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The new European regime on markets in crypto-assets

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On 24th September, the European Commission published a Proposal for a Regulation of the European Parliament and of the Council on the markets in crypto-assets ("**MiCA Proposal**"). This proposal is part of a Digital Finance Action Plan, a package of measures to further enable and support the potential of digital finance¹ in terms of innovation and competition while mitigating the risks.

The MiCA Proposal establishes a new legal framework filling the existing gap in the European law regarding the regulation on crypto-assets, aiming to regulate crypto-assets falling outside existing EU financial services legislation. This proposal identifies, from the outset, three sub-categories of crypto-assets to which it is applicable, namely **asset-referenced tokens**, **e-money tokens** and **utility tokens**.

The MiCA Proposal establishes a set of harmonized rules directed to **issuers of crypto-assets** and **crypto-assets services providers** in the European Union.

In relation with **issuers of crypto-assets**, this proposal makes the offer of crypto-assets to the public or the admission of crypto-assets to trading on a trading platform subject to several requirements, namely the following: the issuer has to be a legal entity, has to draw a white paper in respect of the crypto-assets (an informative document similar to a prospectus but that **is not equivalent to** a prospectus under the Regulation (UE) 2017/1129), which has to contain information about the issuer, the offer or the trading, the rights and obligations attached to the crypto-assets, the underlying technology, etc., and has to notify the white paper to the competent authority of their Member State.

It is important to notice that the proposal determines some regime specificities, establishing additional and specific requirements depending on whether they are issuers of asset-referenced tokens or issuers of e-money tokens.

For instance, the issuers of asset-referenced tokens need to comply with additional requirements, related with complaint handling procedures, conflicts of interest, governance arrangements, own funds, reserve of assets and the content of the white paper should include additional and specific information.

¹ Digital finance is the term used to describe the impact of new technologies on the financial services industry.

On the other hand, the issuer of e-money tokens must be authorised as a credit institution or as an “electronic money institution”² and must disclose additional and specific information.

It also should be noted that competent authorities supervise e-money tokens and asset-referenced tokens, while the European Banking Authority (“EBA”) will be entitled to supervise significant asset-referenced tokens and significant e-money tokens³.

In relation to **crypto-assets providers**, they must be legal persons, they need to have a registered office in a Member State of the Union and they also need to be authorised by the competent authority as crypto-assets service providers.

The MiCA Proposal establishes the regime applicable to these entities, for instance, they should comply with prudential requirements, organisational requirements, rules about the safekeeping of clients’ crypto-assets and funds and rules about conflict of interest. The proposal also establishes additional obligations for the **provisions of specific crypto-asset services**, such as, among others, custody and administration of crypto-assets on behalf of third parties, execution of orders for crypto-assets on behalf of third parties, placing of crypto-assets and reception and transmission of orders on behalf of third parties.

Finally, it is worth highlighting that this proposal establishes **rules to prevent market abuse involving crypto-assets**.

Once approved, the regulation shall enter into application 18 months after its entry into force, except for the provisions related to **asset-referenced tokens and e-money tokens that shall enter into application on the date of entry into force of the regulation**.

This proposal shows the European concern with the regulation of those crypto-assets capable to threaten the financial stability and monetary policy in the euro-zone, such as asset-referenced tokens and e-money tokens, thereby giving them a differential regulatory treatment.

There is no doubt that the legal framework established with the MiCA Proposal will mean serious challenges for the entities operating with crypto-assets; however, the benefits are clear: this new regime will provide legal certainty for markets in crypto-assets.

² With the meaning of Article 2 (1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

³ The classification of asset-referenced tokens and e-money tokens as significant asset-referenced tokens and as significant e-money tokens is done according to articles 39 and 50 of the MiCA Proposal.