

The interview was done with an MEP of the Czech Republic Ondřej KOVARIK who is a member of the Economic Committee in the European Parliament. In particular, the interview goes deeper into the upcoming crypto regulation MiCA and its impact.

First question I wanted to ask is about MiCA in general — In your opinion, is the regulation beneficial for crypto and DeFi?

Overall, if you ask whether the regulation makes sense or not, I think it does. Of course, it depends what's inside the regulation and how it is enforced. It seems it makes sense to regulate the cryptocurrency market due to its extent to the financial markets which are nowadays heavily regulated. At the moment, the EU is not alone in its pursuit of regulating cryptocurrencies. We can see how this trend is unfolding in the entire world. We are trying to project the EU values of customer/investor protection, proper business practices, KYC, and anti-money laundering into the world of crypto. After all, it can be quite beneficial for the actors in the space knowing where the boundaries are set. Of course, we cannot go too overboard in regulating it because the negative aspects of it can start to surface as well and damage the sector.

I am not sure how familiar you are with Uniswap, but will MiCA impact decentralized exchanges such as Uniswap? Or some protocol which does not have necessarily a centralized company behind it in control of the product?

Good question. It depends what version of the regulation you are looking at. If you look at the proposal, put forth to the EU Commission in September 2020, the Commission decided to not include DeFi in the MiCA regulation at that point in time. The decision was taken due to the relatively young nature of the market. The DeFi market is still evolving and it would not make sense to regulate it right now. Also, it has to be said that if you want to regulate something, you need to have a counterparty or an actor which can be regulated. The Commission adopted a similar stance on the issue which I think is fairly logical.

Fast forward one year later, we have begun our talks on the regulation in the Parliament. According to my current knowledge, there will be a broad debate whether MiCA should regulate DeFi as well or not. It has evolved to be a point of interest over the past year and we are currently at the beginning of our talks. The opinion on this matter differs from MEP to MEP. It depends who you ask, but, personally, I can imagine that MiCA could mention DeFi in some form in the regulation. However, at the same time, I cannot imagine it could be heavily regulated at the moment. First, we need to come up with the definitions which would encompass the DeFi actors. Frankly, I think the best approach would be to approve MiCA without DeFi regulation. Perhaps for the Commission, it would make sense to look back on DeFi maybe 5 years after the enforcement of MiCA to see if it would represent a meaningful sub-sector to regulate effectively. This is, however, only my opinion. My opinion comes from the fact that I do not think we can regulate DeFi in a meaningful way at the moment. My approach would be more technical — start with the definitions of the actors and then see what we can do, but I can't see how the current regulatory framework would cram DeFi into it. It is really up to the Commission whether they feel like it's a matter worth regulating or letting it be as is. Currently, I am afraid that if we come up with DeFi regulation now it could do more harm than good.

MiCA also stipulated that crypto bought on not listed exchanges falls under a 14-day refund policy. How could this rule be enforced in a digital cryptocurrency world?

I'm not sure how far we have gotten on this specific point. A good observation is whether this part of the legislation could be enforced since all transactions on the blockchain are final. The extent of reversibility of transactions is a questionable at best. Also, nobody can really guarantee that you will get a refund of the same value due to fluctuations in the price. It represents an enforcement problem. That is why we talk with companies to see what can be done. Our primary objective is to protect both qualified and retail investors alike. It's a big question mark where the discussion has moved specifically on this topic. I'll have to find out.

Another topic is whether the regulation should apply to all cryptos or only to cryptos with a certain valuation. My opinion is that there should be a threshold and the regulation should not be applied to all cryptos the same way. Unfortunately, I cannot say the majority of my colleagues share the same view. I want the regulation to apply only to cryptocurrencies big enough in their valuation when it makes sense to apply it. In my opinion, it does not make sense to burden small cryptocurrencies with regulation such as MiCA. It is a whole another matter if you are talking about a crypto valued at 10–20M USD. In such cases, regulating might be worthwhile. Transparency is something investors value highly.

What does not make sense is punish small projects which are trying to innovate. I hope my colleagues will come to see it the way I do soon as well. Otherwise, there is a risk the project might be launched from a different jurisdiction.

Why do your colleagues have different opinion on the threshold matter?

Well, my colleagues are concerned about all the investors whether it is institutional or retail. If you read the regulation in its entirety, you can see that crypto tokens which do not fall under the criteria of the regulation do not have to present a whitepaper etc. More importantly, there should be a clear distinction between emitting a cryptocurrency on your own and through a cryptocurrency exchange. It might happen that the small crypto project does not fall under the scope of the regulation, but the cryptocurrency exchange does. In this case, the exchange might require certain documents from the project if they seek to be listed. Once again, the main idea behind it is to protect investors. We need to find a balanced approach where we achieve our goals and do not hinder the fast innovative pace of the sector.

Of course, the reporting standards would present an additional financial burden so it needs to be appropriately applied to projects which can afford it. We haven't had the discussion about it yet so we shall see.

Is the cryptocurrency regulation enforcement realistic? Somebody can circumvent the EU law by creating their crypto under a jurisdiction in the Bahamas for example.

Yes, it can happen and the risk is real. If the regulation is too financially demanding, people will try to circumvent the rules. If the actor wishes to go around it, the opportunity is here. The reputation of a cryptocurrency project also might play a role in the long run though. It presents a reputational risk to be tied to a tax heaven where there is lax oversight.

The consumers can buy whatever they want from whoever they want currently. The point is that the EU watchdog would strongly state that if you are investing into a cryptocurrency project without a whitepaper you are forfeiting your rights as an investor/customer under the EU law. Of course, the final decision lays with the customer so we cannot limit one's free will. This is why the regulation has to be balanced so these cases are prevented. The regulation should be made in a way that going around it presents greater risk than reward.

Most likely, consultants will have to be hired to create the whitepapers which is going to add to the cost. Balancing the regulation is the hardest part.

The enforcement part is a bit tricky as well. It depends whether your target market is only retail investors or also institutional investors. Crypto funds are another possibility which might eventually arrive. If we get so far, then the cryptocurrency has characteristics of a financial product. In the end, the cryptocurrency project has to weigh the pros and cons — if your sole audience is retail investors only, then it might make sense to do it outside the EU. Institutional investors will require the product to be compliant with the current regulations. They can't touch it otherwise. If the crypto is so far-reaching its derivatives are in demand, regulations will be a must unfortunately. You will not be able to get far if you ignore that fact. Certainly, there is still some time until institutional investors fully adopt crypto, but what we are seeing even now is that some of them are seriously considering it. We might find ourselves in a situation when asset managers would be willing to allocate a certain percentage of their portfolio into crypto. In this case, it will be only possible to do such an action if the asset in question is compliant with the regulatory framework. Inherently, it is quite negative to a certain extent, but it also presents a major opportunity for the project creators.

Uniswap Labs is a company headquartered in New York city which created the Uniswap Protocol. The company wrote the code and published it on the Ethereum network, but does not hold any control over it. How would MiCA impact protocols as Uniswap? Because anybody can just walk in and set up their own crypto which could be worth thousands or millions. These actors can act either in good or bad faith as some of the projects end up being so called, „Rug pulls“ where investors lose everything.

I'm not entirely sure how MiCA would impact this specific situation. In its current form proposed by the Commission, I can imagine that the Uniswap Labs company could fall under a license framework. However, this framework does not currently exist. These are shifting sands we are currently standing on. We do not know how such a framework would look like; I do not know who would be leading the licensing process. These decisions have not been made yet, but if they were, I think one license would be valid in all 27 countries.

I do not know whether Uniswap Labs would fall under the licensing category though. It's too early to tell, but it could be a possibility. Correct me if I'm wrong: Uniswap Labs is probably charging a fee for providing the code, right?

No, not at all. It is not gathering any fees from the protocol. That's the interesting part — you can interact with the code as an individual and start trading your own cryptocurrency project on it. Uniswap Labs just provided the digital solution to make it happen. Even if the Uniswap Labs went bankrupt tomorrow, the code would still be there. So, even if the company had a license, it would be impossible to prevent somebody from interacting with the code in the EU.

I see. It is a good point. The MiCA regulation is aimed mainly at crypto providers of a financial character. It seems like the company behind the protocol is a digital solutions provider and does not provide any financial services. If this is truly the case, an exemption could be provided. However, the activity of the tokens on the platform are a different topic.

I do not want to give any concrete answers in particular because these talks are still at the beginning stage and nobody knows what will happen with certainty.

Is it still possible to amend MiCA?

Amendment period has already closed. The shadow rapporteur Berger put together more than 1200 amendments into one long document. Now, we will have to go through the entire document and we haven't done so yet. Therefore, it is not possible to change the law formally at this point. The political discussion can still provide some leeway in certain parts of the regulation. We are striving to achieve a consensus in the Parliament above anything else.

When is MiCA going to go to the Parliament for a formal vote?

I'm not sure. I cannot give you a definitive answer yet. We are planning to lead the discussion until the year's end and then we will see what happens next. I can see the proposal going to a committee in the first quarter of 2022. I am not entirely sure how long it is going to take, but you can be sure it is not going to happen next week. The regulation is incredibly complex and long so it is going to take quite some time to polish.

Closing remarks.

Also, can be viewed on Medium: [Interview with an MEP regarding upcoming Crypto MiCA EU Regulation | by Blacksage | Oct, 2021 | Medium](#)