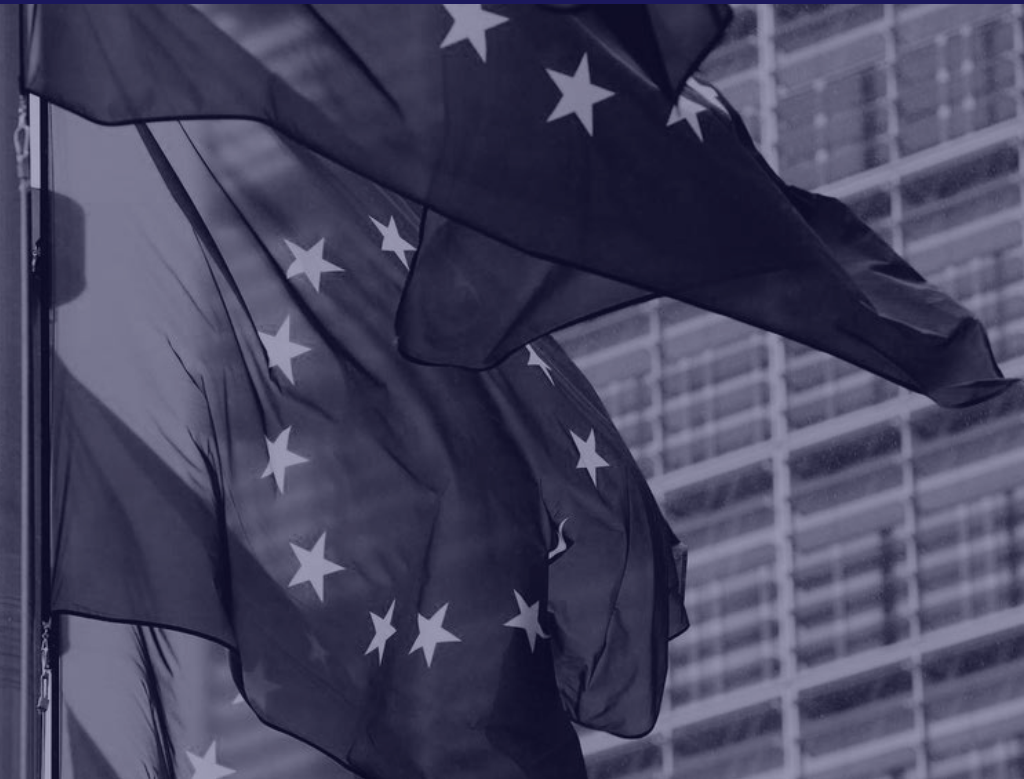


MiCA

INTRODUCTION TO THE MARKETS IN
CRYPTO-ASSETS REGULATION



BACS Blockchain Arbitration
& Commerce Society

May 2023

01	Introduction.
02	What is under the scope of MiCA. <ul style="list-style-type: none"> • First category of services. • Second category of services.
03	What is out of the scope of MiCA. <ul style="list-style-type: none"> • Activities or products. • Public institutions. • Digital assets issued by central banks • Digital assets that cannot be transferred to other holders • Utility tokens that are out of MiCA. • Utility tokens that aims to be trade are in MiCA. • Miners o Consensus mechanisim are out of MiCA.
04	Activities that are under the scope of MiCA: <ul style="list-style-type: none"> • Services and activities relating to any crypto-asset subjected to mica. • Office in a Member State.
05	Exchanges and MiCA.
06	NFTs and MiCA. <p>6.1.- <i>NFTs out of the scope of MiCA.</i></p> <p>6.2.- <i>NFTs under de scope of MiCA.</i></p>
07	Types of crypto-assets: <p>7.1.- <i>E-Money tokens:</i></p> <ul style="list-style-type: none"> • Notion. • Issuance of e-money tokens • Electronic money. • Right to claim. • Guaranties. <p>7. 2.- <i>Asset-Referenced Tokens:</i></p> <ul style="list-style-type: none"> • Notion. • Complaints-handling procedures. • Own funds requirements. • Right of redemption.
08	MiCA and whitepaper information.
09	Offerors of crypto-assets and MiCA.
10	Right of withdrawal.
11	Future guidelines from esma, eba, eiopa and bce



INTRODUCTION

The European Union wants to regulate the crypto-asset market to protect consumers. Its basis lies in the Treaty on the Functioning of the European Union, and in particular Article 114.

The Union has a policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including the uptake of distributed ledger technology (DLT). New types of business activity and business models that, together with the crypto-asset sector itself, will lead to economic growth and new employment opportunities for Union citizens.

When used as a means of payment, crypto-assets can present opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries.

At present, there are no rules, other than those in respect of anti-money laundering, for the provision of services related to such unregulated crypto-assets.

A dedicated and harmonised framework for markets in crypto-assets is therefore necessary at Union level.

02

WHAT IS UNDER THE SCOPE OF MiCA:

2.1

A first category of services: the operation of a trading platform for crypto-assets, exchanging crypto-assets for funds or other crypto-assets, providing custody and administration of crypto-assets on behalf of clients, and providing transfer services for crypto-assets on behalf of clients.

2.2

A second category of services consists of the placing of crypto-assets, the reception or transmission of orders for crypto-assets on behalf of clients, the execution of orders for crypto-assets on behalf of clients, providing advice on crypto-assets and providing portfolio management of crypto-assets.

As a general rule any person that provides crypto-asset services on a professional basis in accordance with this Regulation should be deemed to be a 'crypto-asset service provider'.



03

WHAT IS OUT OF MiCA:

Activities or products:

3.1

- (a) financial instruments and crypto-assets qualify as financial instruments.
- (b) deposits, including structured deposits;
- (c) funds, except if they qualify as e-money tokens;
- (d) securitisation positions;
- (e) non-life or life insurance products ...
- (f) pension products ...
 - (g) officially recognised occupational pension schemes ...
 - (h) individual pension products ...
 - (i) persons who provide crypto-asset services exclusively for their parent companies, for their own subsidiaries or for other subsidiaries of their parent companies;
 - (j) NFTS: crypto-assets that are unique and not fungible with other crypto-assets.



3.2

Public institutions.

It is appropriate to exclude certain intragroup transactions and some public entities from the scope of this Regulation as they do not pose risks to investor protection, market integrity, financial stability, the smooth operation of payment systems, monetary policy transmission or monetary sovereignty. Public international organisations that are exempt include the International Monetary Fund and the Bank for International Settlements.

3.3

Digital assets issued by central banks.

They are acting in their monetary authority capacity, including central bank money in digital form, or crypto-assets issued by other public authorities, including central, regional and local administrations, should not be subject to the Union framework for markets in crypto-assets.

3.4

Digital assets that cannot be transferred to other holder.

Do not fall within the definition of crypto-assets. Therefore, digital assets that are accepted only by the issuer or the offeror and that are technically impossible to transfer directly to other holders should be excluded from the scope of this Regulation. Examples of such digital assets include loyalty schemes where the loyalty points can be exchanged for benefits only with the issuer or offeror of those points.



3.6

Utility tokens that aims to be trade, in MiCA:

Those exemptions should cease to apply when the offeror, or another person acting on the offeror's behalf, communicates the offeror's intention of seeking admission to trading or the exempted crypto-assets are admitted to trading.

3.7

Miners o Consensus mechanisim are out of MiCA.

Offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens that are offered for free or that are automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions in the context of a consensus mechanism.

04

ACTIVITIES THAT ARE UNDER THE SCOPE OF MiCA:

- a)** The offer to the public and admission to trading on a trading platform of:
 - Crypto-assets other than asset-referenced tokens and e-money tokens;
 - Asset-referenced tokens and
 - E-money tokens,
- b)** Those considered as crypto-asset service providers.

4.1

Services and activities relating to any crypto-asset subjected to MiCA:

- (a)** providing custody and administration of crypto-assets on behalf of clients;
- (b)** operation of a trading platform for crypto-assets; **(c)** exchange of crypto-assets for funds;
- (d)** exchange of crypto-assets for other crypto-assets;
- (e)** execution of orders for crypto-assets on behalf of clients;
- (f)** placing of crypto-assets;
- (g)** reception and transmission of orders for crypto-assets on behalf of clients;
- (h)** providing advice on crypto-assets;
- (i)** providing portfolio management on crypto-assets;
- (j)** providing transfer services for crypto-assets on behalf of clients.



4.2

Office in a member state:

Crypto-asset services should only be provided by legal persons that have a registered office in a Member State in which they carry out substantive business activities, including the provision of crypto-asset services.

Undertakings that are not legal persons, such as commercial partnerships, should under certain conditions also be permitted to provide crypto-asset services. It is essential that providers of crypto-asset services maintain effective management of their activities in the Union in order to avoid undermining effective prudential supervision and to ensure the enforcement of requirements under this Regulation intended to ensure investor protection, market integrity and financial stability.

05

EXCHANGES AND MiCA:

MiCA lays down transparency and disclosure requirements for the issuance, offer to the public and admission of crypto-assets to trading on a trading platform for crypto-assets ('admission to trading').

MiCA applies to natural and legal persons and certain other undertakings that are **engaged in the issuance, offer to the public and admission to trading of crypto-assets** or that provide services related to crypto-assets in the Union.



06 NFTs AND MiCA:

6.1

NFTs out of the scope of MiCA:

NFTs: only if are unique and not fungible with other crypto-assets, including digital art and collectibles. Nor should this Regulation apply to crypto-assets representing services or physical assets that are unique and non-fungible, such as product guarantees or real estate.

6.2

NFTs under the scope of MiCA:

The fractional parts of a unique and non-fungible crypto-asset should not be considered unique and non-fungible. The issuance of crypto-assets as non-fungible tokens in a large series or collection should be considered an indicator of their fungibility.

The mere attribution of a unique identifier to a crypto-asset is not, in and of itself, sufficient to classify it as unique and non-fungible. The assets or rights represented should also be unique and non-fungible in order for the crypto-asset to be considered unique and nonfungible.

The exclusion of crypto-assets that are unique and non-fungible from the scope of this Regulation is without prejudice to the qualification of such crypto-assets as financial instruments.

This Regulation should also apply to crypto-assets that appear to be unique and non-fungible, but whose de facto features or whose features that are linked to their de facto uses, would make them either fungible or not unique.

07

TYPES OF CRYPTO-ASSETS:

7.1

“E-MONEY TOKENS”:

Notion: are crypto-assets that aim to stabilise their value by referencing only one official currency. The function of such crypto-assets is very similar to the function of electronic money as defined in Directive 2009/110/EC.

Issuance of e-money tokens: should be issued either by a credit institution, or by an electronic money institution.

Electronic money: E-money tokens should be deemed to be ‘electronic money’ as that term is defined in Directive 2009/110/EC and their issuers should, unless specified otherwise in this Regulation, comply with the relevant requirements set out in Directive 2009/110/EC for the taking up, pursuit and prudential supervision of the business of electronic money institutions and the requirements on issuance and redeemability of e-money tokens.

Right to claim: Holders of e-money tokens should be provided with a claim against the issuer of the e-money tokens.

Guaranties: Funds received by issuers of e-money tokens in exchange for e-money tokens shall comply with the following:

- (a) at least 30 % of the funds received is always deposited in separate accounts in credit institutions;
- (b) the remaining funds received are invested in secure, low-risk assets that qualify as highly liquid financial instruments with minimal market risk, credit risk and concentration risk.

7.2

“ASSET-REFERENCED TOKENS”:

Notion: aims to stabilise their value by referencing another value or right, or combination thereof, including one or several official currencies. That second type covers all other crypto-assets, other than e-money tokens, whose value is backed by assets, so as to avoid circumvention and to make this Regulation future-proof.

Complaints-handling procedures: Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens and other interested parties, including consumer associations that represent holders of asset-referenced tokens, and shall publish descriptions of those procedures.

Own funds requirements: Issuers of asset-referenced tokens shall, at all times, have own funds equal to an amount of at least the highest of the following:

- (a) EUR 350 000;
- (b) 2 % of the average amount of the reserve of assets referred to in Article 36;
- (c) a quarter of the fixed overheads of the preceding year.

Right of redemption: Holders of asset-referenced tokens shall have a right of redemption at all times against the issuers of the asset-referenced tokens.

7.3

UTILITY TOKENS: the third type consists of crypto-assets other than asset-referenced tokens and e-money tokens, and covers a wide variety of crypto-assets, including utility tokens.

08 MiCA AND WHITEPAPER INFORMATION

Marking fair, clear and not misleading, with this information:

- (a)** information about the offeror or the person seeking admission to trading;
- (b)** information about the issuer, if different from the offeror or person seeking admission to trading;
- (c)** information about the operator of the trading platform in cases where it draws up the crypto-asset white paper;
- (d)** information about the crypto-asset project;
- (e)** information about the offer to the public of the crypto-asset or its admission to trading;
- (f)** information about the crypto-asset;
- (g)** information on the rights and obligations attached to the crypto-asset;
- (h)** information on the underlying technology;
- (i)** information on the risks;
- (j)** information on the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset. In cases where the crypto-asset white paper is not drawn up by the persons referred to in the first

subparagraph, points (a), (b) and (c), the crypto-

asset white paper shall also include the identity of the person that drew up the crypto-asset white paper and the reason why that particular person drew it up.

09

OFFERORS OF CRYPTO-ASSETS AND MiCA:

Should have effective arrangements in place to monitor and safeguard the funds or other crypto-assets raised during their offer to the public. Those arrangements should also ensure that any funds or other crypto-assets collected from holders or prospective holders are duly returned as soon as possible where an offer to the public is cancelled for any reason. The offeror should ensure that the funds or other crypto-assets collected during the offer to the public are safeguarded by a third party.



10

RIGHT OF WITHDRAWAL

Retail holders that acquire crypto-assets other than asset-referenced tokens or e-money tokens directly from the offeror, or from a crypto-asset service provider placing the crypto-assets on behalf of the offeror, should be provided with a right of withdrawal during a period of 14 days after their acquisition. In order to ensure the smooth completion of a time-limited offer to the public of crypto-assets, the right of withdrawal should not be exercised by retail holders after the end of the subscription period.



11

FUTURE GUIDELINES FROM ESMA, EBA, EIOPA AND BCE



For the purposes of ensuring a clear delineation between, on the one hand, crypto-assets covered by this Regulation and, on the other hand, financial instruments, **ESMA should be mandated to issue guidelines on the criteria and conditions for the qualification of crypto-assets as financial instruments.**



In order to promote a common approach towards the classification of crypto-assets, EBA, ESMA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹(the 'European Supervisory Authorities' or 'ESAs') should promote discussions on such classification.

11 FUTURE GUIDELINES FROM ESMA, EBA, EIOPA AND BCE

For the purposes of ensuring a clear delineation between, on the one hand, crypto-assets covered by this Regulation and, on the other hand, financial instruments, **ESMA should be mandated to issue guidelines on the criteria and conditions for the qualification of crypto-assets as financial instruments.**



In order to promote a common approach towards the classification of crypto-assets, EBA, ESMA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹(the 'European Supervisory Authorities' or 'ESAs') should promote discussions on such classification.



11 FUTURE GUIDELINES FROM ESMA, EBA, EIOPA AND BCE



For the purposes of ensuring a clear delineation between, on the one hand, crypto-assets covered by this Regulation and, on the other hand, financial instruments, **ESMA should be mandated to issue guidelines on the criteria and conditions for the qualification of crypto-assets as financial instruments.**



In order to promote a common approach towards the classification of crypto-assets, EBA, ESMA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹(the 'European Supervisory Authorities' or 'ESAs') should promote discussions on such classification.



BACS


Blockchain Arbitration
& Commerce Society

VISIT OUR WEB



 C/ Antonio Acuña 9, 2º izq.
Madrid (Spain)

info@bacsociety.com 

+34 91 018 29 46 

En colaboración con 