



Draft of an EU-Regulation on Markets in Crypto-Assets (MiCA)



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Part A: Background and scope of MiCA

1. Background – a fragmented legal landscape across Europe

Following a public consultation conducted in March 2020, the EU commission has published a proposal for a [Regulation of Markets in Crypto-Assets](#) ('MiCA'). The objective of MiCA is to harmonise the European framework for the issuance and trading of various types of crypto token as part of Europe's Digital Finance Strategy. The draft proposes a legal framework for assets, markets and service providers which are currently not regulated on an EU-level and opens the possibility to provide licensed services across the EU. If adopted, the regulation would be directly applicable in all Member States. Implementation in national law will not be required.

2. Scope of the draft

2.1. Which crypto-assets will not be regulated by MiCA?

Crypto-assets which qualify as **financial instruments** according to the 2nd Markets in Financial Instruments Directive (MiFID II) are not in the scope of MiCA but remain solely regulated by MiFID II. Whether or not it is applicable depends on the content of an instrument and not on the technology that is used to issue it ('substance over form').

2.2. Which crypto-assets will be regulated by MiCA?

- **Payment token** like **cryptocurrencies** (e.g. Bitcoin) and **stablecoins** (including coins that qualify as e-money, see below for details),
- **utility token** which are issued to digitally provide access to an application, services or resources available on DLT networks.
- **investment tokens** unless they qualify as MiFID financial instruments (see below for details).

2.3. Particularities for e-money token: MiCA and EMD can be applicable

As MiFID II, the E-Money Directive (EMD) takes a 'substance over form' approach, too. However, MiCA is additionally applicable even if a token qualifies as e-money in terms of the EMD (see below for details).

Part B: Offering and marketing of crypto-assets

Comparable to the prospectus requirement for the public offering of securities, issuers of crypto-assets will have to publish a whitepaper before offering them to the public or requesting admission to trading on a trading platform within the EEA.

1. Publication and notification of a whitepaper

For all types of MiCA assets, a whitepaper has to be issued.

1.1. Content of the whitepaper, notification and publication

The whitepaper has to contain all core information on the characteristics, rights and obligations attached to the crypto-asset, the underlying project and the technology used. It can be drafted in the official language of an EU member state or in English.

Prior to publication, the whitepaper has to be notified to the competent authority at least 20 working days before publication. An approval is not required, however, the competent authority can prohibit the issuance if the whitepaper does not meet the legal requirements.

After elapse of the notification period, the whitepaper has to be published on the issuer's website and immediately after publication, the crypto-asset can be marketed throughout the entire EEA.

1.2. Exemptions from the requirement to publish a whitepaper

Issuers do not have to publish a whitepaper if

- the offering is limited to qualified investors or to less than 150 investors per member state or
- the total consideration for the offering over a period of 12 months remains below EUR 1 million or
- the crypto-assets are offered for free, e.g. during so-called 'airdrops' or
- the crypto-assets are received as a mining reward (like Bitcoin)
- the crypto-assets have already been offered in the EU before MiCA enters into force. However, this does not apply if the crypto-assets qualify as stablecoins.

Crypto-assets shall not be considered as offered for free if prospective holders have to provide personal data in exchange for the token or if the issuer receives any form of commission or (non-)monetary benefits from third parties.

1.3. "Prospectus" liability

Member states have to ensure that issuers can be held liable by token holders under national civil law for the information provided in the whitepaper. Given that the provisions in MiCA outlining the required content of whitepapers are less detailed than those under the EU prospectus regulation which applies to MiFID financial instruments, there is a possibility that national courts will apply different standards when ruling on claims of token holders, depending on the type of token.

1.4. Right of withdrawal for consumers

Consumers will have a right to withdrawal from purchasing a non-listed crypto-asset within 14 days if the token has been acquired from the issuer directly or a service provider placing the tokens on his behalf.

2. Requirements on issuers of crypto-assets

The draft regulation takes into account that there are differences between traditional financial instruments and crypto-assets. The use of DLT offers advantages, however, it also adds a layer of complexity and related (cyber) security risks. Therefore, issuers have to maintain robust IT systems and security protocols according to standards yet to be developed by ESMA and EBA and safeguard investors funds. In case of infringements of the stipulations of this regulation, competent authorities are granted the power to suspend the offering or the trading of crypto-assets.

Part C: Specific rules for stablecoins

A key pillar of the proposal is the regulation of so-called **stablecoins** and their **issuers**. Stablecoins are tokens issued to serve as a **means of payment** that maintain a **stable value**. This is achieved by reference to one or more currencies issued by a central bank (so called 'fiat money') or commodities.

1. Categorisation of stablecoins

MiCA does not define what a stablecoin is but it refers to two types of token which are "often described as 'stablecoins'":

- **asset-referenced token** and
- **e-money token.**

Whilst the main purpose of both types is to be used as a means of exchange, **asset-referenced token** refer to **several** fiat currencies, one or several commodities or one or several crypto-assets, or a combination of such assets (the so called "reserve assets"). **E-money token** refer to **one single fiat currency** only. The issuer of asset-referenced token must ensure the liquidity of the token and, in case the market value of the token (e.g. on trading platforms) deviates significantly from the value of the reserve assets, the token holders are entitled to redeem the token directly from the issuer.

Issuers of e-money token must grant a claim to redeem the token at par value. If this claim is not granted or if it is modified, for example by limiting the redemption period, it will be prohibited to issue the respective e-money token in the EU. The claim for redemption at par value qualifies an e-money token as e-money in terms of the EMD so that the EMD applies in addition to MiCA.

2. Significance of stablecoins

For both categories of stablecoins, additional requirements apply if they are deemed to be **significant**. Based on specific criteria and thresholds like user base and market capitalisation, EBA will determine whether a stablecoin is significant. If this is the case the issuer shall be supervised by EBA and a college of concerned national competent authorities.

3. The framework for asset-referenced token

3.1. Authorisation requirement for issuers of asset-referenced token

Issuers of asset-referenced token exceeding certain de minimis thresholds have to obtain prior authorisation by the competent authority in their home member state unless they are an authorised credit institution. The authorisation requires the incorporation of a legal entity in the EU. If one asset-referenced token is issued by several entities, each issuer has to be authorised. The authorisation can be refused if the proposed business model is considered a threat to financial stability and monetary (policy) sovereignty. Once granted, the authorisation is valid throughout the entire EU.

3.2. Further regulatory requirements

Issuers of asset-referenced token must comply with a number of regulatory requirements, including, but not limited to:

■ **Capital requirements**

Issuers must have in place as CET1 capital the higher of either EUR 350,000 or 2 % (3% in case of significant asset-referenced token) of the average amount of the reserve assets. Competent authorities can reduce or increase the capital requirements by up to 20 %, depending on specific circumstances.

■ **Custody and segregation requirements**

Reserve assets must be segregated from the issuer's own assets and held with a credit institution (for fiat currencies/financial instruments) or a crypto custodian (for crypto-assets) according to a structure comparable to the one set out for custodians under AIFM/UCITS directive.

■ **Requirements regarding the investment of reserve assets**

Investments (of parts) of the reserve assets by the issuer are limited to highly liquid financial instruments with minimal risk profiles. Any losses resulting from the investments are to be borne by the issuer.

On top of that further requirements have to be fulfilled, including, but not limited to requirements regarding the stabilisation mechanism, the business organisation or the qualification of the management.

3.3. Additional content of whitepapers

In addition to the general content of whitepapers, issuers of asset-referenced token have to include information on the core aspects that determine the value and integrity of the token, especially on the stabilising mechanism, custody arrangements, (potential) redemption rights and liquidity management.

3.4. Ongoing information to token holders

Issuers have to report monthly on the amount and valuation of issued token and reserve assets. Any events that are likely to have a significant effect on these figures have to be made public on an ad-hoc basis.

4. The framework for e-money token

4.1. Authorisation and supervision of issuers of e-money token

As all (permissible) e-money tokens qualify as e-money under the EMD, issuers have to be authorised as either credit institutions or e-money institutions.

4.2. Further regulatory requirements

In addition to or in derogation of the requirements applicable to issuers of e-money token under the EMD or CRR/CRD IV, MiCA provides for a set of specific requirements.

■ **Capital and liquidity requirements**

In derogation of the EMD, issuers of e-money token are subject to the same capital requirements as issuers of asset-referenced tokens. Furthermore, issuers have to implement a liquidity management system like issuers of asset-referenced tokens.

■ **Custody and segregation requirements**

Custody and segregation of funds requirements are the same as for asset-referenced tokens.

■ **Requirements regarding the investment of reserve assets**

The reserve assets, being the funds received by issuers in exchange of the e-money, can only be invested in secure, low-risk investments denominated in the same currency as the one referenced by the e-money token.

On top of that, further requirements have to be fulfilled, including, but not limited to requirements regarding the business organisation or the qualification of the management.

4.3. Additional content of whitepapers

The whitepaper for e-money token and its notification and publication process follow the same principles as the whitepapers for other crypto-assets within the scope of MiCA. As the redeemability of the token is a core feature of e-money token, issuers are required to provide details on the rights, claims and obligations attached to the tokens as well as the underlying technology and procedures and conditions to exercise these rights.

Part D: Crypto-asset service providers

1. Authorisation of crypto-asset service providers

The provision of services in relation to crypto-assets requires prior authorisation by national competent authorities. Credit institutions, however, do not need to obtain an additional authorisation. The same applies to MiFID firms as far as the crypto-asset service(s) they intend to provide are deemed equivalent to the MiFID financial service(s) for which they are authorised. The authorisation is valid for the entire EU.

If bespoke licence regimes for crypto service providers already exist, like in Germany or France, a simplified authorisation procedure will be applied for transitioning from a national licence to a MiCA crypto-asset service provider licence.

2. Further regulatory requirements

Crypto-asset service providers will be subject to requirements regarding organisation, capital, governance and qualified personnel which are comparable to the requirements for MiFID investment firms. However, when applying these provisions in light of the principle of proportionality,

competent authorities have to take into consideration the size and risk profile of each service provider.

Minimum capital requirements are composed of a fixed amount depending on the specific type of crypto-asset service (see [Annex](#) below) and a quarter of the fixed overhead costs per year. Own funds can be supplemented or substituted by an **insurance policy**.

Such as issuers of stablecoins, crypto-assets service providers have to fulfil certain requirements, including, but not limited to requirements regarding the separation of assets, the safekeeping of clients' funds, the organisation of their business or the qualification of their management.

3. Requirements on specific crypto-asset services

Equivalent to the list of financial services under MiFID, MiCA stipulates an exhaustive list of types of services that require authorisation. In addition to the general organisational principles mentioned above, there are specific requirements addressing the particularities of each type of crypto-asset services (see Annex below).

Part E: Prevention of market abuse

Crypto-assets that are **admitted to trading on a trading platform for crypto-assets** are subject to provisions to deter market abuse. MiCA contains provisions which prohibit some behaviours, such as insider dealings, unlawful disclosure of inside information and market manipulation. Competent authorities will be granted the power to impose pecuniary sanctions of up to EUR 5 million or 3 % of the annual turnover on legal persons or EUR 700,000 on natural persons. Criminal and administrative sanctions under national law remain applicable.

Annex: Services regarding crypto-assets

Type of crypto-asset service	Specific capital requirements	Other specific requirements
Custody and administration of crypto-assets	EUR 125,000	Clients' crypto-assets are to be held on DLT addresses separate from those on which their own crypto-assets are held. The provision does not state explicitly that there has to be a separate DLT address for each customer. Crypto-custodians have to report on the positions held in custody for each customer on a quarterly basis. Customers will be able to hold their crypto-custodian liable for loss of crypto-assets resulting from hacks or malfunctions.
Operation of a trading platform (MTF/OTF)	EUR 150,000	Trading platform operators have to set rules regarding the admission or suspension of crypto-assets to and from the platform. In contrast to traditional multilateral trading facilities under MiFID II, access to trading on the platform can be opened to retail clients. Tokens that do not allow for the identification of holders and the transaction history are to be banned from trading platforms. Operators are prohibited from dealing on their own account on their own platform. Bid and ask prices and trading volumes have to be published continuously and transactions have to be settled on DLT on the day they occur.
Exchange of crypto-assets against fiat currency or other crypto-assets (dealing on own account)	EUR 150,000	Exchange operators have to publish their policy on the type of clients they accept and the firm prices they offer or the pricing mechanism. Similar to trading platforms, they have to publish data (prices and volumes) on transactions concluded on their exchange platform.
Execution of orders for crypto-assets	EUR 50,000	Service providers have to implement policies and steps to ensure the best possible result when executing client orders (best execution).
Placement of crypto-assets	EUR 50,000	When placing crypto-assets for issuers, service providers have to clearly communicate transaction fees and provide information on the considered timing, process and the proposed price for the placed crypto-assets.
Reception and transmission of orders in relation to crypto-assets	EUR 50,000	When transmitting clients' orders, service providers are prohibited to accept any form of remuneration or benefits for routing clients' orders to a particular trading platform.
Advice on crypto-assets	EUR 50,000	Advisors for investments in crypto-assets have to collect all relevant information from clients to assess their knowledge and experience regarding different types of crypto-assets and base their advice on this assessment and clearly explain risks related to the investments or issue warnings.

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