EU approach to crypto-asset regulation

JVI Seminar: Legal aspects of digital assets and services

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Regulation on markets in crypto-assets (MiCA)

• A bespoke and comprehensive legal framework on crypto-assets

• Entry into force on 29 June 2023, application date: 30 June 2024 (stablecoins), 30 December 2024 (crypto-asset service providers, market abuse, supervision)

• EU Regulation, which directly applies in all EU Member States

• Objective: promote innovation (legal certainty, passporting) while addressing the risks to consumers, market integrity and financial stability as well as monetary sovereignty

• Regulating 1) issuers of crypto-assets, 2) crypto-asset service providers and 3) market abuse

• Implementing FSB Recommendations on crypto-assets
MiCA Taxonomy

Crypto-assets

- A digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology.

Asset-referenced tokens

- A type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies.

E-money tokens

- A type of crypto-asset that purports to maintain a stable value by referencing to the value of one official currency.

Outside of MiCA scope:
- Crypto-assets that are already covered by other financial services acts (e.g. securities)
- Issued by public bodies, international organisations (e.g. CBDC)
- Unique and non-fungible tokens (NFTs)
- Fully DeFi
MiCA obligations on issuers

Other crypto assets
- disclosure and transparency:
  - crypto-asset white paper (liability)
  - marketing communication
- conduct requirements and consumer protection

Asset-referenced tokens (ARTs)
- authorization in EU
- prudential, organisational and conduct requirements
- redemption at market value/physical
- reserve of assets

E-money tokens (EMTs)
- authorized e-money institutions/credit institutions
- E-Money Directive unless otherwise in MiCA
- redemption at par (1:1)
- safeguarding of funds ("reserve of assets") for e-money institutions

‘stablecoins’

Limitations on use as means of exchange (except for EMT in EU currency)

Additional requirements and EU supervision for significant ARTs:  
Additional requirements and partial EU supervision for significant EMTs
### Crypto-asset services
- Operation of trading platforms
- Custody services (wallets)
- Exchange services (for funds or other crypto-assets)
- Execution of orders
- Placing of crypto-assets
- Reception/transmission of orders
- Advice
- Portfolio management
- Transfer services

### Requirements for crypto-asset service providers (CASPs)
- Authorised in EU
- General prudential, organisational and conduct requirements
- Specific requirements for each service

### Prevention of Market Abuse
- Insider dealing
- Unlawful disclosure of inside information
- Market manipulation
- Reporting of suspicious transactions
MiCA scope: exclusion of financial instruments

- Explicit exclusion of financial instruments (securities, derivatives …), e-money, deposits, pension and insurance products

- The issuer responsible for correct classification: explanation or legal opinion to the competent authority on classification upon notification/request for authorisation

- There is no harmonised definition of a financial instrument at EU level, which is addressed by:
  - European Securities and Markets Authority (ESMA) to issue guidelines on qualification of CA as financial instruments;
  - European supervisory authorities (ESAs) promote discussions on classification; possibility for national competent authorities to ask ESAs for an opinion;

- Case-by-case basis assessment by national competent authorities
Digital euro

- June 2023: proposal for a Digital Euro Regulation, sets out essential elements of digital euro, enable the ECB to issue digital euro
- Not replace cash, complements cash, additional method of payment for consumers
- Direct liability of the central banks, while distributed by intermediaries (banks and payment service providers)
- Legal tender status in the Eurozone (mandatory acceptance)
- Means of payment (prohibition of interest, holding limits)
- Online and offline (high level of privacy)
Thank you

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