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MICA Is Here: European Ground-Breaking Rules for The Cryptocurrencies Market

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On 30 June, European institutions reached a provisional political agreement on the proposal for a regulation on Markets in Crypto-Assets, also known as **MiCA**.[1]

MiCA's objective is to regulate and harmonize the crypto-assets' market within the European Union (EU) by establishing a regulatory framework for consumer protection and crypto-assets service providers. MiCA replaces the existing national frameworks applicable to crypto-assets but does not replace existing EU financial services legislation, namely the Markets in Financial Instruments Directive (MiFID II)[2], the Electronic Money Directive (EMD II)[3], and the Second Payments Directive (PSD II)[4].

MiCA states that in order for crypto-asset service providers to operate within the EU, an "authorization" (or a license) will be necessary. The authorization will include a "passport" mechanism, meaning that once an entity receives authorization in one EU Member State, the crypto-service provider will be able to carry out its activities in the other 27 Member States.

Importantly, MiCA also makes crypto-asset service providers liable for damages or losses of investors' crypto-assets unless the damage or loss could not have been prevented.

Under the MiCA regulation, issuers of stablecoins (referred to as asset-referenced tokens and electronic money tokens) will be subject to stricter rules. Stablecoins are considered to present higher levels of risks and are more likely to impact the financial system's stability. Thus, amongst other obligations, stablecoin issuers will have to maintain liquid reserves with a 1:1 ratio and stablecoin holders will have the right to claim payment from the issuer at any time based on the same ratio. Furthermore, investments performed by stablecoin issuers will have to be in low-risk and secure scenarios. Issuers of stablecoins based on a non-EU currency will require a registered EU office. Moreover, crypto-asset issuers and service providers will be required to disclose information on their environmental and climate footprint. For example, they will have to report which type of blockchain mechanism they operate with.

After many months of negotiations, EU co-legislators have finally decided to exclude Non-Fungible

Tokens (NFTs) from the MiCA, except if they fall under already existing crypto-assets categories.

Finally, on supervision, each country's national competent authority will be responsible for supervising the crypto-asset service providers that it authorized and enforcing MiCA's provisions. For large crypto-asset service providers (with more than 15 million active users), the applicable national competent authority will also have to report information about such large providers to the European Securities Market Authority (ESMA), which will also have an “intervention power” if it considers there is a threat to market integrity, investor protection or financial stability. ESMA will also be entitled to issue opinions to define technical regulatory standards (e.g. those related to the environmental and climate impact information disclosure). The European Banking Authority (EBA) will also be in charge of supervising any stablecoin issuers considered significant. The EBA will have the power of classifying stablecoins as significant in accordance with the MiCA regulation and will be empowered to address requests for information and to conduct standard and on-site investigations.

The European Parliament and Council of the EU now have to formally approve the agreed text before it can enter into force, which is expected towards the end of 2023 or at the beginning of 2024.

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[1] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593

[2] See https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0065

[3]See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110

[4] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366

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