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European  
Commission  
proposal for the  
regulation of  
Crypto-Assets

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# Speakers



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# EU crypto-asset regulation today

Crypto-asset exchange providers and custodian wallet providers within scope of AML legislation.

EU clarifications that existing securities and investment services regulation can, in principle, apply to crypto-assets and DLT-based instruments.

Gaps in regulatory framework (e.g. some stablecoins).

# What does MiCA cover?



The proposed Markets in Crypto-Assets Regulation (**MiCA**) is a broad and comprehensive proposal containing:

**licensing** (including **change in control**) **requirements** for:

- issuers of **asset-referenced tokens** and **electronic money tokens**
- **crypto-asset service providers**

regulation (including **white papers** and other **transparency** and **disclosure requirements**) for:

- **offers** of crypto-assets to the public
- **admission** to trading

**market abuse regime**

# EU proposal for comprehensive regulatory framework for crypto-assets



The European Commission (**EC**) has set the following objectives for MiCA:

legal certainty

supporting innovation

consumer protection

market integrity

financial stability

mitigating risks to monetary policy /  
sovereignty

# Definition of “crypto-asset”

## 1 Crypto-asset:

*“a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology”*

Intentionally broad “**catch-all**” definition in line with FATF recommendations.

*“a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically”*

Definition of “*virtual currency*” (Money Laundering Directive 2018)

## 2 Distributed ledger technology or DLT:

*“a type of technology that supports the distributed recording of encrypted data”.*

## 3 Three specific types of crypto-asset:

### Asset-referenced token

*“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 assets”*

### E-money token

*“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”*

### Utility token

*“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”*

# Definition of “crypto-asset”: exclusions

To avoid overlap with other financial services regulation, MiCA excludes crypto-assets regulated as:

Electronic money?

Financial instruments covered by MiFID (as amended)

Deposits

Structured deposits

Securitisations

## Tech neutrality

- MiFID to be amended to include financial instruments on DLT
- MiCA also extends regulation to previous unregulated instruments, if they are tokenised on DLT
  - Aim is to regulate stablecoins that resemble regulated products or e-money, but without regulating *all* other DLT tokens
  - New licensing and conduct of business requirements specific to crypto-assets depart from historic approach to regulation on the basis of “technological neutrality”



# Other key definitions in MiCA

## 1 Issuer of crypto-assets:

*“means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets ”*

Note: ‘offer’ and ‘issuance’ are different concepts. Contrast with the concept of ‘offering’ in Crowdfunding Regulation.

## 2 Offer to the public:

*“means an offer to third parties to acquire a crypto-asset in exchange for fiat currency or other crypto-assets ”*

## 3 In the Union – territorial scope of MiCA:

*“This Regulation applies to legal and natural persons that are engaged in the issuance of crypto-assets or provide services related to crypto-assets in the Union”*

# Stablecoins: issuance of e-money tokens and asset-backed tokens – I

Requirement	E-money Tokens	Asset-referenced Tokens
<b>Status to be licensed as issuer</b>	EU legal entity or bank branch in EU	EU legal entity or bank branch in EU
<b>Authorisation</b>	Bank (incl. branch) in EU or Electronic Money Institutions (EMIs)	Bank (incl. branch) in EU or authorisation under MiCA
<b>Ongoing obligations</b>	Same as for EMIs	Include conduct, disclosure, complaints-handling, conflicts of interests, governance, management of reserve assets and orderly wind-down
<b>Regulatory capital</b>	Same as for EMIs	CET1 regulatory capital – the higher of €350,000 or 2 % of reserve assets

# Stablecoins: issuance of e-money tokens and asset-backed tokens – II

Requirement	E-money Tokens	Asset-referenced Tokens
<b>Reserve</b>	<p>Segregation per normal rules for EMIs</p> <p>Funds received in exchange for e-money tokens may only be invested in <u>cash or secure, low-risk investments</u> denominated in the same currency as the one referenced by the e-money token</p>	<p>Reserve assets must be segregated and held with a bank (for fiat currencies and financial instruments) or a crypto-custodian (for crypto-assets)</p> <p>Reserve assets can be invested, but only in low-risk, highly liquid financial instruments (losses resulting from the investments must be borne by the issuer)</p>
<b>Claims on issuer / redemption right</b>	Token holder must have direct claim on issuer to redeem at par value	Grant right to redeem on issuer or reserve <b>or</b> mechanisms to ensure liquidity in tokens
<b>Payment of interest on tokens</b>	Prohibited	Prohibited
<b>Change in control</b>	Same as for EMIs	Equivalent regime (and crypto-asset service providers)

# Crypto-asset service providers

A **crypto-asset service provider** is a person who provides any of the following services. Must be **incorporated and authorised** in the EU.

custody and administration  
on behalf of third parties

operation of trading platform

exchange for fiat currency or  
other crypto-assets

execution of orders on  
behalf of third parties

placing of crypto-assets

reception and transmission  
of orders on behalf of third  
parties

providing advice

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# What is not covered by MiCA?

No concept of:

Portfolio management in relation to crypto-assets

No equivalence regime for third-country crypto-asset service provider

Partial exemption from certain MiCA requirements for UCITS ManCo and AIFM

Client categorisation  
- Absence of MiFID style breakdown of client categories

# Public offers and admissions to trading | white papers

1

Before offering to the public or admission to a trading platform, crypto-asset issuers shall provide to their national competent authority a *white paper* detailing e.g.:

- background to the issuer and those involved in design and development of the crypto-asset;
- the terms of the offer;
- the rights and obligations attached to the crypto-asset;
- the underlying technology;
- the risks associated with the issuer, crypto-asset and offer.

2

- Utility token and e-money token white papers are subject to prior notification procedures.
- Asset-referenced token white papers are subject to prior administrative approvals.

3

Certain additional requirements for stablecoin white papers (e.g. information on the reserve and governance arrangements).

# Public offers and admissions to trading | white papers

4

Exemptions depending on the type of token:

- a. Where the crypto-assets are offered for free;
- b. Where the crypto-assets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions;
- c. Where the crypto-assets are unique and not fungible with other crypto-assets;
- d. Where the crypto-assets are offered to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;
- e. Where over a period of 12 months, the total consideration of an offer to the public of crypto-assets in the EU does not exceed EUR 1 000 000 (or EUR 5 000 000), or the equivalent amount in another currency or in crypto-assets; and
- f. Where the offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.

5

Issuers liable for false or misleading information they present to the public (other than qualified investors).

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# Market abuse

## Market Abuse:

- Requirement for publication of inside information by issuers
- Prohibition on insider dealing and market manipulation by issuers or crypto-asset service providers in relation to crypto-assets
- High-level treatment, and doesn't address crypto-assets listed outside EU or define the powers of national competent authorities to prevent cross-border abuse as in the Market Abuse Regulation



# Other considerations and insights



- EC does not propose to say which tokens fit into which category. It is for market participants and national competent authorities to assign each token to the correct category
- Crypto-assets without an issuer (e.g. mined tokens) are not banned
- Now impossible to hold crypto-assets anonymously due to KYC at each touch-point
- (Un)level playing field in relation to e-money tokens vs e-money, under the revised EU Electronic Money Directive
- Brexit: a potential for regulatory divergence?

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# Questions?

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