

## **Alert** | Blockchain & Digital Assets



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### **New Rules for Crypto-Assets in Europe**

On 20 April 2023, the European Parliament adopted Regulation (EU) 2023/1114 on Markets in Crypto-Assets (MiCA). The European Council approved MiCA on 16 May 2023; it was published in the Official Journal of the European Union on 9 June 2023.

A limited number of rules set out in MiCA are already in force, but most of them will take effect on 30 December 2024.

#### **MiCA – Highlights and Scope**

MiCA aims to create a harmonised regulatory framework for crypto-assets in the European Union, promote innovation, and foster crypto-asset use while ensuring financial stability of issuers and service providers. The regulation also addresses investor and consumer protection for the issuance, trading, and custody of crypto-assets and seeks to prevent market abuse on cryptocurrency exchanges.

Prior to MiCA, EU legislation did not regulate the provision of virtual asset services. Instead, virtual asset service providers were subject to the individual legislation of each EU member state.

MiCA applies to issuers of crypto-assets and to firms that provide crypto-asset services, and defines “crypto-asset” as “a digital representation of value or rights which may be transferred and stored electronically using distributed ledger technology or similar technology.”

MiCA distinguishes between three types of crypto-assets:

1. asset-referenced token (ARTs): a crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value, right, or a combination thereof, including one or more official currencies;
2. electronic money token (EMT or e-money token): a crypto-asset that purports to maintain a stable value by referencing the value of one official currency; and
3. the residual category of “other” crypto-assets, which captures all digital assets that do not fall under the other two categories (ARTs and EMTs), and which comprises, as a subset, utility tokens, i.e., crypto-assets which only intend to provide access to a good or a service the issuer supplies.

The regulation does not apply to assets that are already within the scope of other EU legislation, including (but not limited to):

- a. financial instruments and structured deposits within the scope of MiFID II (Directive 2014/65/EU);
- b. funds, as defined in PSD II (Directive 2015/2366/EU), other than EMTs;
- c. deposits within the scope of the EU Directive on Deposit Guarantee Schemes (Directive 2014/49/EU), including structured deposits; and
- d. securitisations within the scope of the Securitisation Regulation (Regulation (EU) 2017/2402).

MiCA distinguishes between activities carried out on the primary market, i.e., issuing crypto-assets, and providing services on the secondary market, known as crypto asset services, including (i) providing custody and administration of crypto-assets (ii) providing advice on crypto-assets, (iii) operating a trading platform for crypto-assets, (iv) receiving and transmitting orders for crypto-assets, or (v) executing orders for crypto-assets.

In detail, MiCA sets forth:

- transparency and disclosure requirements for issuing and trading crypto-assets,
- requirements for issuing crypto-assets and supervising issuers and service providers, and
- requirements for a proper business organization of crypto asset issuers and crypto asset service providers.

### **Takeaways**

As mentioned, MiCA will take effect on 30 December 2024. Operators in crypto-assets should ensure that their corporate structure, corporate bodies, and activity as issuers and/or service providers comply with the new rule. Failure to do so may lead to severe sanctions.

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