

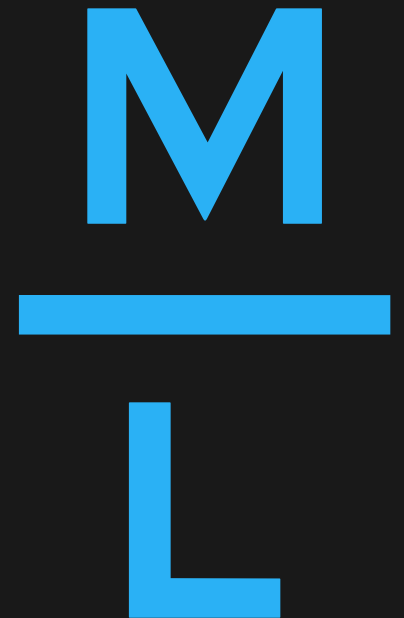
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# REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

Chapter I

Introduction and overview



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## Introduction and overview

The [Regulation \(EU\) 2023/1114 of the European Parliament and the Council, of 31 May 2023](#), on markets in crypto-assets (Regulation MiCA), was published in the *Official Journal of the European Union* on 9 June 2023 and entered into force on 29 June 2023.

The publication and entry into force of this regulation is a significant milestone regarding the legal framework applicable to those types of assets and related services. It proposes to establish regulatory clarity in a sector with some uncertainty and legal turmoil, both for crypto-asset issuers and crypto-asset service providers, consumers and investors, and for other market players.

**The MiCA Regulation introduces new rules on the categorisation, issuance and admission to trading of crypto-assets, as well as on the provision of crypto-asset services.**



### Background

The European Union (EU) has lacked an harmonised legal framework for the crypto-asset sector since crypto-assets became an increasingly important asset in the global market (e.g. since the emergence and proliferation of ICOs – Initial Coin Offerings – in 2017). In the absence of such standardisation at the EU level, member states have tried to create their own legal frameworks to address regulatory and supervisory gaps in their jurisdictions. Some countries have taken advantage of this situation to position themselves as jurisdictions that tend to be favourable to crypto-assets markets. Others have only applied authorisation obligations for the prevention of money laundering and terrorist financing to entities providing services with crypto-assets, while others have extended the scope of the financial sector rules to such entities.

In order to harmonise the rules applicable to this sector, the European Commission presented, as part of the Digital Finance Package, in September 2020, a proposal to regulate the crypto-asset sector.



## Framework

Until the publication of the MiCA Regulation, only crypto-assets that met the notion and characteristics of securities (i.e. security tokens) were regulated, as their very nature qualified them as financial instruments under DMIF II – [Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014](#) on markets in financial instruments. However, the remaining crypto-assets, given their characteristics, lacked a precise legal framework.

Thus, the MiCA Regulation is designed to be the main piece of legislation in the EU legal framework for markets on crypto-assets, establishing an unified set of rules directly applicable to crypto-asset issuers or crypto-asset service providers (CASPs), be they exchanges, wallet providers or others.

## Purposes

- [Creation of a harmonised legal framework](#) at European level, replacing existing individual regulation in several EU member states with an harmonised and comprehensive legal framework, in particular with regard to CASPs and tokens issuers;
- [Provide greater certainty in the regulation](#) of crypto-assets that, due to their characteristics, are not covered by existing regulation;
- [Support innovation and fair competition](#) by establishing a secure legal framework that promotes the development of the sector and related “business models”, the competitiveness of member states in financial markets and equal opportunities in accessing them;
- [Protecting consumers and investors](#) through mechanisms that ensure the integrity of crypto-asset markets by establishing safeguards for common financial risks and preventing abusive and/or misleading practices; and
- [Ensuring financial stability](#) by mitigating and including safeguards against potential risks to the market.

## Taxonomy

The MiCA Regulation adopts a broad definition of crypto-asset: «a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology».

Given that different types of crypto-assets (of different nature and with different characteristics) present different risks to consumers and investors, the European legislator has chosen to introduce a taxonomy differentiating into four groups of crypto-assets, for which a different set of requirements will apply:

- **Asset-referenced tokens:** crypto-assets that do not qualify as e-money tokens and seek to maintain a stable value by reference to another value or right, or a combination of both (e.g. commodities, other crypto-assets or gold);
- **E-money tokens:** crypto-assets that seek to maintain a stable value by reference to an official currency (e.g. EUR, GBP or USD);
- **Utility tokens:** crypto-assets intended solely to provide access to a good or service provided by their issuer; and
- **Other crypto-assets:** crypto-assets that do not fall into any of the other categories (provided they do not qualify as securities).

On the other hand, crypto-assets that are qualified under other legislation, in particular those relating to financial instruments such as securities, are excluded from the scope of the MiCA Regulation. Other assets that remain outside the scope of the regulation are NFTs (non-fungible tokens) in general and digital currencies issued by central banks – so-called CBDCs (central bank digital currencies). Lending and DeFi are also not covered by the regulation.



## Scope

The MiCA Regulation introduces a set of common standards applicable to issuers of crypto-assets and CASPs.

## Issuers of crypto-assets

Before entities issue, offer or admit to trading crypto-assets, they will have to fulfil a number of transparency, disclosure and information requirements aimed at providing the target public with sufficient information about the characteristics, risks, rights and obligations associated with crypto-assets to enable the target public to make their decisions in a considered and informed manner.

## CASP

This diploma also introduces requirements that will apply to CASPs (until then, the so-called VASPs - Virtual Asset Service Providers), i.e., entities that provide services with crypto-assets, namely:

- **Providing custody and administration of crypto-assets on behalf of clients:** the safekeeping or controlling, on behalf of clients, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;
- **Operation of trading platforms for crypto-assets:** management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in an agreement, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets;
- **Services of exchange crypto-assets for funds or crypto-assets for other crypto-assets:** conclusion of purchase or sale contracts concerning crypto-assets with clients for funds or other crypto-assets by using proprietary capital;
- **Execution of orders for crypto-assets on behalf of clients:** conclusions of agreements, on behalf of clients, to purchase or sell one or more crypto-assets or subscription on behalf of clients for one or more crypto-assets, and includes the conclusion of contracts to sell crypto-assets at the moment of their offer to the public or admission to trading;
- **Placing of crypto-assets:** marketing on behalf or for the account of the offeror or a party related to the offeror, of crypto-assets to purchasers;
- **Reception and transmission of orders for crypto-assets on behalf of clients:** reception from a person of an order to purchase or sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution;
- **Providing advice on crypto-assets:** offering, giving or agreeing to give personalised recommendations to a client, either at the clients request or

on the initiative of the crypto-asset service provider providing the advice, in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services;

- **Providing portfolio management of crypto-assets:** managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets;
- **Providing transfer services for crypto-assets on behalf of clients:** services of transfer, on behalf of a natural or legal person, of crypto-assets from one distributed ledger address or account to another;

Before starting the intended activity, CASPs will have to obtain authorisation, to be granted by the competent national authority, having to ensure compliance with a variety of organisational, governance, conduct and information requirements under the new regime.



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