMTs, the issuer must be authorized as a credit institution or as an “electronic money institution” within the meaning of Article 2(1) of Directive 2009/110 (known as the e-Money Directive). Article 46 and Annex III of MiCA sets out the requirements for the crypto-asset white paper accompanying the issuance of EMTs, for example: description of the issuer and the project; indication of whether it concerns an offering of EMTs to the public, or admission of these to a trading platform; as well as information on the risks relating to the issuer and the EMTs.

### **Obligations for Crypto-Asset Service Providers**

MiCA provides that Crypto-Asset Service Providers (“CASPs”) are any persons whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis. As such, crypto-asset services shall only be provided by legal persons who have a registered office in a Member State of the EU and that have been authorized as crypto-asset service providers.

Furthermore, MiCA stipulates a set of general and service-specific rules CASPs will need to adhere to. These include governance, capital/insurance, and transparency requirements.

### **Other Provisions**

MiCA states several obligations for management bodies defined as an issuer of crypto-assets, or of a crypto-asset provider, which is appointed in accordance with national law, and which is empowered to set the entity’s strategy, objectives, and overall direction and which oversees and monitors management decision-making and which includes persons who direct the business of the entity. For example, they must assess and periodically review the effectiveness of the policies, arrangements, and procedures, and they must ensure effective and prudent management of the reserve assets.

Finally, MiCA lays down specific rules prohibiting certain behaviors that are likely to undermine users’ confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information, and market manipulation related to crypto-assets.

## Next Steps

MiCA was already agreed informally by the EU Council in June 2022. After the European Parliament vote, MiCA will now have to be formally endorsed by the EU Council before publication in the EU Official Journal; there is strong suggestion that this will be done smoothly. It would enter into force 20 days later. MiCA would generally start applying after a transitional period of 18 months, while the rules for stablecoins would start applying after a transitional period of 12 months. France’s Financial Markets Authority, or AMF, said in a recent statement that, existing crypto companies could get a “fast-track regime” to new European crypto rules. It is to be seen whether United States will take similar steps or continue to regulate via enforcement.

## What Clients Should Think About

Considering the above, clients carrying out any crypto-asset activities should assess whether they would fall under the scope of this upcoming regulation and anticipate any regulatory changes, especially since crypto exchanges could be made liable for losses on their platform. Any questions should be directed to their legal counsel.

*Law Clerk Laurine Petit also contributed to this blog post.*  
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