



Proposal for a Regulation of the European Parliament and of the Council

on Markets in Crypto-Assets, and amending Directive (EU)
2019/1937 (MiCA)

European Commission

Objectives – the why

- Legal certainty
- Supporting innovation
- Consumer protection
- Market integrity
- Financial stability
- Mitigating risks to monetary policy transmission and to monetary sovereignty

How?

- Bespoke regime for all crypto-assets not covered elsewhere in EU financial services legislation and crypto-asset service providers
- Based on Art. 114 TFEU
- Instrument: A Regulation

Overview of the proposal

| Title I Scope and definitions | Title II Crypto-assets other than asset-referenced tokens and e-money tokens | Title III Asset-referenced tokens |
|---|---|--|
| Title IV E-money tokens | Title V: Crypto-asset service providers | Title VI: Market integrity |
| Title VII: Powers of competent authorities, EBA and ESMA | Title VIII: Transitional measures | Title IX: Final provisions |

Title I: Scope of MiCA

Title I: Subject Matter, Scope and Definitions

In scope of MiCA

- All crypto-assets not covered elsewhere in financial services legislation and e-money tokens
- Issuers and crypto-asset service providers providing services in the Union

Not in scope of MiCA

- MiFID II financial instruments, deposits, structured deposits, securitisation
- E-money unless it qualifies as 'e-money token'
- ECB, national central banks of Member States, EIB, EFSF, ESM, public international organisations

Title I: Definitions of MiCA

Crypto-assets, utility tokens, asset-referenced tokens and e-money tokens

Crypto-asset

- *‘crypto-asset’ means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology*
- ‘Catch-all’ definition – in line with the FATF recommendations
- Not advisable attempting exhaustive list or a full taxonomy
- Future-proof
- Covers algorithmic ‘stablecoins’ as long as these do not reference one or several assets (see Recital 26)

Utility token

- *‘utility token’ means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token*

Asset-referenced token

- *‘asset-referenced token’ means 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 several commodities or one or several crypto-assets, or a combination of such asset*
- A token referring to gold for example
- A token referring to several currencies
- A token referring to other crypto-assets

E-money tokens

- *‘electronic money token’ or ‘e-money token’ means a type of crypto-asset the main purpose of which 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*
- Wide definition to catch tokens referring to a single currency that is legal tender and to avoid risks of regulatory arbitrage

Article 4(1), point 15 of Directive 2014/65/EU*

Existing;

‘financial instrument’ means those instruments specified in Section C of Annex I;

Replaced by;

‘financial instrument’ means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology;

*in the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341

Crypto-asset service providers

Services

- Custody (i.e. wallet providers)
- Operating trading platform
- Exchange services fiat-to-crypto
- Exchange services crypto-to-crypto
- Execution of order
- Placing of orders
- Reception and transmission of orders
- Advice
- This list is wider than the services in the FATF recommendations on virtual asset services
- This list of services is also in line with current bespoke regimes on crypto-asset services

Title II: Crypto-assets other than asset-referenced tokens and e-money tokens

Crypto-assets other than asset-referenced tokens and e-money tokens

- **General principle (Art. 4):** No issuer of crypto-assets can make an offer to the public of crypto-assets in the EU or seeks an admission of such crypto-assets to trading on a trading platform for crypto-assets unless:
 - it is established as a legal entity;
 - has drafted a crypto-asset white paper;
 - has notified this crypto-asset white paper to a NCA of its home MS;
 - complies with requirements laid down in Article 13.
- **Marketing communications by issuers of crypto-assets are subject to requirements under Art. 6**

Crypto-assets other than asset-referenced tokens and e-money tokens

Exemptions from drafting, notifying and publishing a crypto-asset white paper

Crypto-assets offered for free

Crypto-assets for the maintenance of DLT

Small offers (less than 150 people per MS)

Small offers (total consideration less than EUR 1 million)

Offers solely to qualified investors under the PR

CA which are unique and not fungible

In any case, issuers of crypto-assets are not exempted from the requirements of Art. 13, i.e.:

- obligation to act honestly, fairly, professionally;
- communicating with holders of CA in a fair, clear and not misleading manner
- preventing conflicts of interest
- maintaining the systems and security protocols to adequate EU level (to be specified in ESMA guidelines)

Crypto-assets other than asset-referenced tokens and e-money tokens

| | |
|---|---|
| Content of the draft CAWP (Art.5 and Annex I) | <ul style="list-style-type: none">• CAWP shall include a description of the issuer, issuer's project, characteristics of the offer (including rights offered), description of the technology and risks related to the issuer• CAWP includes two statements• CAWP includes a summary |
| Notification of the draft CAWP to a NCA (Art.6) | <ul style="list-style-type: none">• Notification to a NCA, no <i>ex ante</i> approval of the CAWP by a NCA but NCAs have powers under Art. 82• The notification should include an explanation why the CA at stake is not a MiFID II financial instrument, electronic money...• Notification includes a list of MS where CA would be offered |
| Publication of the draft CAWP (Art. 8) | <ul style="list-style-type: none">• The CAWP shall be published before the offer to the public or admission to trading• The CAWP published is identical to the one notified to the NCA |
| Modification of a published CAWP (Art.11) | <ul style="list-style-type: none">• Procedure to modify a CAWP after publication to describe 'any change likely to have a significant influence on the purchase decision' |

Crypto-assets other than asset-referenced tokens and e-money tokens

- To ensure consumer protection, **a right of withdrawal** is granted to consumers for 14 days;
- *Lex specialis* approach on the right of withdrawal;
- This right of withdrawal is not applicable where the CAs are admitted to trading on a trading platform for crypto-assets;
- This right can be exercised until the end of the subscription period (where the issuer has set a limited period of time for the offer);
- To ensure investor/consumer protection, provision on civil liability attached to the CAWP

Title III: Asset-referenced tokens

Asset-referenced tokens

| Chapter 1 | Autorisation to offer asset-referenced tokens or to seek an admission of ART to trading |
|-----------|---|
| Chapter 2 | General obligations for all issuers of ART |
| Chapter 3 | Rules on the reserve of assets |
| Chapter 4 | Acquisition of issuers of asset-referenced tokens |
| Chapter 5 | Significant asset-referenced tokens |
| Chapter 6 | Orderly wind-down |

Asset-referenced tokens

- **General principle (Art.15):** No asset-referenced tokens can be offered in the EU or admitted to trading on a trading platform for crypto-assets unless:
 - They are offered by an entity established in the EU;
 - This entity has been authorised in application of Art. 19.
- Exemption from authorisation for:
 - small offers (less than EUR 5 million in the EU)
 - Offers solely addressed to qualified investors and that can be only held by qualified investors
 - Issuers are credit institutions
- Where exempted, the issuer has to produce a CAWP.

Authorisation as an issuer of asset-referenced tokens

- Authorisation granted by a NCA (Art. 19) on the issuers.
- Where seeking the authorisation, the applicant issuer also submit its CAWP. The content of the CAWP (Art. 17, Annexes I and II) for an asset-referenced token shall, in particular, include a description of the issuer's governance arrangements, the reserve of assets, the custody arrangements, the investment policy of the reserve (where applicable) and the rights granted to the holders.
- Where assessing an application, the NCA shall consult the EBA, ESMA, the ECB and where a Union currency which is not euro is included in the reserve assets, these central banks.
- NCAs can refuse an authorisation to an issuer of asset-referenced tokens where there is a serious threat to financial stability, monetary policy transmission or monetary sovereignty.
- Art. 21 provides for a procedure to modify a CAWP where a change can have a significant influence on the purchase decision of a holder of the asset-referenced tokens.
- Civil liability is attached to the information given in a CAWP (Art.22)

Obligations for all issuers of asset referenced tokens

| Obligations for issuers of asset-referenced tokens | |
|--|---|
| Art. 23 | <ul style="list-style-type: none">• Obligation to act honestly, fairly, professionally• Obligation to communicate in a fair, clear and not misleading manner• Obligation to act in the best interest of the holders of asset-referenced tokens |
| Art. 25 | <ul style="list-style-type: none">• Requirements on marketing communications |
| Art. 26 | <ul style="list-style-type: none">• Disclosure of tokens in circulation, value and composition of reserve assets every month• Disclosure of the audit of the reserve (every six months)• Disclosure of every event likely to have an effect on the value of the tokens or the reserve of assets |
| Art. 27 | <ul style="list-style-type: none">• Complaint handling procedure |
| Art. 28 | <ul style="list-style-type: none">• Prevention of conflicts of interest |
| Art. 30 | <ul style="list-style-type: none">• Governance arrangements |
| Art. 31 | <ul style="list-style-type: none">• Own funds requirements |
| Art. 36 | <ul style="list-style-type: none">• Orderly wind-down |

Obligation on the reserve of assets

Obligation on the reserve of assets

| | |
|---|--|
| Art. 32 Reserve of assets | <ul style="list-style-type: none">• Obligation to maintain a reserve of assets at all times• Obligation to ensure the prudent management of the reserve assets. Every issuance of asset-referenced tokens shall be matched by a corresponding increase of the reserve of assets• Independent audit of the reserve every 6 months |
| Art. 33 Custody of the reserve of assets | <ul style="list-style-type: none">• Reserve assets shall be segregated from the issuer's own assets and they shall not be encumbered;• Obligation to establish policies and procedures for the appointment and review of custodians• The custodians are EU credit institutions (for fiat currency, financial instruments or other assets) or crypto-asset service providers (for crypto-assets) |
| Art. 34 Investment of the reserve assets | <ul style="list-style-type: none">• Investment of the reserve assets in other assets is possible only if it is highly liquid instruments with minimal market and credit risk• All profits and losses from the investment shall be borne by the issuer• Financial instruments to be further specified in a EBA RTS |
| Art. 35 Rights of holders of asset-referenced tokens | <ul style="list-style-type: none">• Obligation to maintain a policy on the rights granted to holders (Art.35(1) and (2))• Where the issuer only grants rights on the reserve or on the issuer to a specific group of persons, the issuer shall have specific contractual arrangements with these persons• Where the issuer only grants rights on the reserve or on the issuer to a specific group of persons, all holders of asset-referenced tokens shall have minimum rights: (i) a right to liquidity; (ii) a direct right of redemption where the value of the asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets; (iii) a contingency claim in case of orderly wind-down or if the issuer stops its activity. |
| Art. 36 Prohibition of interest | <ul style="list-style-type: none">• Prohibition for issuers and crypto-asset service providers to provide interest for the length of time holders of asset-referenced tokens hold such tokens |

Significant asset-referenced tokens

- EBA can classify an asset-referenced token as significant at its own initiative (Art. 39) or at the request of the issuer (Art. 40)
- The criteria to qualify an asset-referenced token as significant are:
 - Size of customer base of the promoters of the asset-referenced tokens;
 - Value of asset-referenced tokens/market capitalisation
 - Size of the reserve of assets
 - Significance of cross-border activity including use for cross-border payments/remittances
 - Interconnectedness with financial system
- The criteria shall be specified by a delegated act. The delegated act cannot set thresholds that are lower than those specified in Art. 39(6)

Significant asset-referenced tokens

- Issuer of significant asset-referenced tokens are subject to additional requirements:
 - Remuneration policy
 - Interoperability requirements
 - Liquidity management policy
 - Higher own funds requirements
- Supervision of issuer of significant asset-referenced tokens is transferred to EBA.

Title IV: E-money tokens

E-money tokens

- No e-money tokens can be offered in the EU or admitted to trading on a trading platform for crypto-assets unless the issuer:
 - is authorised as a credit institution or as a e-money institution;
 - publishes a CAWP (in accordance with Art. 46 and the content of Annex III).
- Exemption from authorisation for small issuances (< EUR 5 million) or if the e-money tokens are only held by qualified investors;
- Where an e-money tokens refers to a Union currency, there is a presumption that this e-money token is offered in the Union.

E-money tokens

- All holders of e-money tokens have a claim at any moment and at par value (Art.44(2))
- E-money tokens shall be issued at par value and on the receipt of funds (Art. 44(3))
- Prohibition of interest on e-money tokens (Art. 45)
- Civil liability attached to the CAWP prepared by the e-money token issuer (Art.47)
- Requirements on marketing communications (Art. 48)
- Investment of funds received in exchange of e-money tokens shall be denominated in the same currency as the one referenced by the e-money tokens (Art.49)

Significant e-money tokens

- EBA can classify an e-money token as significant at its own initiative (Art. 50) or at the request of the issuer (Art. 51)
- The criteria are the same as the ones for classifying an asset-referenced token as significant
- Issuers of significant e-money tokens are subject to:
 - Rules on the custody of the reserve assets;
 - Rules on the investment of the reserve assets;
 - Higher funds requirements;
 - Orderly wind-down plan.

Title V: Crypto-asset service providers

Crypto-asset service providers

- CASPs shall be authorised to provide their services in the Union and have a passport (Art.53, 54, 55)
- This authorisation can be withdrawn (Art. 56)

Obligations applying to all crypto-asset service providers

Obligation to act honestly, fairly and professionally and in the best interest of clients (Art. 59)

Prudential requirements (Art.60 and Annex IV)

Organisational requirements (Art. 61)

Safekeeping of clients' crypto-assets and funds (Art.63)

Complaint handling procedure (Art.64)

Prevention of conflicts of interest (Art.65)

Outsourcing (Art.66)

Crypto-asset service providers

Obligations applying for the provision of specific crypto-asset services

| | |
|--|--|
| Custodians (Art.67) | Contractual arrangements with clients, register of positions of clients, asset segregation, liability |
| Trading platforms (Art.68) | Operating rules, prohibition of dealing on own account for the CASP, resilience of the trading systems, pre- and post-trade transparency, obligation to settle the transactions on the DLT |
| Exchange fiat to crypto or crypto-to-crypto (Art.69) | Non-discriminatory commercial policy, obligation to publish a firm price, execution at the price displayed at the time of receipt, transparency on orders and transactions |
| Execution of orders (Art. 70) | Best execution, clear information to clients on the execution policy |
| Placing of crypto-assets (Art. 71) | Clear agreement with the issuer before the placing, specific rules on conflicts of interest |
| Reception and transmission of orders (Art. 72) | Prompt transmission of orders, prohibition of non-monetary benefits, no misuse of information related to clients orders |
| Advice on crypto-assets (Art.73) | Necessary skills and knowledge, assesment of crypto-assets with the needs of clients |

Title VI: Market integrity/Market abuse

Prevention of market abuse involving crypto-assets

- Scope of the rules: when a crypto-asset is admitted to trading on a trading platform for crypto-assets (Art.76)
- Issuer shall disclose inside information (Art.77)
- Prohibition of insider dealings (Art.78), unlawful disclosure of inside information (Art. 79), market manipulation (Art.80)

Title VII: Supervision

Supervision

| Type of entities under MiCA | Notification of CAWP | Authorisation | Supervision |
|--|----------------------|---------------|---|
| Issuers of crypto-assets | NCAs | - | - |
| Issuers of asset-referenced tokens | - | NCAs | NCAs |
| Issuers of significant asset-referenced tokens | - | NCAs | EBA + College of supervisors |
| Issuers of e-money tokens | - | NCAs | NCAs |
| Issuers of significant e-money tokens | - | NCAs | Dual supervision NCAs/EBA + college of supervisors |
| Crypto-asset service providers | - | NCAs | NCAs |

Title VII: transitional measures and final provisions

Transitional measures

Entry into force

- Crypto-assets (other than asset-referenced tokens and e-money tokens) offered in the EU before that date are exempted from the requirements of Title II
- Provisions for asset-referenced tokens (Title III) and e-money tokens (Title IV) are applicable on the date of entry into force

Entry into application (18 months after entry into force)

- CASPs that have been authorised under a national regime may continue to do so until 18 months after the entry into application or until they are granted an authorisation under MiCA

Entry into application of DA

- Supervisory powers of EBA apply when the DA specifying the criteria of significance (Art. 39(6)) enters into application.

Impact Assessment

accompanying the pilot regime

Market and Legal context

- A 'Europe fit for the digital age' is a top priority under the current Commission presidency
- Especially regarding crypto-assets a unified approach is needed to allow innovations to bring benefits to the EU, while mitigating the risks to consumers
- The impact assessment is mainly based on the responses to the public consultation on crypto-assets launched in December 2019 as well as the advice from EBA and ESMA

Problem definition

| | Crypto covered by EU legislation | Crypto not covered by EU legislation | Global stablecoins |
|--|---|--|--|
| Drivers towards a legislative initiative : | Lack of certainty as to how existing EU rules might apply | Absence of rules and diverging national rules for crypto-assets not yet covered by existing rules | |
| Problems to be addressed: | Regulatory obstacles to the use of DLT and potential gaps in existing legislation | Consumer/investor protection risks and risks of fraud Market integrity risks Market fragmentation/ risks to level playing field | Financial stability and monetary policy concerns |
| Consequences: | Missed efficiency gains in the issuance/ trade/post-trade areas | Missed funding opportunities for start-ups and companies (through low level ICOs/ STOs) Missed opportunities in terms of financial inclusion and cheap, fast efficient payments | |

General and specific objectives

Legal certainty for all crypto-assets

Supporting Innovation and fair competition by creating a conducive framework

High levels of **consumer and investor protection** and **market integrity**

Addressing **financial stability and monetary policy risks** (especially from a wide use of crypto-assets and DLT)

Removing regulatory hurdles (e.g. to issuance, trading and post-trading of security tokens)

Increasing the sources of funding (through ICOs and STOs)

Limiting risks of fraud, money laundering and illicit practices in the crypto-asset markets

Supporting access to **new investment opportunities, new types of payment instruments** and **fueling competition**

Overview: available policy options

| Type of crypto-asset | Policy options |
|--|--|
| Crypto-assets that are currently unregulated at EU level | Option 1: Opt-in regime |
| | Option 2: Full harmonisation regime |
| Crypto-assets that qualify as financial instruments under MiFID II | Option 1: Non-legislative measures |
| | Option 2: Targeted amendments to sectoral legislation |
| | Option 3: Pilot/experimental regime on DLT market infrastructure |
| 'Stablecoins' and global 'stablecoins' | Option 1: Bespoke legislative measures on stablecoins/global stablecoins |
| | Option 2: Bringing stablecoins and global stablecoins under the Electronic Money Directive 2 |
| | Option 3: Measures limiting the use of stablecoins and global stablecoins |

Preferred policy options

| Type of crypto-asset | Policy options |
|--|--|
| Crypto-assets that are currently unregulated at EU level | Option 1: Opt-in regime |
| | Option 2: Full harmonisation regime |
| Crypto-assets that qualify as financial instruments under MiFID II | <u>a mix of:</u> |
| | Option 1: Non-legislative measures |
| | Option 2: Targeted amendments to sectoral legislation |
| | Option 3: Pilot/experimental regime on DLT market infrastructure |
| 'Stablecoins' and global 'stablecoins' | <u>a mix of:</u> |
| | Option 1: Bespoke legislative measures on stablecoins/global stablecoins |
| | Option 2: Bringing stablecoins and global stablecoins under the Electronic Money Directive 2 |
| | Option 3: Measures limiting the use of stablecoins and global stablecoins |

Assessment of policy options; ‘unregulated’ crypto-assets

| | PRO | CON |
|----------------------------|--|---|
| Opt-in regime: | <ul style="list-style-type: none">➤ Possibility to instil trust in the crypto-asset market;➤ Less legislative arbitrage;➤ Possibility to scale-up across borders | <ul style="list-style-type: none">➤ No reduction of market fragmentation➤ Might create a two-tier market; |
| Full harmonisation: | <ul style="list-style-type: none">➤ Legal clarity for users, issuers and service providers;➤ Same level of protection and market integrity across the single market➤ Financial stability➤ Little risk of regulatory arbitrage | <ul style="list-style-type: none">➤ Imposing costs on issuers and providers➤ Risk of arbitrage regarding third countries |

Assessment of policy options; crypto-assets qualifying as financial instruments

| | PRO | CON |
|--|--|---|
| Non-legislative measures, guidance on the applicability of existing rules | <ul style="list-style-type: none">➤ Would clarify on the qualification as financial instruments under MiFID II➤ More flexibility➤ Preserving the high level of investor protection, market integrity and financial stability, | <ul style="list-style-type: none">➤ Could have limited effect |
| Targeted amendments to existing rules | <ul style="list-style-type: none">➤ High degree of legal clarity➤ Addressing specific operational resilience risks | <ul style="list-style-type: none">➤ Isolated amendments may have limited effect |
| Pilot regime | <ul style="list-style-type: none">➤ Possibility to test the use of DLT on a larger scale, facilitate more reliability and safety➤ Enable competition with third countries➤ Investor protection and financial stability➤ Possibility to establish real use cases | <ul style="list-style-type: none">➤ Might not be fully adequate |

Assessment of policy options: ‘stablecoins’ and ‘global stablecoins’

| | PRO | CON |
|--|--|--|
| Bespoke legislative regime | <ul style="list-style-type: none">➤ Clear legal basis➤ Adequate levels of investor protection across the EU➤ Comprehensive and holistic EU framework➤ Financial stability and consumer protection risks addressed | <ul style="list-style-type: none">➤ Regulatory and supervision costs |
| Regulating ‘stablecoins’ under EMD 2 | <ul style="list-style-type: none">➤ Possible comparability to e-money under EMD2➤ Higher protection of users’ funds➤ Limiting risks of shadow banking | <ul style="list-style-type: none">➤ Obligation for issuers to be authorised in the EU➤ May not mitigate risks by wallet providers➤ Could limit the number of ‘stablecoins’ in the EU |
| Measures to limit the use of ‘stablecoins’ in the EU | <ul style="list-style-type: none">➤ Restriction of ‘stablecoins’ and related services | <ul style="list-style-type: none">➤ Possible issue with Union competences➤ Questionable effectiveness |

Thank you



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