

Briefing on MiCA

March 2023

In October 2022, the proposed regulation on Markets in Crypto Assets (MiCA) reached a new milestone with a compromise text between the Parliament, Council and Commission, after the political agreement in June 2022 and before the vote expected to take place in April 2023. On the basis of this compromise text, this note presents the key features of the legislation alongside its scope in terms of regulated assets and its reach in terms of regulated activities.

MiCA will establish a regulatory framework for the protection of consumer and regulation of crypto asset service provider (CASP). It does not replace but complements three major financial regulations: MiFID (market in financial instrument directive), EMD (e-money directive), and PSD (Second Payment directive). The regulatory targets of MiCA can be summarized around three concepts:

- Legal certainty for both consumer / investors protection and business operation to promote innovation in EU
- Uniform definitions of the regulated assets and rules for the regulated activities across EU to avoid regulatory arbitrage
- Clear framework for stablecoins : to limit the risks of bank runs and financial systemic risk

Scope and definition:

MiCA provides a long awaited definition of crypto assets as a digital representation of value or rights which may be transferred and stored electronically using distributed ledger technology or similar technology. There is no mention, in this definition, of cryptography, or consensus mechanism, or the nature of the underlying network used.

The distributed ledger technology definition is a reference to the DLT Pilot regime regulation. NFT and DEFI are currently outside of the scope, even if one could consider that the regulation of stablecoins is a first step toward DEFI regulation as they are the backbone of DEFI transactions.

The scope of MiCA is clear, with 3 categories of crypto assets:

- **Asset referenced token (ART)** : a stablecoin that references other assets for stabilization. To issue ART the company must be established in EU and obtain authorization. The authorization comes with capital requirement, relevant internal procedure and governance, they need a white paper (prospectus)
- **E money** : a stablecoin that references only one asset (a fiat currency). The issuer has to be an authorized credit institution or electronic money institution under the EU e-money directive. It must publish a white paper. An e-money referencing euro is deemed to be offered to the public in EU and is subject to the regulation.
- **Utility token** : a crypto asset that is intended to provide a good or service. This category is mostly used as a condition for an exclusion.
- **All other crypto assets** similar to the notion of unbacked crypto used by the FSB. MiCA will not regulate crypto assets that qualify as financial instrument, non DLT electronic money and will not be applied to Central Banks (exclusion of CBDCs)

Regulatory Regimes, regulated activities and CASP status

MiCA provides **two distinct regulatory regimes**

- A **disclosure regime** for offering stablecoins (ART and E-money) which is also a prospectus like regime but with establishment rules, capital and liquidity requirements. MiCA provides a disclosure regime for offering non-stablecoins (or unbacked crypto assets), which is a light prospectus regime
- An **authorisation regime** for carrying crypto asset services based on MiFID regime

The regulation bears strong similarities with investment services and activities under MiFID II.

Regulated activities are essentially:

- Custody and administration of crypto
- Operation of a trading platform
- Exchange of crypto for fiat

- Exchange of crypto for a crypto
- Execution of orders on behalf of third party
- Advice on crypto or portfolio management on crypto

Those different services come with specific capital requirement. To operate within EU, firms need to obtain an authorization and needs to :

- Be registered office in the EU
- Respect capital requirement in function of the service provided
- Implement specific governance requirements
- Firms are also supposed to publish a report and adverse environmental and climate related impact of their activity.

The CASP may passport the authorization in other member states. A number of categories of firms are by default authorized, they are Credit institutions, MiFID investment firms under MiFID and E-money institution under the e-money directive.