大成 DENTONS

Background Briefing

Meet MiCA – The EU pushes forward its proposal for its Markets in Crypto-Assets Regulation plus a pilot regime for DLT infrastructure

NOVEMBER 2020

QuickTake: Blockchain has been transformative and MiCA marks the "Big Bang" in regulation in the EU

On September 24, 2020 as part of its "Digital Finance Strategy Package", the European Commission adopted:

- the MiCA proposal[1] including its Annexes[2] and an impact assessment[3];
- the Pilot DLT Market Infrastructure Regulation (**PDMIR**) proposal[4]; the
- the Digital Operational Resilience Regulation proposal (**DORA**) as supplemented by
- an EU directive which introduces targeted amendments (the **Amending Directive**)[5] to existing financial services legislation[6] to accommodate the EU's MiCA regulatory regime.

(collectively the **MiCA Regime7**).

When taken together this new MiCA Regime clarifies which tokens will qualify as a "financial instrument" and thus fall under the existing financial services regulatory regime, as amended, and which tokens will qualify as "crypto-assets" and thus fall under MiCA's specific regime for crypto-asset services (**CAS**). Crucially, MiCA aims to be technology, asset class and jurisdiction agnostic neutral. MiCA allows for the use of both permission-less[8] and permission-based[9] distributed ledger technology (**DLT**)[10]. Assessment of whether a digital asset will be a crypto-asset and subject to MiCA or a token that is a financial instrument subject to the existing financial services regime, notably MiFIR/MiFID II, will look at the substance over form and thus depends on the content of an instrument and not the technology behind it.

MiCA itself may be implemented as early as mid-2021 to early 2022 and aims to be fully operational by 2024. PDMIR could begin operating much earlier. The pilot/sandbox regime that is introduced by the PDMIR marks a very definitive shift in how the EU is approaching financial services rulemaking. The pilot regime is the first EU-wide sandbox of its type. DORA also marks an advance in a thematic area that has long been marked a priority for policymakers.

1 For the main legislative text the final legislative proposal is available here (a deltaview showing changes to the draft proposal (without the Annexes) is in the Appendix to this Background Briefing). The Annexes 1 to 6 to MiCA are (from the Danish government) available here.
2 The Annexes 1 to 6 to MiCA are available here.
3 Available here.
4 Available here.
5 Available here.
6 The European Commission consulted on the possibility of an EU framework for crypto-assets in December 2019 and the feedback to that consultation is set out in part 2 of the final legislative proposal. In part MiCA builds upon the work of the European Supervisory Authorities (**ESA**s), in particular the European Banking Authority (**EBA**), the European Securities and Markets Authority (**ESMA**) and to a lesser degree the European Insurance and Occupational Pensions Authority (**EIOPA**) as well as the European Central Bank (**ECB**) in its role at the head of the Banking Union's Single Supervisory Mechanism (**SSM**). This includes notably ESMA's advice on initial coin offerings and crypto-assets – see here as well as the EBA's report with advice for the European Commission on crypto assets – see here as well as our analysis here.
7 A link to the legislative procedure file (and supporting documents) are available here.
8 Refers to a DLT network in which anyone (subject to little limitation) can become a participant in the validation and consensus process.
9 Refers to a DLT network in which only the parties that meet certain requirements are entitled to participate to the validation and consensus process.
10 The EU defines DLT as "a means of saving information through a distributed ledger, i.e., a repeated digital copy of data available at multiple locations. DLT is built upon public-key cryptography, a cryptographic system that uses pairs of keys: public keys, which are publicly known and essential for identification, and private keys, which are kept secret and are used for authentication and encryption."

While MiCA still raises a number of questions, the definitive demarcation of how tokens are to be treated is likely to provide greater legal certainty and thus transform Europe's current fragmented crypto-asset legislative and regulatory framework into possibly the world's largest and most significant uniform regulatory framework. This would improve harmonization and legitimization of how tokens are regulated generally, the dealings with them and supervision of issuers and firms that qualify as crypto-asset service providers (**CASP**s). MiCA applies to persons engaged in the issuance of crypto-assets and to CASPs in the EU-27. MiCA will equally impact those persons from outside the EU, for example in the United States, soliciting, selling and promoting CAS activities to clients that are in the EU. When taken as a whole these changes aim at creating legal certainty, supporting innovation, ensuring appropriate levels of consumer and investor protection, promoting market integrity and financial stability.

MiCA also makes targeted amendments to expand and adapt the existing financial services regulatory regime to cover those tokens that will become subject to that regime. Persons subject to MiCA will be subject to a sliding scale of requirements. More onerous requirements are imposed in relation to those crypto-assets that present greater risk (such as stablecoins, notably when they are e-money).

In summary, MiCA's text:

1. provides clarity that security tokens (and those with similar features) and activity in respect of these to be governed by the current existing financial services regime, and for those range of tokens that qualify under MiCA as one of the various subcategories of "crypto-assets" those formerly known as "payment tokens", "utility tokens" but also "stable tokens";
2. introduces definitions of what constitutes "crypto-asset services" (**CAS**) and how these are regulated (and these are set out in MiCA as being deemed equivalent to MiFID II/MiFIR obligations) and thus require an authorization[11] for those providing the following activity:
    a. Custody and administration of crypto-assets on behalf of third parties;
    b. Operation of a trading platform for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender;
    c. The exchange of crypto-assets for other crypto-assets;
    d. The execution of orders for crypto-assets on behalf of third-parties;
    e. The reception and transmission of orders for crypto-assets on behalf of third parties;
    f. The placing (i.e., marketing of newly issued crypto-assets or crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offer to the public or an offer to existing holders of the issuer' crypto-assets;
    g. Providing advice on crypto-assets – which means the offering, giving or agreeing to give personalized or specific recommendations to a third party either at its request or on the initiative of the crypto-asset service provider, concerning the acquisition of or the sale of one or more crypto-assets or the use of "crypto-asset services" – i.e., all of the CAS activity above.

11 Including "top-up" authorizations for those persons already regulated under the respective existing financial markets regulatory licensing regime.

3. introduces new requirements for issuers[12] of crypto-assets including with respect to whitepapers. MiCA proposes that no issuer of crypto-assets (other than for an Asset Referenced Token (**ART**s) or an Electronic Money Token (**EMT**s) or those which are exempt) shall, in the EU, offer such crypto-assets to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that issuer has satisfied certain requirements including the minimum content of the whitepaper as set out in Annex I of MiCA for all whitepapers and Annex II for ART whitepapers. Admission of a whitepaper and/or trading shall be an EU-wide admission. While ART issuers will require an authorization, exemptions from the need for ART issuers to be authorized are available for small-scale ARTs or for ARTs that are marketed, distributed and exclusively held by qualified investors. All issuers have to report monthly on the amount and valuation of an issued token and reserve assets and any events that are likely to have a significant effect on these figures have to be published on an ad-hoc basis;
4. sets out that, by way of a general requirement, crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the EU and that have been authorized as a crypto-asset service provider. This may impact a range of custodian wallet providers, crypto-asset exchanges, crypto-asset trading platforms and issuers of crypto-assets. In relation to stablecoins i.e., what MiCA terms an ARTs though, these can only be provided by a "credit institution" (i.e. a bank) under MiCA, i.e., what the EU terms a bank and this will require minimum capital requirements of EUR 5mln. If the stablecoin is however not what MiCA terms an ART or an EMT, then perhaps there is an argument to limit the regulatory capital requirements;
5. puts in place a client segregation requirement (permits omnibus accounts) for crypto-asset services providers holding crypto-assets and/or funds (read fiat) belonging to clients. Rehypothecation and/or rights of use (subject to client consent) is permitted. Client funds need to be held with a bank or a central bank on a client fund (omnibus is permitted) account. Certain conduct of business and disclosure obligations also apply to crypto-asset service providers undertaking custody and administration of crypto-assets on behalf of third-parties;
6. applies and extends existing market integrity measures with respect to prevention of market abuse, insider information, insider dealing and market manipulation;
7. stipulates a change in control framework that applies to acquisitions/dispositions of crypto-asset service providers. This is a copy and paste of existing EU rules/principles – save that administrative timelines are somewhat longer for review and processing;
8. introduces a regime for minimum capital requirements for those regulated persons providing CAS as well as a passporting regime across the EU-27;
9. sets definitive rules for the relationship between a crypto-asset issues and token holder, as well as rights and procedures for a tokenholder to complain; and
10. interacts with the PDMIR creation of a "pilot" i.e., sandbox regime for private sector participants in creating and developing infrastructure for the trading and settlement of crypto-assets, that will be reviewed five years after entry into force. This is in addition to the MiCA effectiveness review that is scheduled three years after the entry into force of the Regulation.

12 Issuers have been defined as "any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets".

AUTHORIZATION AND SUPERVISION FOR ALL CRYPTO-ASSET ISSUERS AND CASPS

MiCA requires that those entities that are in-scope of this new regime (including crypto-asset issuers) will be authorized and supervised by national competent authorities (**NCA**s) in the Member States in which they are based.[13] NCAs will be required to designate a single point of contact for CASPs and MiCA relevant issuers providing cross-border business. For those regulated firms, such as credit institutions i.e., banks, generally, and MiFID investment firms that undertake "CAS-like activity", these will not require a further authorization to undertake CAS activity. MiCA shall not apply to any person who provides CAS activity exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent companies (**MiCA Intragroup Exemption**).

ADDITIONAL RULES FOR AUTHORIZATION AND SUPERVISION OF ARTS AND EMTS

For those issuers of stablecoins, i.e., what MiCA terms ARTs, NCAs will consult with the European Banking Authority (**EBA**) and the European Securities and Markets Authority (**ESMA**) and where the ARTs reference EU currencies (not just euro but Bulgarian lev, Croatian kuna, Czech koruna, Danish krone, Hungarian forint, Polish zloty, Romanian leu and Swedish krona) the NCA will consult the European Central Bank (**ECB**) and the national central bank (**NCB**) of issue of such currencies, who will provide a non-binding opinion on the prospective issuer's application for authorization.

EMTs may only be offered or admitted to trading on a crypto-asset trading platform if the issuer is authorized as a credit institution i.e., a bank or an electronic money institution within the terms of the second –E-Money Directive. EMT issuers and CASPs are prevented from granting any interest to EMT holders.

For issuers of what MiCA terms as significant ARTs, issuers of ARTs will be supervised by the EBA once those ARTs have been classified as significant. EMTs, notably those that are categorized as significant, will be supervised by both the NCAs and the EBA. MiCA contains provisions empowering the European Commission to adopt a delegated act to further specify the circumstances under which, as well as thresholds above which, an issuer of ART will be considered significant. Additional obligations apply to issuers of significant ARTs, such as requirements for multiple custodians, additional own funds requirements, a liquidity management policy and interoperability as well as the orderly wind-down of activities.

OUTLOOK

While MiCA may mark a quantum leap in how crypto-assets are regulated, it may provide opportunities for some and compliance challenges for others in respect of business in the EU-27. Affected stakeholders will want to take early action, consulting counsel to first assess the impact of MiCA and any action plans to seize opportunities that MiCA introduces as well as how to remedy areas where greater compliance obligations may apply. We anticipate that if MiCA is passed, possibly by mid-2021, that the phased 18 month period (which does not apply for crypto-assets that would be EMTs or ARTs i.e., stablecoins) of introduction of its requirements will also be complemented by a raft of subsidiary legislative instruments, notably technical standards issued by EU supervisory policymakers, some of which may alter the national regimes (where they exist) even if the MiCA Regime is borrowing from the best of those regimes. Further possible institutional changes are expected, including due to complementarity of regulatory approaches and increased central bank oversight, which are subject to forthcoming consultations.

13 Recital 49 states that, and it is conceivable that this assessment/rationale could change, "Given the relatively small scale of crypto-asset service providers to date, the power to authorize and supervise such service providers should be conferred to national competent authorities. The authorization should be granted, refused or withdrawn by the competent authority of the Member State where the entity has its registered office. Such an authorization should indicate the crypto-asset services for which the crypto- asset service provider is authorized and should be valid for the entire Union." ESMA is required to maintain a register for crypto-asset services providers. Consequently, it will remain to be seen whether NCA's registers and ESMA's EU-wide register will be sufficiently harmonized. In other areas of regulated markets, such as insurance intermediaries NCA's registers for insurance intermediaries (where they exist) and ESMA's central register have not been fully reconciled. This may fuel confusion rather than the transparency that this requirements aims to provide.

Overview

The European Union's (**EU**) long-standing efforts on how to regulate cryptocurrencies and digital assets (**crypto-assets**) has finally come to fruition, first in the form of a draft 167 page legislative proposal[14], which was released via various sources, and then on September 24, 2020 the publication of a formal 233 page proposal of which 173 pages (and 12 new articles) reflect the Markets in Crypto-Assets Regulation (**MiCA**)[15] accompanied by various supporting documents as highlighted in the QuickTake. A deltaview showing changes that MiCA has made to the draft proposal is included as an Appendix to this Background Briefing.[16]

This Background Briefing assesses the impact of the MiCA Regime, the differences to the MiCA draft proposal, an overview of pieces that are (at the time of writing) still missing from the MiCA Regime and how all of this ties together in the context of the EU's "Digital Finance Strategy Package"[17] (**DFP**)[18], including the proposal for a Digital Operational Resilience Regulation (**DORA**) along with the efforts announced in the much awaited Capital Markets Union 2.0 Action Plan (**CMU 2.0**)[19] which were also released on September 24, 2020. Please see also standalone coverage from our Eurozone Hub on the details on DORA specifically and the DFP[20] and CMU 2.0[21] more generally as well as coverage on the concurrent efforts by the European Central Bank (**ECB**) on its own central bank digital currency proposal as well as corresponding crypto-asset reforms in relation to its Banking Union supervisory role.

MiCA, and the relevant regulatory technical standards referred to in this EU Regulation, will now move from the draft proposal state through the EU's legislative process of the European Parliament and Council. As an EU Regulation, MiCA, once adopted, would apply 20 days following its publication in the EU's Official Journal and assuming political agreement on the current proposal, MiCA could well enter into force in mid-2021 or early 2022, subject to certain transitional periods and full operation of the regime by 2024. PDMIR could begin operating much earlier. The pilot/sandbox regime that is introduced by the PDMIR marks a very definitive shift in how the EU is approaching financial rulemaking. The pilot regime is the first EU-wide sandbox of its type. DORA also marks an advance in a thematic area that has long been marked a priority for policymakers.

14 The draft proposal followed on from a public consultation that commenced in December 2019 and closed in March 2020 with 198 submissions evidencing a heightened interest from market participants. Details of the number, type and geographical location of the respondents are set out, form page 75 onwards, in the Impact Assessment (for ease of reference available here). The public consultation followed detailed due diligence on the fitness of the existing financial services regulatory regime by both ESMA and the EBA as well as the European Parliament (see report here) as well as well as an attempt to shoehorn crypto-asset regulation into the European Crowdfunding Service Providers Regulation (see coverage here).

15 The draft Regulation is available here.

16 This deltaview should be viewed as provided purely for informative purposes. Red colored items are deletions, blue represent additions and green represent items that have been moved.

17 The EU's Digital Finance "package" is comprised of various measures to further enable and support the potential of digital finance in terms of innovation and competition while mitigating the risks. It is in line with the Commission priorities to make Europe fit for the digital age and to build a future-ready economy that works for the people. The digital finance package includes a new Strategy on digital finance for the EU financial sector with the aim to ensure that the EU embraces the digital revolution and drives it with innovative European firms in the lead, making the benefits of digital finance available to European consumers and businesses. In addition to this proposal, the package also includes a proposal for a pilot regime on distributed ledger technology (DLT) market infrastructures, a proposal for digital operational resilience, and a proposal to clarify or amend certain related EU financial services rules.

18 The DFP is available here.

19 The CMU 2.0 Action Plan is available here.

20 See coverage availabe here.

21 See coverage availabe here.

MiCA is set to be transformative in providing certainty that those crypto-assets that are already categorized as security tokens, or those with similar features, will be regulated under the existing financial services regulatory perimeter as, what the EU's Markets in Financial Instruments Directive (**MiFID II**) regime terms "financial instruments". For all other types of tokens that fall under what MiCA defines as "crypto-assets" these will be subject to the MiCA regime, which in turn borrows and adapts certain principles from the EU's existing financial services regulatory regime to those tokens that will come into scope of MiCA.

Importantly, as an EU Regulation, MiCA will, after its entry into force, apply directly in all Member States and will be superordinate to national law. This would likely override a number of national legislative efforts in respect of crypto-assets (where they exist) even where the MiCA Regime borrows from some of the best of those regimes.[22] This would assist in eliminating fragmentation but also create one of the largest and most significant uniform and harmonized regulatory regimes for crypto-assets. Changes to institutional arrangements amongst supervisors may follow shortly. Importantly, as with other EU legislative instruments, MiCA's Art. 1(2) states that the European Commission is empowered to adopt delegated acts and to specify technical elements of the definitions and adjust them to account for market and technological developments.

MiCA requires that MiCA in-scope entities will be supervised by national competent authorities (**NCA**s) in the Member States in which they are based. For CAS firms/providers (**CASP**s) or issuers under MiCA providing cross-border business NCAs will be required to designate one NCAs "single point of contact". For those issuers of stablecoins, i.e., what MiCA terms "Asset Reference Tokens" (**ART**s), these will be subject to the supervision of the European Banking Authority (**EBA**). Issuers of those tokens that are defined as "Electronic Money Tokens" (**EMT**s) and which are categorized as significant, these will be supervised by both the NCAs and the EBA.

So why is the EU tackling the regulation of tokens now?

Building on previous statements from EU financial regulatory and supervisory policymakers (notably the EBA and ESMA as well as the rationale set out in the MiCA proposal's Impact Assessment[23]) on how to classify and treat crypto-assets, MiCA's introductory recitals reiterate what the EU sees as the problem and consequently grounds for what it proposes as solutions in how and why Blockchain should be regulated. At its core, the EU frames the issue in that some crypto-assets might qualify as MiFID II/MiFIR "financial instruments", while the majority do not. Specifically MiCA states that in the EU:

> "...there are no rules for services related to crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against fiat currency or other crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity in the secondary market of crypto-assets, including market manipulation. To address those risks, some Member States have put in place specific risks for all – or a subset of crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in this area."

And MiCA's recitals go further to state:

> "The lack of an overall Union framework for crypto-assets can lead to a lack of users' confidence in those assets, which will hinder the development of this market in those assets and can lead to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for Union companies. In addition, companies using crypto-assets will have no legal certainty on how their crypto-assets will be treated in the different

22 This also applies to EU Member States such as Germany (even if a lot of MiCA may borrow from German and/or Maltese domestic law efforts but also those of Estonia, France, and Luxembourg that have taken direct but also indirect supportive measures) where recent domestic legislative changes expanded the German implementation of the MiFID II/MiFIR Regime to crypto-assets (regardless of their categorization as cryptocurrency, utility token or security token) as well as regulation of crypto-asset custody. Coverage on this German domestic legislation is available here with further updates to follow. Then there are also national regimes, such as Liechtenstein, in the wider European Economic Area, to whom MiCA would apply once adopted that will continue to have jurisdiction specifics. For example, Liechtenstein's Token and TT Service Provider Act has applied since January 1, 2020 and aims to regulate all transaction systems based on trustworthy technology (TT). The act applies to the same types of persons to whom MiCA applies, save that the Liechtenstein act also applies to a "Token Generator" and a "Physical Validator". The UK's forthcoming own digital assets regulatory regime, which is still in the process of being finalized, may prove to be a competitive regime to that introduced by MiCA.

23 Available here.

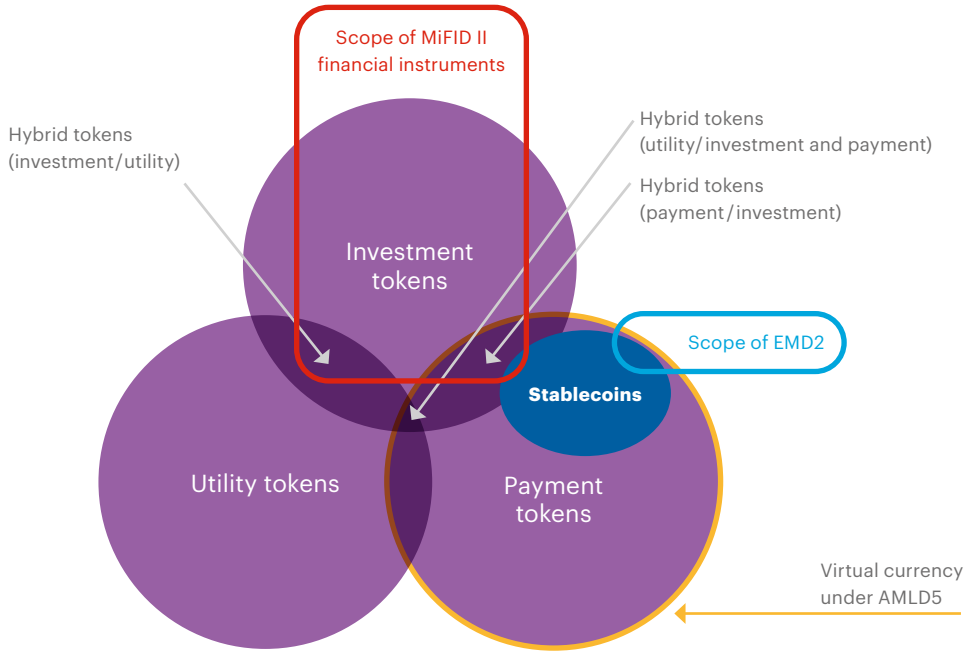
> Member States, which will undermine their efforts to use crypto-assets for digital innovation. The lack of an overall Union framework on crypto-assets could also lead to regulatory fragmentation, which will distort competition in the Single Market, make it more difficult for crypto-asset service providers to scale up their activities on a cross-border basis and will give rise to regulatory arbitrage."

These extracts from the recitals provide a useful context as to what the EU sees as the problem with the fragmented status quo and states that:

> "A dedicated and harmonized framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services to clarify the applicable legal framework... Such a framework should support innovation and fair competition, while ensuring a high-level of consumer protection and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale-up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly."

These issues were highlighted graphically in the MiCA proposal's Impact Assessment (figure 1) as follows:

Figure 1: Interactions between EU financial services legislation and the different types of tokens



The MiCA proposal's Impact Assessment also frames some of the risks[24] by reiterating and updating past warnings namely that:

> ***The market for crypto-assets remains fractional compared to the market for traditional financial assets.*** From the peak in January 2018 of around €760 billion, the total market capitalization of crypto-assets had fallen to around €250 billion by February 2020. The market has historically been prone to leverage, operational risks and high volatility. For instance, following the COVID-19 outbreak, the price of bitcoin dropped significantly (by 42% vs. 19% for the S&P500, from March 1 to 16, 2020), before recovering. Fraud, hacking, thefts, money laundering and cyber incidents have plagued crypto-asset markets as many crypto-asset trading platforms, exchanges/brokers/dealers and wallet services operate without proper cyber security arrangements.
>
> ***Almost all national authorities as well as international standard-setting bodies have issued warnings about the risks related to certain crypto-assets, but have also issued positive statements about the potential of the underlying technology (DLT).*** The European Commission has itself identified DLT as a transformative and foundational technology, including in the financial sector."

The Impact Assessment goes on to say that:

> ***First, the notion of 'financial instruments' and in particular of 'transferable securities' under MiFID II is harmonized in a broad manner. EU Member States have not always interpreted and implemented the MiFID II Directive in a similar way.*** ESMA has found that while a majority of national competent authorities (NCAs) (16) have no specific criteria in their national legislation to identify transferable securities in addition to those set out under MiFID II, other NCAs (12) do have such criteria. This results in different interpretations of what constitutes a "transferable security".
> ***Second, the range of crypto-assets is diverse and many of them have hybrid features. While some investment tokens could be considered as transferable securities or as other financial instruments, payment tokens and utility tokens are more likely to fall outside the scope of the existing EU financial services legislation.*** The situation can be more complicated for hybrid tokens that exhibit components of two or all three of the archetypes (i.e. hybrid utility/investment tokens, hybrid currency/investment tokens, hybrid currency/investment/utility tokens).

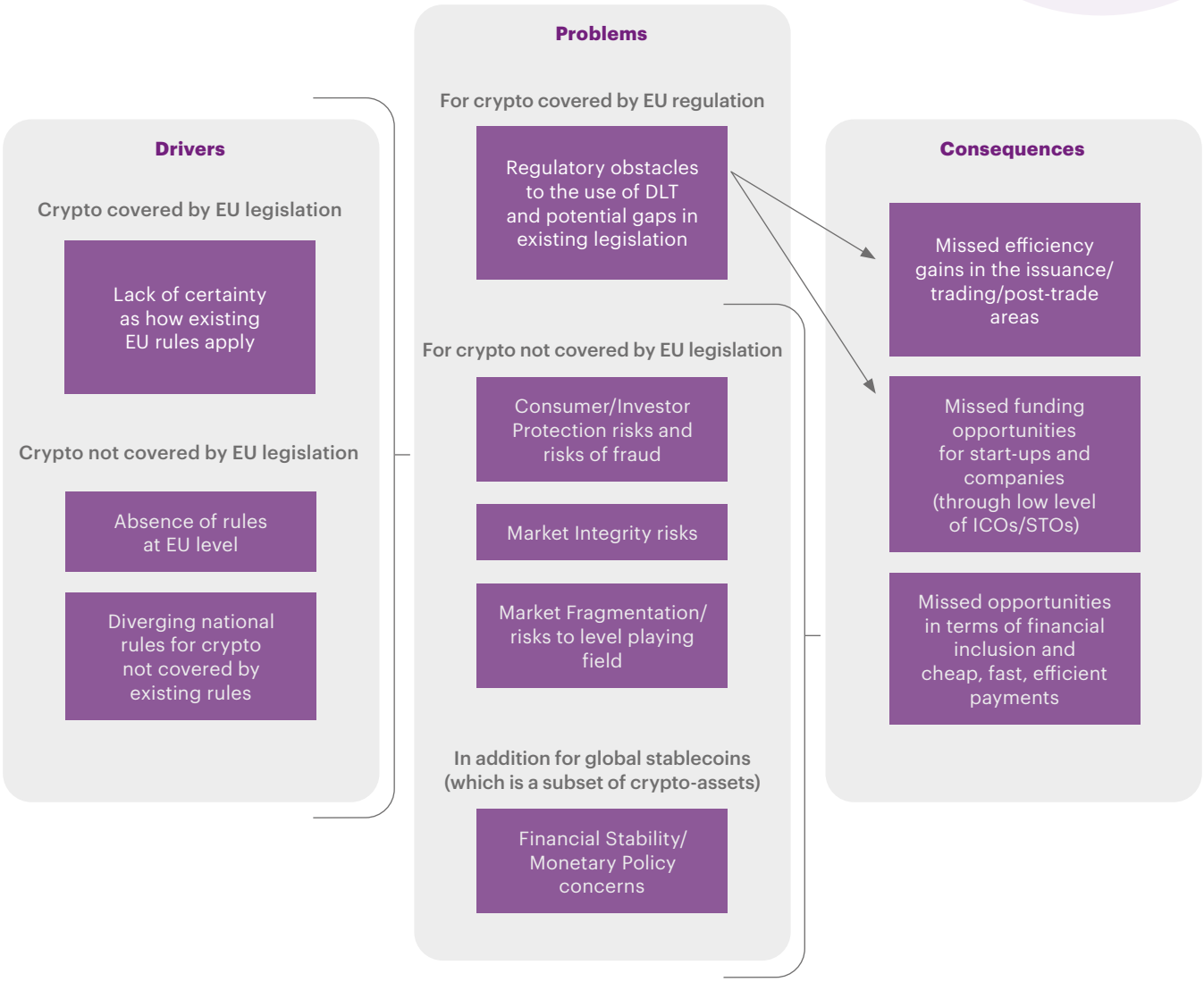
24 See paras. 1.3 and 1.4 as well as para. 2.1 thereof.

Even where a crypto-asset would qualify as a MiFID II financial instrument (the so called 'security tokens'), there is a lack of clarity on how the existing regulatory framework for financial services applies to such assets and services related to them. As the existing regulatory framework was not designed with crypto-assets in mind, NCAs face challenges in interpreting and applying the various requirements under EU law. Those NCAs may therefore diverge in their approach to interpreting and applying existing EU rules. This diverging approach by NCAs creates fragmentation of the market and opportunities for regulatory arbitrage."

This is further visually reflected (excluding issues on tax treatment[25]) as follows:

MiCA thus aims to expand the existing EU financial services regulatory perimeter while at the same time plug identified gaps, including those that exist due to national legislative efforts, while at the same time aiming to support innovation. MiCA also introduces definitive terminology on the types of tokens to be covered by it and those to be captured by the existing regulatory perimeter.

Figure 2: Problem tree



25 The European Commission notes that crypto-assets pose the following challenges. "First there is uncertainty about the legal status of crypto-assets, and therefore the tax treatment of transactions using crypto-assets. The second challenge for tax administrations is that crypto-assets can make it easier to avoid paying tax."

Expanding the regulatory perimeter and introducing a bespoke regime for tokens

MiCA defines a "**crypto-asset**" as: "all representations of value or rights that may be transferred and stored electronically, using distributed ledger and similar technology". This definition aims to provide a catch-all scope of coverage. Sub-categories are set out below.

Recital 8 also clarifies that MiCA, and legislation in this area, should be "future proofed" and states that the definitions of "'Crypto-assets' and "distributed ledger technology" should therefore:

> "...be defined as widely as possible to capture all types of crypto-assets which currently fall outside the scope of Union legislation on financial services. Such legislation should contribute to the objective of combatting money laundering and the financing of terrorism. Any definition of 'crypto-assets' should therefore correspond to the definition of 'virtual assets' set out in the recommendations of the Financial Action Task Force (FATF). For the same reason, any list of crypto-assets services should also encompass virtual asset services that are likely to raise money-laundering concerns that are identified as such by the FATF."

The FATF's 2019 Recommendations[26] provided new requirements that FATF's members, including the EU-27 should implement. Importantly there are key differences to the scope and definitions of a CASP and that of a virtual asset services provider (**VASP**) as defined in the FATF 2019 Recommendations. MiCA's drafting of the CASP definition is broader in the activities and entities that it covers when compared to the VASP terminology

Crypto-assets that will be subject to MiCA.

MiCA will apply to: **crypto-assets** and the following sub-categories of crypto-assets:

- **Asset-referenced token (ARTs)**: A type of crypto-asset that purports to maintain a stable value by referring to the value of **several** fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets. The definition excludes "algorithmic stablecoins"[27] and central bank digital currencies (**CBDC**s).

26 Available here.

27 This terms refers to those stablecoins that do not reference one or more fiat currencies or other assets and aim to maintain a stable value, via protocol, that provide for the increase or decrease of supply of such crypto-assets in response to changes in demand. Such algorithmic stablecoins should not be considered as ARTs, according to recitals of MiCA provided that they do not aim at stabilizing their value by referencing one or several other assets. They may be subject to the provisions for crypto-assets in general.

- **Significant ARTs**: an ART, that the EBA has determined (or which applicant issuers have voluntarily classified as such) in relation to which certain criteria (some of which have yet to be finalized[28]) including where at least three of the following have been met:
    - the size of the customer base of the promoters of the ART, the shareholders of the issuer of ART or of any of the third-party entities;
    - the value of the ART issued or, where applicable, their market capitalization;
    - the number and value of transactions in those ARTs;
    - the size of the reserve of assets of the issuer of the ARTs;
    - the significance of the cross-border activities of the issuer of the ARTs, including the number of Member States where the ARTs are used, the use of the asset-referenced tokens for cross-border payments and remittances and the number of Member States where the third-party entities are established;
    - the interconnectedness with the financial system.
- **Electronic money (e-money) token (EMTs)**: A type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a single fiat currency that is legal tender.[29]
- **Significant EMTs**: shall be those that meet the same criteria as those that are a Significant ART (or which applicant issuers have voluntarily classified as such).
- **Utility token (UTs)**: A type of crypto-asset that is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token.

Tokens that will be subject to the existing financial services regulatory regime

MiCA will **not** apply to the following tokens, which will remain regulated under the EU's existing financial services regulatory regime:

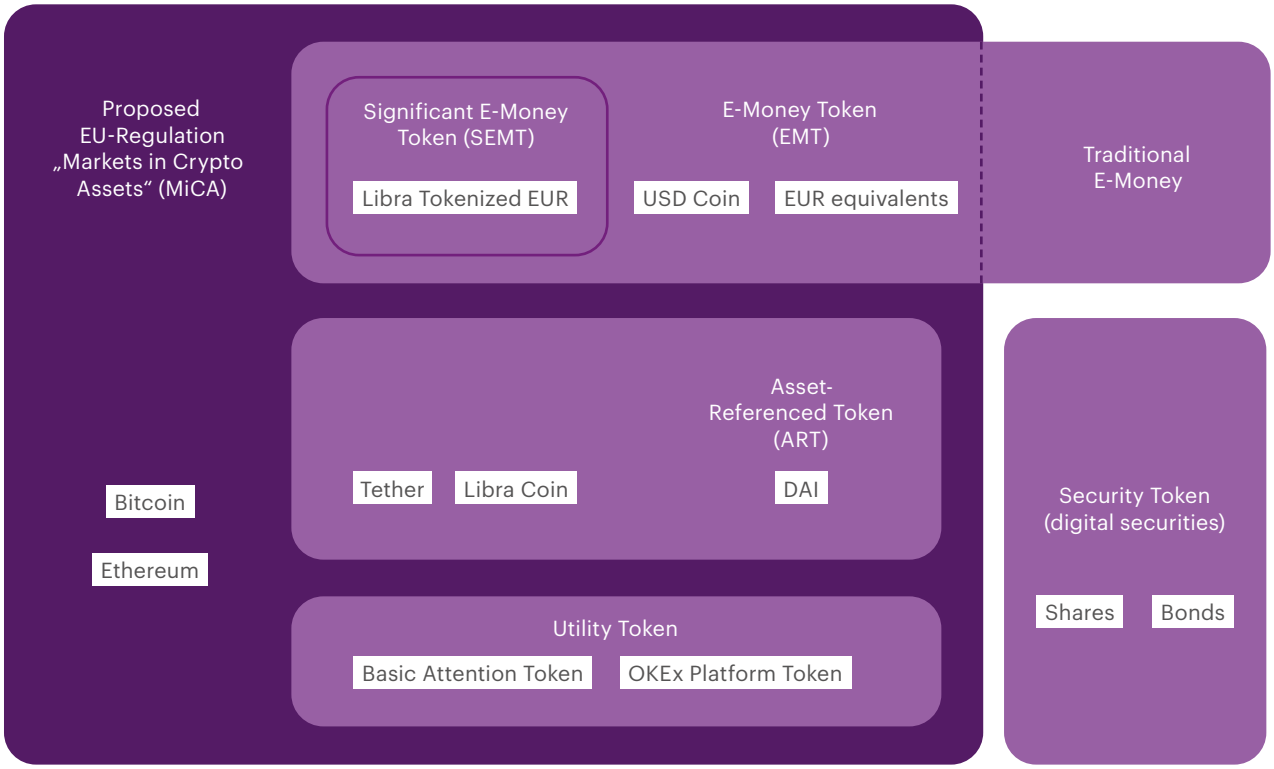
- those that qualify as "financial instruments" or "structured deposits" under MiFID II[30]; or
- those that qualify as "electronic money" for purposes of the E-Money Directive, unless they are qualified as Electronic Money Tokens under MiCA; or
- those that qualify as "deposits" under the Deposit Guarantee Schemes Directive; or
- those that qualify as "securitization issuances" under the Securitization Regulation.

Crypto-assets issued by central banks or by other public authorities shall **not** be in scope of MiCA.

28 The European Commission shall be empowered to adopt further delegated acts to further specify when and ART is deemed significant, based on the following quantitative and qualitative thresholds:
- as to the size thresholds:
    - the threshold for the customer base shall not be lower than two million of natural or legal persons;
    - the threshold for the value of the ART issued or, where applicable, the market capitalization of such an ART shall not be lower than EUR 1 billion;
    - the threshold for the number and value of transactions in those ARTs shall not be lower than 500,000 transactions per day or EUR 100 million per day respectively;
    - the threshold for the size of the reserve assets shall not be lower than EUR 1 billion;
    - the threshold for the number of Member States where the ARTs are used, including for cross-border payments and remittances, or where the third parties, are established shall not be lower than seven;
- the circumstances under which ARTs and their issuers shall be considered as interconnected with the financial system;
- the content and format of information provided by NCAs to EBA;
- the procedure and timeframe for the decisions taken by the EBA.

29 The European Commission in preventing regulatory arbitrage between e-money and e-money based on DLT plans to treat EMT generally like E-Money as such term is used in the second E-Money Directive (**EMD 2**). EMT-issuers must therefore be authorized as an e-money or credit institution and observe the relevant governance and e-money redemption rules. EMT redemptions must be carried out by way of cash or credit transfer, which suggests that redemption must be in fiat currency (instead of other crypto-assets). If EMTs are not redeemed within an agreed period, those who safeguard the funds or distribute the tokens must redeem them.

30 Further clarifications on when tokens are deemed to satisfy conditions of being security tokens and thus financial instruments will be published separately and would thus eliminate differing national interpretations.



While MiCA may not be MiFID II/MiFIR in its depth, it does borrow from its design. MiCA introduces a passporting regime for CASPs and cross-border notifications of the issuance of crypto-assets. Financial services firms that are already licensed under CRR/CRD IV (i.e., credit institutions – banks) and/or those investment firms authorized under MiFIR/MiFID II will be able to conduct CAS activity under a simplified extension of license. Where an EU Member State's pre-MiCA's national regulatory regime requires an authorization for CAS activities, holders of those licenses will be able to benefit from a simplified top-up authorization process to transition from those national regimes to MiCA and benefit from a CASP license, which is valid across the whole of the EU-27.

Equally, MiCA adapts existing regulatory principles applicable to prospectuses under the EU's Prospectus Regulation, and states that crypto-asset issuers (other than stablecoins) must publish a "crypto-asset whitepaper" that is subject to certain minimum disclosure requirements. The obligations set out in the EU's Market Abuse Regulation (**MAR**)[31] will also apply to crypto-assets[32]. Where MiCA's Prevention of Market Abuse rules[33] are violated, NCAs may order monetary sanctions up to EUR 5 million or 3% of annual turnover on legal persons or EUR 700,000 on natural persons. This new measure is separate from national law sanctions that, as with MAR more generally, continue to apply regardless.

31 Notably with respect to disclosure of insider information, prohibition of insider dealing and market manipulation.

32 Member States will be able to (but not obliged) to expand their relevant criminal sanctions regime for market abuse, as implemented to comply with CSMAD, to illegal dealings concerning crypto-assets.

33 Title VI of MICA comprised of:
- Art. 76 defines the scope of market abuse rules;
- Art. 77 defines inside information and signals that an issuer whose crypto-assets are admitted to trading on a MiCA trading platform must disclose inside information;
- Art. 78 covers insider dealing;
- Art. 79 deals with unlawful disclosure of inside information; and
- Art. 80 prohibits market manipulation.

Regulating and supervising crypto-asset services (CAS) and providers (CASPs)

MiCA describes CASPs as "any person whose occupation or business is the provision of one or more crypto-asset services to third-parties on a professional basis". The provision of CAS activities may only be provided by legal persons that have a registered office in an EU Member State and authorized under MiCA for the provision of CAS activity. This may impact a range of custodian wallet providers (even those that have been to date "only" required to register in compliance with the EU's anti-money laundering directives' regime), crypto-asset exchanges, crypto-asset trading platforms and issuers of crypto-assets. CASPs will also be subject to minimum capital requirements, governance standards and requirements when holding client assets including an obligation to segregate these from own assets.

Authorization, once granted by the home state NCA, shall be valid for the entire EU-27 While it is expected that further details on the application process will be provided in the form of regulatory technical standards closer to MiCA's adoption, NCAs will need to confirm, within 25 working days[34], from receipt of the application for authorization, whether the application is complete. NCAs then have 90 working days from the date of receipt to assess the application. CASP applicants will be able to commence their CAS activity once their authorization has been granted.

The description of what constitutes a CAS activity is set out under MiCA as the following activity:

- Custody and administration of crypto-assets on behalf of third parties;
- Operation of a trading platform for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender;
- The exchange of crypto-assets for other crypto-assets;
- The execution of orders for crypto-assets on behalf of third-parties;
- The reception and transmission of orders for crypto-assets on behalf of third parties;
- The placing (i.e., marketing of newly issued crypto-assets or crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offer to the public or an offer to existing holders of the issuer' crypto-assets;
- Providing advice on crypto-assets – which means the offering, giving or agreeing to give personalized or specific recommendations to a third party either at its request or on the initiative of the crypto-asset service provider, concerning the acquisition of or the sale of one or more crypto-assets or the use of "crypto-asset services" – i.e., all of the CAS activity above.

MiCA also introduces a passporting regime for licensed CASPs and the ability to establish branches and/or provide services without the establishment of a branch. ESMA will be required to maintain a register of all CASPs. Both ESMA and the EBA will have powers to issue technical guidelines and binding decisions. MiCA sets out specific rules on the acquisition of CASPs. Equally, MiCA introduces a change in control approval procedure that applies to acquisitions/dispositions of crypto-asset service providers. In some ways this approach is a copy and paste of existing EU rules/principles – save that administrative timelines are somewhat longer for review and processing.

34 And 20 working days for ARTs and EMTs.

CASPs' prudential capital requirements

CASPs will be subject to the following prudential capital requirements, which is the higher of the CASPs':

1. minimum capital requirements (which are dependent on the nature of the CAS services provided) (**MCR**s) and are grouped on the basis of Class 1, 2 and 3 firms[35] include:

CASP firm type category	Type of CAS activity undertaken	MCR level in EUR or equivalent amount in currency other than EUR
Class 1	CASPs authorized for the following crypto-asset services: • reception and transmission of orders on behalf of third parties; and/or – providing advice on crypto-assets; and/or • execution of orders on behalf of third parties; and/or • placing of crypto-assets.	EUR 50,000
Class 2	CASPs authorized for any CAS activity under Class 1 and: • custody and administration of crypto-assets on behalf of third parties.	EUR 125,000[36]
Class 3	CASPs authorized for any CAS activity under Class 2 and: • exchange of crypto-assets for fiat currency that is legal tender; • exchange of crypto-assets for other crypto-assets; and/or • operation of a trading platform for crypto-assets.	EUR 150,000

2. One quarter of the fixed overheads requirements (**FOR**)[37] of the preceding year, as reviewed annually.

35 An approach that the European Commission has recently been adopting across a range of other areas to delineate systemic importance – note though that for example the class treatment in the Investment Firms Regulation/Investment Firms Directive proposals (see most recent edition in our Eurozone Hub's standalone series on this coverage available here) categorizes Class 1 firms as the more risky whereas Class 3 firms are less risky. A similar approach is taken with respect to non-EU domiciled central counterparties under regulatory reforms in that area. It is conceivable that the EU Commission may look to invert the numbering for CASPs to align it with the approach taken in other thematic areas.

36 We note that this is the same level as applies in the German changes on regulating crypto-custody – see coverage available here.

37 Calculated using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:
- staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the CAS providers in the relevant year;
- employees', directors' and partners' shares in profits;
- other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary; and
- non-recurring expenses from non-ordinary activities.

As in the existing EU financial services regulatory regime, prudential capital requirements may be own funds, consisting of Common Equity Tier 1 instruments, after the deductions and without the application of threshold exemptions set out in the CRR or an insurance policy[38] covering the territories of the EU-27 where the CASPs' services are actively provided or a comparable guarantee. It remains to be seen how these prudential regulatory requirements may apply to those regulated entities undertaking CAS activities that are already subject to a higher MCR or FOR requirement for their non-MiCA activity. Equally, it remains to be seen how and whether there will be any reduction in MCR levels where certain national Member State regimes, including Malta, have higher MCR requirements for certain activity.[39] CASPs will want to engage with counsel to forward plan these impacts but also opportunities.

NCAs shall withdraw authorizations (completely or to a particular service) of any CASPs (other than crypto-asset issuers of ARTs and EMTs) not meeting threshold conditions (including serious infringements of MiCA or any infringements of national law implementation of EU money laundering and terrorist financing prevention laws or where the CASP has lost its authorization (and not remedied this within 40 calendar days) as a payment institution or an E-Money Institution and) and/or where the MiCA authorization has:

- not been used within 18 months of the date of granting or for nine successive months;
- been expressly renounced; or
- been obtained by irregular means.

CASPs providing custody and administration of crypto-assets may be held liable by their customers for losses resulting from hacks or malfunctions. In addition to CASPs complying with DORA and cyber-resilience measures, the potential liability that may arise here may prompt further need for testing.

Cooperation amongst authorities including investigative and sanctioning powers

MiCA contains the extensive investigative and sanctioning powers of competent authorities as well as cooperation mechanisms between authorities, including those in third countries. MiCA extends the EU's prevention of market abuse and insider dealing to CASPs and crypto-asset issuers. A similar approach applies to the organizational measures applicable to CASPs as well as the prevention of market abuse requirements that copy existing EU financial services regulatory principles to crypto-assets, CAS activities and CASPs in-scope of MiCA.

The general approach to cooperation amongst authorities as well as the investigative and sanction powers that can be exercised by national and/or EU authorities builds off principles and the catalogue of penalties and sanctions that already exist in EU financial services regulatory legislation. Additional rules apply for issuers of significant ARTs or EMTs, including those that are categorized as significant and thus supervised by the EBA. The EBA may delegate certain of its powers in respect of supervision of significant ARTs and EMTs back to the NCAs.

Supervisory fees

While the precise level of fees remains to be communicated both to the market generally and to CASP firms individually, MiCA distinguishes between fees that can be charged at the national level by NCAs and those at the EU level by the EBA and where applicable the ECB. It will remain to be seen

38 Which must meet provide coverage against the risk of:
- loss of documents;
- misrepresentation or misleading statements made;
- acts, errors or omissions resulting in a breach of:
  - legal and regulatory obligations;
  - the duty to act honestly, fairly and professionally towards clients;
  - obligations of confidentiality;
- failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;
- losses arising from business disruption or system failures:
- where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds.

And which must meet at least of all of the following characteristics:

A. have an initial term of no less than one year;
B. the notice period for cancellation is at least 90 days;
C. provided by a third-party entity that is authorized to provide insurance in accordance with EU or national law.

39 As an illustrative example, Malta's 2018 Virtual Finance Assets Act, notably its February 2020 Rules to that legislative regime, specify that a Class 4 License Holder that holds or controls clients' assets or money in conjunction with the provision of service governed by that Maltese regime will need to have a MCR of 730,000.

whether the ECB, in its SSM remit, will levy additional fees for MiCA activity conducted by Banking Union supervised institutions. The level of supervisory fees that NCAs will charge for supervision of CASPs will be set by those national authorities with details to be communicated at a later date.

The EBA shall charge fees to the issuers of significant ARTs and EMTs in accordance with MiCA and delegated acts that have yet to be adopted and as such details are pending. Fees charged for significant ARTs and EMTs will be calculated in a proportionate manner that takes into account the size of the significant ART/EMT issued in exchange of funds and cover the EBA's costs in supervising those issuances.

CASPs' compliance with organizational measures

CASPs are required to implement the following organizational measures and ensure that:

1. Members of the management body of crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties. They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions;
2. Natural persons who either own, directly or indirectly, more than 20% of the crypto-asset service provider's share capital or voting rights, or who exercise, by any other means, a power of control over the said crypto-asset service provider shall provide evidence that they have the necessary good repute and competence;
3. None of the persons referred to in bullets 1 or 2 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.
4. They employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, the nature and range of crypto-asset services provided;
5. The management body shall assess and periodically review the effectiveness of the policies arrangements and procedures put in place and take appropriate measures to address any deficiencies;
6. They take all reasonable steps to ensure continuity and regularity in the performance of their CAS. To that end, CASPs shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems in accordance with DORA;
7. They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with the forthcoming DORA aimed at ensuring, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services;
8. They have internal control mechanisms and effective procedures for risk assessment, including effective control and safeguard arrangements for managing ICT systems in accordance with forthcoming DORA. They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies;
9. They have systems and procedures to safeguard the security, integrity and confidentiality of information in accordance with forthcoming DORA;
10. They arrange for records to be kept of all CAS activity, orders and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to perform the enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market;
11. They shall have in place systems, procedures and arrangements to monitor and detect market abuse. They shall immediately report to their competent authority any suspicion that there may exist circumstances that indicate that any market abuse has been committed, is being committed or is likely to be committed;
12. They maintain and operate an effective conflict of interest policy and ensure that the general nature and sources of conflicts of interest and the steps

taken to mitigate them are disclosed to (potential) clients on their website on a prominent place;

13. They maintain robust policies and procedures that reduce operational risk in the event of regulatory outsourcing of "operational functions"[40] as well as contingency plans and exist i.e. insourcing strategies;

14. They have, when operating a trading platform for crypto-assets shall lay down operating rules for the trading platform, which shall include at least:

    a. The requirements, due diligence and approval processes applicable to admitting crypto-assets to the trading platform and the level of fees as well as the exclusion categories for those types of crypto-assets that will not be admitted to trading on the trading platform – including crypto-assets which have inbuilt anonymisation function unless the holders of the crypto-assets and their transaction history can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets or by competent authorities.;

    b. objective and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;

    c. set requirements to ensure fair and orderly trading;

    d. set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;

    e. set conditions under which trading of crypto-assets can be suspended;

    f. set procedures to ensure efficient settlement of both crypto-asset transactions and fiat currency transactions;

    g. the operating rules shall clearly state that a crypto-asset shall not be admitted to trading on the trading platform, where a crypto-asset white paper has been published, unless such a crypto-asset benefits from exemptions;

    h. restrictions on dealing on own account on the trading platform for crypto-assets they operate, even when they are authorized for the exchange of crypto-assets for fiat currency or for the exchange of crypto-assets for other crypto-assets;

    i. effective systems, procedures and arrangements to ensure that their trading systems:

        i. are resilient;

        ii. have sufficient capacity to ensure orderly trading under conditions of severe market stress;

        iii. are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

        iv. are fully tested to ensure that conditions above are met;

        v. are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system;

        vi. make public:

            1. any bid and ask prices and the depth of trading interests at

40 The reference to "just" operational functions differs to other EU financial services legislation and suggests that this may not include control functions. Notwithstanding the differing approach, regulatory outsourcing under MiCA means that CASS firms shall remain "fully responsible for discharging all of their obligations and shall ensure that all the following conditions are complied with:
   a. outsourcing does not result in the delegation of the responsibility of the CASPs;
   b. outsourcing does not alter the relationship between the CASP and their clients, nor the obligations of the CASPs towards their clients;
   c. outsourcing does not change the conditions for the authorization of the CASP;
   d. third parties involved in the outsourcing cooperate with the competent authority of the CAS providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions by those competent authorities, including on-site access to acquire any relevant information needed to fulfil those functions;
   e. CASPs retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
   f. CASPs have direct access to the relevant information of the outsourced services;
   g. CASPs ensure that third parties involved in the outsourcing meet the standards laid down in the relevant data protection law which would apply if the third parties were established in the Union. For the purposes of point (g), CAS are responsible for ensuring that the standards laid down in the relevant data protection legislation are set out in the written agreement that must be entered into with the outsourcing service provider. CASPs shall enter into a written agreement with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations of both the CASPs and of the third parties concerned, and shall allow the CASPs concerned to terminate that agreement.

those prices which are advertised for crypto-assets through the systems of the trading platform for crypto-assets. The CASPs shall make that information available to the public during the trading hours on a continuous basis;

2. the price, volume and time of the transactions executed in respect of crypto-assets traded on their trading platforms. They shall make details of all such transactions public as close to real-time as is technically possible;

3. the information in points 1 and 2 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine readable format and remain published for at least 2 years;

vii. facilitate final settlement of a crypto-asset transaction on the DLT on the same date as the transactions has been executed on the trading platform;

viii. ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse;

ix. have back-up facilities in place to be capable of reporting to their competent authority at all times;

15. They have when providing exchange of crypto-assets against fiat currency or other crypto-assets a non-discriminatory commercial policy that indicates the type of clients they accept to transact, methods of determining pricing as well as meet certain reporting deadlines;

16. They have order and best execution policies and procedures in place when executing order for crypto-assets on behalf of third parties as well as an equivalent for the prompt and fair (non-incentivized routing) reception and transmission of orders on behalf of third-parties;

17. They have detailed policies and procedures in place on how to collect information for purposes of the "compatibility" assessment described below and reviewing such assessment every two years.;

18. They have detailed written agreements in place covering the CAS activities to be provided as well as a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets, such as cryptographic keys; and

19. They establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients. Clients may file complaints free of charge. Complaints shall be investigated in a timely and fair manner and outcomes will be communicated to clients in a reasonable period of time.

In addition to the above, CASPs that are authorized to provide advice on crypto-assets shall assess the compatibility[41] of the crypto-assets with the needs of the clients and recommend them only when this is in the interest of the clients. This rule is worded somewhat broader than the conceptual equivalent of suitability and appropriateness tests, as they exist in the MiFID II/MiFIR regime. MiCA sets out that this assessment shall, for each client, be reviewed every two years after the initial assessment was made. MiCA also states that natural persons providing advice on crypto-assets shall possess the necessary knowledge and experience to fulfil their obligations. CASPs will need to provide risk warnings to their clients they are advising on the limited tradability of crypto-assets.

41 The CASPs shall request information about the client or prospective client's knowledge of, and experience in crypto-assets, objectives, financial situation including the ability to bear losses and a basic understanding of risks involved in purchasing crypto-assets.

Rules on safekeeping of clients' crypto-assets and funds

CASPs (other than those that are E-Money or Payment Institutions) that hold crypto-assets belonging to clients or the means of access to such crypto-assets are required to implement adequate arrangements (including a custody policy and detailed written agreements) to safeguard the ownership rights of clients, in particular in the event of the insolvency of the CASP and to prevent the use of such crypto-assets on the CASP's own account except with the client's express consent.

Client funds are subject to an identical segregation requirement except that the use of client funds for own account shall not be permitted. Instead CASPs (other than those that are E-Money or Payment Institutions), shall promptly place any client's funds with a central bank or a credit institution (presumably in the EU-27). When placing such funds with a central bank or a credit institution, the CASP must ensure that those funds shall be held in a client-segregated account separately identifiable to any account of the CASP used to hold funds belonging to it.

CASPs providing custody and administration of crypto-assets on behalf of third parties shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. CASPs shall record as soon as possible, in that register any movements following instructions from their clients. Their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.

Where applicable, CASPs that are authorized for the custody and administration of crypto-assets on behalf of third parties shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register as soon as possible. CASPs providing custody shall provide their clients, at least once every three months and at each request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in a durable medium. The statement of position shall mention the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

CASPs may themselves, or through a third-party, provide payment services related to the CAS activity they offer, provided that the CASP, or the third-party is a payment institution as in the PSD 2.

CASPs providing custody and administration of crypto-assets shall be liable to their clients for loss of crypto-assets resulting from a malfunction or hacks up to the market value of the crypto-assets lost.

Compliance requirements for all crypto-asset issuers

MiCA introduces new requirements for issuers[42] of crypto-assets including with respect to whitepapers. MiCA proposes that no issuer of crypto-assets (other than for an ART or an EMT or those which are exempt) shall, in the EU, offer such crypto-assets to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that issuer has satisfied certain requirements. Crucially, while NCAs are not permitted to establish an *ex ante* approval requirement for MiCA whitepapers, they are mandated to suspend or prohibit an offer if the whitepaper does not comply with the relevant requirements.

These requirements include that the issuer:

- is a legal entity (and cannot be a natural person acting in their personal name);
- has drafted a crypto-asset whitepaper that meets MiCA's requirements as to its content and format and notified the crypto-asset paper to the competent authority of the Issuer's home Member State and published the whitepaper in compliance with MiCA's requirements;
- offer those consumers purchasing crypto-asset issuances (other than for ARTs and EMTs) a 14 calendar day right of withdrawal and a corresponding reimbursement (without undue delay) of all payments received from a consumer – this may prove a controversial point for many issuers;
- complies with the requirements that apply specifically to all crypto-assets (other than ARTs and EMTs) to:
    - act honestly, fairly and professionally;
    - communicate with crypto-asset holders in a fair, clear and not misleading manner;
    - prevent, identify, manage and disclose any conflicts of interest that may arise; and
    - maintain all of the issuer's "systems and security access protocols to appropriate Union standards", the details of which will be further defined by joint regulatory technical standards from ESMA and the EBA.

Where an issuer of crypto-assets (other than an ART or EMT) has breached the information disclosure requirements a holder of crypto-assets may claim damages from the crypto-assets issuer or its management body for damage caused by the infringement. The burden of proof lies with the holder. A holder of crypto-assets may not claim damages for the information provided in the summary, save where the summary is misleading or itself does not meet the disclosure requirements.

MiCA clarifies that an issuer will not be required to draft, notify and publish a crypto-asset whitepaper if such tokens are:

- offered for free (including so called "airdrops" unless recipients have to provide personal data or the issuer earns commission revenue or benefits from other parties); or
- "automatically" created through mining as a reward for DLT maintenance or the validation of transactions; or
- unique and not fungible with other crypto-assets; or
- offered to fewer than 150 natural or legal persons per EU Member State where such persons are acting on their own account; or

42 Issuers have been defined as "any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets".

- offered over 12 month period, with a total consideration of the public offer that does not exceed EUR 1 million or the equivalent amount in another currency or in crypto-assets; or
- solely addressed to qualified investors and the crypto-assets can only be held by such qualified investor.

Crypto-assets (other than ARTs and EMTs) issued before MiCA enters into force are not subject to the offering rules (e.g. the whitepaper requirement). All issuers also need to comply with on-going governance requirements, such as acting honestly, fairly and professionally as well as in the best interests of the crypto-assets holders. Time-limited crypto-asset offerings require that the issuer ensures that the funds and crypto-assets collected during the offering are kept in custody by a credit institution or a crypto-custodian. Funds need to be returned if an offering is cancelled. This may help to prevent fraudulent initial coin offerings (ICOs), often called 'ICO scams'.

In addition to the above, all crypto-asset issuers have to report monthly on the amount and valuation of an issued token and reserve assets and any events that are likely to have a significant effect on these figures have to be published on an ad-hoc basis.

Further requirements applicable to crypto-asset issuers of ARTs and EMTs

In addition to the general requirements binding upon crypto-asset issuers, those issuing ARTs and EMTs, have to satisfy additional requirements. These apply both to the authorization and on-going compliance aspects, notably when they are also categorized as significant.

The relevant NCA is responsible for the primary review of the authorization application, and the EBA, ESMA and the ECB and, where applicable, a central bank of a member state whose currency is not the euro, shall issue a non-binding opinion on the application and inform the relevant NCA. The NCA will one month after having received the non-binding opinion, take a fully reasoned decision granting or refusing authorization of the application of the ART- or an EMT-issuer and within five working days, notify that decision to the applicant issuers.

An ART- or an EMT- issuer must be a legal entity established in the EU. An exemption from the authorization requirements applies where the issuer is a credit institution or where an entity, over a 12-month period, the average outstanding amount of ARTs/EMTs, as calculated at the end of each calendar day, does not exceed EUR 5 million or the equivalent amount in another currency and the offer to the public of the ARTs/EMTs is solely to qualified investors and can be only held as such.

EMT issuers will need to comply with all requirements applicable to an E-money institution within the meaning of the second E-Money Directive. Issuers will need to be authorized as either a credit institution or an e-money institution, subject to derogations introduced by MiCA.

ART and EMT issuers will also need to ensure:

- they meet the own funds requirements (EUR 350,000 or 2% of reserve assets – or 3% in the case of significant ARTs). NCAs can reduce or increase the own funds requirements by up to 20% subject to specific circumstances;
- implement robust governance arrangements (including a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards. Further areas of particular focus include IT security);
- embed conflicts of interest polices and procedures;
- operate detailed complaints-handling and qualifying holding procedures;
- ensure safe custody and segregation of the funds received in exchange for tokens with credit institutions or crypto-asset service providers;
- for EMT issuers only: that these make sure that the reserve assets can only be invested in secure, low-risk investments denominated in the same currency as the one referenced in the e-money token;
- for ART issuers only, that these:
    - comply with rules and disclosure on the stabilization mechanism underpinning the ART;
    - ensure that investments (in whole or in part) of the reserve assets by the issuer are limited to highly-liquid financial instruments with limited risk profiles. Any losses that are to the detriment of the ART-holder are to be covered in full by the issuer; and
    - prohibit the granting of interest to holders of ARTs.

The EBA and ESMA will be tasked with providing further regulatory technical standards specifying further clarifications in respect of the above.

Competent authorities may withdraw an ART- or an EMT-issuer's authorization where it has not used the authorization within 6 months of the authorization being granted or for six successive months. Authorizations may also be withdrawn if it breaches the disclosure requirements, any threshold conditions or has been put into an orderly wind-down and/or insolvency or where it has renounced its authorization.

Minimum content requirements for all crypto-asset whitepapers and marketing communications

MiCA sets out minimum disclosure requirements for the whitepaper, including a description of the crypto-assets and risk factors. In many ways, MiCA's requirements follow the concepts and requirements that exist in the EU's Prospectus Regulation framework as supplemented by a number of principles that have been introduced by a breadth of domestic crypto-asset regimes – notably in that disclosures must be fair, clear and not misleading. Whitepapers shall not contain any material omissions and shall be presented in a concise and comprehensible form. Crypto-asset whitepapers should be include a summary, which shall, in brief non-technical language provide key information in relation to the offer to the public

Issuers of crypto-assets will need to notify their Home State NCA of their whitepaper and marketing communications at least 20 working days before the publication of the crypto-assets whitepaper. This requirement does not equate to the NCA undertaking a formal review and authorization process, but the NCA will be equipped with new supervisory and investigative powers.

MiCA's requirements state that each whitepaper will need to:

- be notified to one NCA and include an assessment of why the crypto-asset does not qualify as a MiFID financial instrument. The issuer can instruct the home state authority to instruct other Member States' authorities where the crypto-asset shall be offered or admitted to trading. It is conceivable that this may require issuers to obtain legal opinions supporting this assessment.
- provide a detailed description (in addition to a list of items to be disclosed in Annex I of MiCA) of the:
    - issuer and presentation of the main participants involved in the design and development of the crypto-asset and/or project;
    - type of crypto-asset that will be offered to the public or for which admission to trading is being applied for;
    - reasons why the crypto-assets will be offered to the public or why admission to trading is sought;
    - planned use of the fiat currency or other crypto-assets collected via the offer to the public;
    - characteristics of the offer to the public, including the number of crypto-assets that are to be issued or for which admission to trading is being applied for as well as details on the issue price of the crypto-assets and the subscription terms and conditions;
    - rights and obligations attached to the crypto-assets and procedures for making use of those rights; and
    - risks relating to the issuer of the crypto-assets, the crypto-assets itself, the offer to the public and the implementation of the project. A risk warning that crypto-assets may not always be transferable and liquid must also be included.

ART whitepapers, will need to in addition to the above (and the disclosure items specified in Annex I and II of MiCA), provide a detailed description of:

- issuer's governance arrangements, including a description of the role, responsibilities and accountability of the third-party entities;
- the details on the reserve of assets and in case of an investment of the reserve assets, a detailed description of the investment policy for those reserve assets;

- the custody arrangements for the reserve assets, including the segregation of the assets;
- the nature and enforceability of rights, including any direct redemption right or any claims, that holders of ARTs and any legal or natural person may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures;
- detailed information on the mechanisms to ensure the liquidity of the ARTs, where the issuer does not offer a direct right on the reserve assets; and
- the complaint handling procedure.

EMT whitepapers, will in addition to the general requirements on the minimum content requirements (and the disclosure items in Annex III of MiCA), will need to provide a detailed description of:

- the EMT-issuer, the EMT-issuer's project and a presentation of the main participants involved in the project's design and development;
- an indication on whether the crypto-asset white paper concerns an offering of e-money tokens to the public and/or an admission of such e-money tokens to trading on a trading platform for crypto-assets;
- a detailed description of the rights and obligations attached to the EMT, including the redemption right at par value and the procedures and conditions of exercise of these rights;
- the information on the underlying technology and standards met by the EMT issuer allowing for the holding, storing and transfer of such EMT; and
- the risks relating to the EMT issuer, the EMT and the implementation of the project, including the technology.

Marketing communications should be:

- clearly identifiable as such;
- fair, clear and not misleading;
- consistent with the information in the crypto-asset whitepaper;
- state that a crypto-asset whitepaper has been published and indicate the website of the issuer; and
- for EMTs state that all holders of the EMT have a redemption right on the issuer at any time and at par value.

MiCA's transitional measures

Given that a number of EU Member States have prior to MiCA introduced or expanded their own domestic crypto-asset regimes, EU legislators have introduced various transitional measures that specify that:

- requirements under MiCA's Articles 4 to and including 14 will not apply to crypto-assets, other than Asset Referenced Tokens and Electronic Money Tokens, which were offered to the public in the EU-27 or admitted to trading on a trading problem prior to the date of entry into force of MiCA;
- CASPs that had provided their services in accordance with the applicable law, in the respective jurisdiction, prior to the entry into force of MiCA, may continue to do so for 18 months following the date of MiCA's application or until they are granted an authorization of MiCA, or whichever is the sooner. This will not apply to those tokens that are deemed financial instruments and subject to the existing financial services regulatory regime. CASPs will want to scenario plan how they may be impacted by this measure and forward-plan; and
- NCAs will be allowed to apply a simplified procedure for applications for an authorization which is submitted between the date of MiCA's entry into force and 18 months following that date, by entities that, at the time of MiCA's entry into force, were authorized under existing national law to provide what is CAS activity. Consequently, this will provide those domestic regulated firms with an advantage over those that are not already licensed domestically.

Key differences between MiCA and the draft legislative proposal

As set out in the Appendix hereto, MiCA in the final proposal format when compared to the draft legislative proposal made a number of changes to both the recitals and operative language. Some of these are editorial but others are more fundamental and selected highlights include:

- Applying MiCA's scope of coverage to crypto-asset issuers and public offering in considerable more detail than in the draft;
- Clarifying that the Commission will be empowered to adopt implementing technical standards developed by the EBA and ESMA with regard to machine readable formats for crypto-asset whitepapers, the standard forms, templates and procedures for the application for authorization for issuers, including for ARTs;
- Introducing considerably more detail in obligations for ART and EMT issuers generally and specifically for those issuers of significant ARTs and EMTs; and
- Introducing the ability for consumers to exercise a 14 calendar day right of withdrawal from the agreement to purchase the crypto-assets without incurring any costs and without giving reasons. The 14 day calendar day "cooling off" period will apply from the day the consumer gave its agreement to purchase the crypto-assets. All payments and charges that are received by consumers that are reimbursed must done so without undue delay and not later than 14 days from the day the issuer of crypto-assets or a CSP places crypto-assets on behalf of that issuer is notified of the consumer making use of its cooling off period withdrawal right.

The Amending Directive's changes – expanding the existing financial services regulatory perimeter

The Amending Directive[43], introduces targeted changes to the existing financial services regulatory regime. These aim to incorporate the provisions of the MiCA regime and to DORA into the following existing EU legislative acts (which would then prompt amendments in how those acts are incorporated into national laws of Member States):

- The Accounting Directive – Directive 2006/43/EC[44];
- The UCTIS Directive – Directive 2009/65/EC[45];
- Solvency II Directive - Directive 2009/138/EC[46];
- The Alternative Investment Fund Managers Directive (AIFMD) – Directive 2011/61/EU[47];
- CRD IV – Directive 2013/36/EU[48];
- MiFID II – Directive 2014/64/EU[49];
- Second Payment Services Directive (**PSD 2**) – Directive 2015/2366/EU[50]; and
- Institutions for Occupational Retirement Provision (**IORPs**) Directive – Directive 2016/2341/EU[51].

As one of the key changes, the Amending Directive alters the definition of "financial instrument" in MiFID II to include "financial instruments issued using a class of technologies which support the distributed recording of encrypted data (distributed ledger technology – **DLT**)" as well as definitions on the DLT Multilateral Trading Facility (**MTF**) introduced by the PDMIR.

Furthermore, the Amending Directive aligns the above legislative instruments with DORA and the focus on information and communication technology (**ICT**) risks so as to "bring legal clarity and consistency in relation to the application by financial entities that are authorized and supervised in accordance with those Directives of various digital operational resilience requirements that are necessary in the pursuit of their activities, thus guaranteeing the smooth functioning of the internal market." Notably the Amending Directive prompts the following actions by the following firms:

- Firms providing banking services and who are regulated subject to the CRD IV will need to address ICT risks explicitly in their contingency and business continuity plans (collectively **BCP**s);
- Firms that are subject to MiFID II are subject to stringent ICT rules for investment firms and trading venues but only when performing algorithmic trading. Less detailed requirements apply to data reporting services and to trade repositories. MiFID II only contains limited references to control and safeguard arrangements for the information processing systems and on use of appropriate systems, resources and procedures to ensure continuity and regularity of business services. The Amending Directive's changes to MiFID II will align it with DORA as regards continuity and regularity in the performance of investment services and activities, operational resilience, capacity of trading systems, and effectiveness of business continuity arrangements and risk management;

- Payment services firms regulated under the PSD 2 will need to comply with the ICT-related incident notifications that DORA fully harmonizes instead of the PSD 2 ICT-incident related notifications;
- Firms that are within scope of Solvency II[52], AIFMD[53] and UCITS[54], where ICT risk is generally only governed by general governance as opposed to tailored rules, will need to comply with DORA; and
- IORPs will need to employ appropriate and proportionate systems, resources and procedures and shall set up ICT systems and tools that comply with DORA.

52 Insurance and re-insurance firms will need to "take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures and shall set up information communication technology systems and manage them in accordance with Article 6 of DORA."

53 AIFMs will in addition to the on-going obligation to use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs. Equally, the NCAs, shall require that, with due regarded to the AIFM and the AIF it manages, will require AIFMs to comply with Art. 6 DORA and "...adequate internal control mechanisms, including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force."

54 UCITS Managements Companies will need to ensure they "...have sound administrative and accounting procedures and control and safeguard arrangements for electronic data processing, including information and communication technology systems that are set up and managed in accordance with Article 6 of DORA, as well as adequate internal control mechanisms including rules for personal transactions by its employees or for the holding and management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force."

Open questions – MiCA's relationship with other EU regulatory issues

While MiCA is welcome and timely it does still raise a number of questions namely:

- **What types of tokens will not require a whitepaper or a license under MiCA**: would the issuance of a parking ticket token fall outside the scope of MiCA and if yes, where is the boundary drawn?;
- **What further changes are needed to complement the MiCA Regime to give better effect to tax treatment and combatting tax evasion?** The MiCA Regime is silent on tax treatment. This therefore could mean that tax treatment of crypto-assets subject to MiCA and tokens subject to the MiFIR/MiFID II regime will remain subject to the perhaps differing interpretations of national and possibly regional tax offices, which would however limit some of the effectiveness of the pan-EU aims of the MiCA Regime;
- **MiCA and the EU's anti-money laundering regime**: While Recital 8 of MiCA states that the definition of crypto-assets should evolve over time and correspond to the definition of "virtual assets" set out in the Financial Action Task Force's Recommendations, MiCA itself does not address some issues as to whether "hot wallets" including "software wallets" are fully in-scope of KYC/CDD and general financial crime prevention obligations. Other questions also arise in how the FATF's September 2020 report[55] on red flag indicators[56] on virtual assets and financial crime, and any subsequent reports/guidance, will be implemented into the MiCA regime as well as for tokens in-scope of the MiFIR/MiFID II regime;
- **MiCA and the EU's PRIIPs Regulation**: It is possible that certain stablecoins (and thus ARTs and EMTs) could constitute what the EU regulatory environment considers a "Packaged Retail Investment Product" (**PRIP**s) when offered to clients domiciled or ordinarily resident in the EU and its Member States that have been categorized as "retail clients". The details of what constitutes a PRIP and the compliance obligations are set out in the EU's PRIIPS Regulation.[57] Cryptocurrencies may be considered a PRIP, as defined in the PRIIPs Regulation, although we note that EU-level and thus national-level supervisory approaches on this point are not as established as of yet. Equally, there are no details as to whether MiCA will, if at all, address this point. Consequently, it may be at any

55 Available here. This FATF report and the red flags were compile after analyzing over 100 case studies shared by jurisdictions in FATF's global network of over 200 countries. The report comes as a direct responsive measure to combat criminals exploiting the relative anonymity that DLT allows when committing money laundering as well as financial crime. The 2020 FATF report sets out 13 case studies from international jurisdictions and ought to be read in conjunction with the EU's latest supranational risk assessment, which at the time of writing was the 2019 edition.

56 Some of the red flag identified by FATFs include:
- Technological features that increase anonymity – such as the use of peer-to-peer exchanges websites, mixing or tumbling services or anonymity-enhanced cryptocurrencies;
- Geographical risks – criminals can exploit countries with weak, or absent, national measures for virtual assets;
- Transaction patterns – that are irregular, unusual, uncommon which can suggest criminal activity or suspicious including (i) multiple high-value transactions in short succession, such as within a 24-hour period; to a new or previously inactive account; (ii) transactions to multiple accounts, especially ones registered or operated in a different country or jurisdiction; (iii) quick deposit and withdrawal from an exchange; (iv) a large first deposit, while the amount funded is inconsistent with the user's profile; trading the entire balance, or withdrawing the entire balance off the platform; (v) frequent transfers in a certain period of time to the same account by more than one person/large amounts or from the same IP address; (vi) moving a digital asset that operates on a public, transparent blockchain, such as Bitcoin, to a centralized exchange and then immediately trading it for a privacy coin; (vii) the use of decentralized/unhosted, hardware or paper wallets to transport assets across borders;
- Transaction size – if the amount and frequency has no logical business explanation;
- Sender or recipient profiles – unusual behaviour can suggest criminal activity; and/or
- Source of funds or wealth – which can relate to criminal activity.

57 See here.

of the relevant competent supervisory authority's discretion to query whether a stablecoin is in fact or should be treated as a PRIP.[58] If a stablecoin is deemed to be a PRIP the PRIIPS Regulation obligations, which would apply to the manufacturer of the stablecoin, would require, amongst other things, the compliance with EU-wide uniform rules, detailing:

- the format and content of a Key Investor Document (**KID**) to be provided to retail investors to compare products and make a more informed investment choice;
- compliance and product governance obligations applicable to PRIIPs manufactures who are responsible for drawing up the KIDs;
- distribution rules that are binding upon persons advising on or selling PRIIPs who are responsible for providing retail investors with KIDs in good time before those investors are bound by any contract or offer relating to those PRIIPs – such persons are often referred to as PRIIPs distributors;
- post-distribution rules on complaints and redress from retail investors in respect of the PRIIPs manufacturer and/or the persons advising on or selling on the PRIIPs; and
- temporary product intervention powers that are exercisable by competent regulatory authorities in respect of PRIIPs as well as sanctions for breaches of the PRIIPs Regulation.

- **How the following issues will be treated:**
  - How MiCA applies to decentralized autonomous organizations (DAOs) and decentralized finance (**DeFi**) more generally given the need for a presence in the EU-27. It is likely that this geographical presence requirement will cast digital assets into three categories: 1. regulated under the financial services perimeter, 2. regulated under MiCA or 3: Not regulated. The degree of what this might mean for the attraction of the EU-27 and regulatory arbitrage possibilities remains unclear an item that is picked up by IOSCO's 2020 report[59] on issues, risks and regulatory considerations relating to crypto-asset trading platforms;
  - Instances where MiCA crypto-assets move off-chain or cross-chain and corresponding conduct of business obligations (incl. best execution);
  - The treatment of "atomic swaps"[60] including where a MiCA crypto-asset is exchanged for a token that is a financial instrument and thus in scope of the MiFIR/MiFID II regime;
  - Double spending, which refers to the risk that a single unit of virtual currencies can be spent multiple times. This is a particular issue if the DLT underlying the crypto-asset does not have a proof of work consensus model or other weaknesses where a transaction is not included on the DLT or there is not sufficient data on the DLT thus making it easier to double spend or otherwise commit fraudulent transactions;[61]

58 By way of background a PRIP is "*an investment [...], where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor*".
The PRIIPs Regulation applies to "*all products, regardless of their form or construction*". As an example noted by certain market commentators in the context of Libra, a stablecoin proposition, Libra may qualify as a PRIP as it is (not solely but also) addressed to retail investors, its value fluctuates based on the value of the Libra Reserve and the reserves' assets are only indirectly bought by the investors. However, as pointed out in previous sections, it is still unclear whether Libra users will possess a claim against the Libra Association. If this is the case, the invested amount would be repayable as demanded by the definition for a PRIP in the PRIIPs Regulation. Thus, Libra – and cryptocurrencies with analogous characteristics – could be classified as a PRIP forcing its manufacturers to i.e. publish key information documents on the investment product that enable retail investors to understand and compare the key features and risks of PRIPs.

59 Available from the International Organization of Securities Commissions here

60 This refers to the process, using a smart contract, or other mechanism that facilitates the simultaneous exchange of one crypto-asset for another without using a centralized exchanges but which may occur on an off-chain or cross-chain basis.

61 The ECB have previously noted (available on page 40 here) that some distributed ledgers do not use double-entry but single-entry bookkeeping with cryptographic linkages thus calling into question the role of an issuance or distribution account and the role of as well as correct nature of performance of any automated notary function checking the correspondence between the issued amount of securities in an issuance account and the total amount of tokens credited.

- The impact of so-called "51% attacks"[62] or distributed denial of service attacks (DDoS)[63]; and
- How to treat forks and/or accidental forks generally or in the combination of various attacks on the integrity of the DLT network;

- **Interoperation with the existing legal concepts underpinning infrastructure:** MiCA does not address the possible need to rethink certain legal concepts due to how DLT operates and what this means for a range of issues from formation of contracts, settlement discipline, settlement finality (including in the context of the Settlement Finality Directive), delivery versus payment through to depositor and investor protection through the Depositor Guarantee Scheme Directive and the Investor Compensation Directive's application. Other questions also arise in relation to asset-servicing, where DLT could generate substantial benefits. MiCA offers in some ways an opportunity to sidestep the highly fragmented legal framework applicable to securities holdings and accounts[64] – a longstanding criticism of EU policymakers and the ECB.

While the above offers just a snippet of the legal gaps, it will also remain to be seen how NCAs and how ESMA, the EBA and the ECB(-SSM) approach their own transition to supervising compliance with MiCA. While it is not expected that these supervisory policymakers will be pouring over code in the first years of the transition to this regime, there is a marked change to place cyber-resilience very much at the heart of supervisory priorities across the EU. The PDMIR helps regulators and the regulated in balancing the need for supporting innovation while promoting resilience.

62 The concept of a 51% attack refers to a scenario where one or more persons collectively control more than 50% of a DLT network's computational power and illegally employs the available hashing power to reverse transactions that have been confirmed or otherwise interferes with the block-recording process, frustrating consensus or enabling double-spending or any other malicious activity that undermines the blockchain of the DLT network.

63 Which refers to malicious attempts to disrupt the ability of a server, service or network to handle regular traffic volumes by swarming or overwhelming a identified target or any infrastructure with data or requests.

64 At European level there is no comprehensive definition of a "securities account" nor an "issuance account". The legal nature of a securities account (i.e., statutory record, contractual construct or accounting device) and the legal nature and effects of book entries are still embedded in national law. Several EU legal act define, in functional terms, the notion of a securities account. This certainly allows fundamental features to be defined from a functional perspective. The efforts of the EU in setting out MiCA or building the PDMIR may need to revisit this area.

The PDMIR – a bespoke pilot regime for DLT market infrastructure

The EU proposed pilot/sandbox regime for crypto-asset market infrastructure is a welcome and innovative development. The pilot/sandbox regime that is introduced by the PDMIR marks a very definitive shift in how the EU is approaching financial rulemaking. The pilot regime is the first EU-wide sandbox of its type. The pilot/sandbox regime is designed to permit regulatory authorities to gain a further understanding of the use of DLT in market infrastructures and concurrently aims to remove regulatory barriers blocking the issuance, trading, booking, settling and custody of financial instruments in crypto-asset form.

The regime will be open for application to those firms that have been previously approved as what the EU's existing financial services regime defines as a multilateral trading facility (**MTF**) or a central securities depository (**CSD**). The PDMIR sets operating conditions for DLT market infrastructures, permissions to make use of them and the supervision and cooperation of NCAs and ESMA. MiCA does not offer a grandfathering option for MTFs or CSDs that were authorized as such. ESMA will be tasked with reviewing the operation of the pilot/sandbox regime five years after its entry into force. This is in addition to the MiCA effectiveness review that is scheduled three years after the entry into force of the Regulation.

The PDMIR Regulation has the following objectives generally but also specifically for those operating DLT market infrastructures (either as a DLT multilateral trading facility (**DLT MTF**) or a DLT securities settlement system (**DLT SSS**), namely to:

1. improve legal certainty – by, like MiCA, supporting the growth of secondary markets and trading in tokens that qualify as financial instruments. Those that are able to join the pilot regime may be granted specific permissions to operate as a DLT MTF or DLT SSS in accordance with PDMIR. The requirements for operation as a DLT MTF are the same as operating as MTF under the MiFIR/MiFiD II regime and for a DLT SSS the same as for a CSD under the CSD Regulation. PDMIR sets out a limited list of exemptions that DLT MTFs and DLT SSS may request and the conditions attached to such exemptions;
2. support innovation – by removing obstacles to how new technologies are applied in keeping with the EU's Digital Finance Strategy package's wider objectives;
3. improve consumer and investor protection along with market integrity – through the putting in place appropriate safeguards, including the types of financial instruments that can be traded in the pilot regime (see below) as well as providing all members, participants, clients and investors with clear an unambiguous information on how they carry out their functions, services and activities (notably when safekeeping of clients' funds or DLT transferable securities) and how these differ from a traditional MTF or CSD along with ensuring that overall IT and cyber-resilience arrangements related to the use of DLT are adequate[65]; and
4. ensure financial stability – persons operating within a pilot regime may not be exempted from consumer and investor protection requirements.

The PDMIR sets out the following limitations on what types of transferable securities can be admitted to trading on, or recorded by, DLT market infrastructures and thus become **DLT transferable securities**:

Shares	The tentative or actual market capitalization of the issuer of DLT transferable securities should be less than EUR 200 million. This threshold may be subject to criticism, notably from Germany, where no such upper boundary exists.
Public bonds (other than sovereign bonds, covered bonds and corporate bonds	EUR 500 million. This threshold may be subject to criticism, notably from Germany, where no such upper boundary exists.
Sovereign bonds	Should not be admitted to trading or recorded by DLT market infrastructure.
Aggregate value of DLT transferable securities of a DLT MTF or DLT SSS	Must not exceed EUR 2.5 billion. Where the total market value of the DLT transferable securities reported has EUR 2.25 billion, the investment firm or market operator operating the DLT MTF concerned, or the CSD operating the DLT SSS concerned shall activate a publically available "transition strategy" for transitioning out of or winding down a particular DLT market infrastructure.

The DLT transferable securities' values above various thresholds shall be determined daily by the CSD or the investment firm or market operator concerned and on the basis of the daily closing price of each DLT transferrable security admitted to trading on a DLT MTF, multiplied by the number of DLT transferable securities with the same ISIN that are settled on the DLT SSS or the DLT MTF concerned on that day, whether in full or in part.

DLT market infrastructure provider must inform NCAs and ESMA upon the occurrence of the following items and firms may need to consider adapting their policies and procedures to ensure prompt reporting of:

- proposed material changes to their business plan including critical staff;
- evidence of hacking, fraud or other serious malpractice;
- material changes in the information contained in the initial application;
- technical or operational difficulties in delivering activities or services covered under the permission; and
- any risks to investor protection, market integrity or financial stability that may have arisen and were not foreseen at the time their permission as a DLT market infrastructure was granted.

Following receipt of any such notification, an NCA may request that the DLT market infrastructure submit an application for another permission or exemption take any corrective measure it deems appropriate. The DLT market infrastructure is obliged to provide any information to the NCA that granted the permission and to ESMA. NCAs, following consultation with ESMA, may address corrective measures to the DLT market infrastructure to strengthen investor protection, market integrity or financial stability and a DLT market infrastructure will be required to demonstrate how it has met that corrective action.

DLT market infrastructure firms are required to produce and submit a report to the NCAs and ESMA setting out the barriers in applying EU financial services legislation to DLT. EMSA will regularly inform all NCAs about the details of such reports and exemptions granted under the PDMIR including how these exemptions are applied in practice. ESMA will submit an annual report on these findings to the European Commission. ESMA will, at the latest after a five-year period, produce a detailed report on the pilot regime's effects and recommendations going forward to be submitted to the European Commission for evaluation. The recommendations shall address, by way of a cost-benefit analysis on whether the pilot regime should be maintained as is or amended or terminated, whether it should include new categories of financial instruments and whether and what amendments should be considered to EU legislation to enable a wide(r)spread use of DLT.

A round-up of key likely impacts on persons affected under MiCA, PDMIR and the wider MiCA Regime

The MiCA Regime's individual components, as well as when taken together, have far reaching impacts for various stakeholder groups and the European Commission's conclusions are that while there may be initial costs and challenges, including leading to some exits of certain market participants, the longer-term benefits will outweigh the initial identified issues. Some of the key highlights, based on details as they currently exist, can be summarized as follows:

Type of affected person	Summary of MiCA's main likely impact
Types of firms qualifying as CASPs	• Firms that would qualify as CASPs have been largely operating in a non-regulated space. The MiCA Regime introduces new authorization as well as on-going operational and compliance requirements including costs that are dependent on the type of activity involved. The MiCA Regime however allows a harmonized and uniform pan-EU-27 regulatory regime for CASPs and their activities and thus a more level playing field, which the European Commission considers will over the longer-term outweigh the initial impact on reduced profit margins for CASPs. • Notably those CASPs that are crypto-trading platforms will be subject to new authorization and on-going compliance and operational costs. The European Commission considers that even for those crypto-trading platforms that have already taken certain voluntary measures in their systems and controls, so as to comply with market abuse prevention as well as listing and trading protocols that are applicable in the EU's existing financial services regulatory regime, there will be work to do. The introduction of the PDMIR may also lead existing crypto-asset trading platforms to seize opportunities to step-up the listing of securities token offerings (STOs).
Issuers	• MiCA issuers will have to face increased compliance costs, especially in the form of mandatory transparency and disclosure requirements as well as the standardization of the contents of the whitepaper as well as additional requirements for ART and EMT whitepapers.
Investors	• Investors and consumer of CAS activity that is within scope of MiCA will benefit from an increased level of investor protection and higher market integrity that the MiCA Regime reforms introduce across a breadth of areas that aim to reduce the risks, including regulatory ones, that are borne by investors and consumers. • The European Commission expects that those crypto-assets (as well as tokens) that meet EU regulatory requirements could benefit from higher valuations.
Incumbent i.e., existing operators of market infrastructures	• The European Commission anticipates that incumbent operators of market infrastructure will not face any direct impacts from the MiCA Regime but will have the opportunity to take advantage of the PDMIR regime and list potential crypto-assets that qualify as MiFID II financial instruments. • Notably the European Commission proposes in the Impact Assessment (page 85) that: "Provided that security tokens meet the envisaged efficiency gains and overcome outstanding technological and legal hurdles, they may slowly supplant traditional listings. This process would hold important implications for many market infrastructure operators, especially CCPs and CSDs. The business model of these stakeholders would need to change radically, with some operations potentially becoming outdated altogether. This would however require further changes to primary legislation. In addition, the market would transform slowly and allow companies to adapt accordingly." This statement suggests that further amendments may be advanced by the European Commission as digital and "traditional" finance and market infrastructure arrangements converge.

Other market participants	• The European Commission considers that MiCA will also benefit asset managers and institutional investors through the introduction of what is a new regulated asset class and the corresponding proposed efficiency gains in trading, clearing and settlement processes.
	• Equally, the European Commission is of the view that intermediaries such as banks and payment service providers may attract additional revenue from the entry and exit points for fiat currency given increased investment and trading flows in crypto-assets that are subject to greater legal certainty and a uniform pan-EU-27 regime.
	• Investment banks are expected to be beneficiaries from greater opportunities to engage in STO underwritings and advisory services supporting the issuance process.
	• Some banks may also find the issuance of stablecoins as a commercially attractive process that could also yield efficiencies in transfers of payments – although there is no mention of how this might be differentiated from existing pan-EU payment mechanisms such as the TARGET 2 and SEPA for transfers/remittances (in fiat currencies) and/or TARGET2-Securities in respect of financial instruments. The European Commission notes that the efficiency gains, which may take several years to fully arise, would amount to savings of between:
	  • EUR 220 million to 750 million per year (in the areas of remittances);
	  • EUR 270 million to 540 million per year (in the area of cash equity markets);
	  • EUR 4 billion per year (in the area of reporting);
	  • A range of several billion euro (in the areas of clearing, settlement, collateral management and other intermediary functions);
	  • EUR 15 billion to 19 billion per year (estimate of banks' infrastructure cost savings in relation to cross-border payments, securities trading and regulatory compliance – these savings capture other efficiency gains above as well);
	  • 20 to 40% lower costs than for comparably sized initial public offerings;
	  • Reduction in fraudulent activity, which at present cannot be estimated (other than a study that equated global costs of fraud in crypto-asset markets of up to USD 4.3 billion in 2019. The European Commission estimates 5% to 25% of current ICOs are subject to fraudulent activity; and
	  • An "unquantifiable amount of reduction in financial stability risks" due to increased market integrity, along with increased innovation and safeguarding of monetary sovereignty.

Supervisors	• Supervisory authorities will also be tasked with doing more and this will translate into a greater need of resources. Supervisors will need to invest in particular in new monitoring systems to capture market abuse and fraudulent activities in crypto-asset markets and ensure a firm enforcement of regulatory provisions. They will also need to train staff to ensure sufficient knowledge of these newly regulated markets and employ additional employees to stem the additional work. • The costs for individual NCAs will crucially depend on (i) the amount of service providers and crypto activities monitored, and (ii) the extent to which innovative market abuse and other monitoring systems are already in place. While it may be possible to use similar monitoring techniques to traditional financial markets the pseudo-anonymous nature of trading many crypto-assets will require that supervisors alter or introduce new systems to efficiently analyze and combine client/counterparty due diligence (CDD/KYC) and trading data. The Impact Assessment has proposed that additional full time employee positions would range between 1 to 2 per NCA. This may prove rather optimistic given the extent of tasks that would be involved. • The cross-border nature of many crypto transactions will furthermore require supervisors to cooperate closely and share relevant data. Costs will originate especially in the supervision of currently unregulated crypto-assets, including 'stablecoins'. • The PDMIR's creation of a pilot regime for STOs will equally require some operational changes, however, given that these tokens take the form of traditional financial assets such as shares or bonds, the already existing supervisory approaches should be able to meet many obligations. As such, costs should remain relatively low in this area and concern mainly new issuances and the ongoing monitoring of the markets.

Outlook and next steps

While MiCA may mark a quantum leap in how crypto-assets are regulated, it may provide opportunities for some and compliance challenges for others in respect of business in the EU-27. The PDMIR Regulation, while novel, may compete with certain national sandboxes. While as a whole the changes are welcome, MiCA however, could in some ways also cement more of a "Fortress Europe" mentality in that it clearly requires most CAS providers and issuers to be located in the EU-27 and comply with the existing financial services regime and/or MiCA. It is at present not clear whether the EU Commission will consider adding a MiFID II-style equivalence regime to MiCA and some non-EU service providers will have to carefully consider whether they can rely on reverse solicitation principles when providing activity that would constitute CAS activity under MiCA or be caught by the expanded existing financial services regulatory regime. Similar issues exist when liquidity locked-up in decentralized protocols denominated in a stablecoin that is not MiCA compliant.

Affected stakeholders will want to take early action, consulting counsel to first assess the impact of MiCA and any action plans to seize opportunities that MiCA introduces (including with respect to authorization, regulatory capital treatment and the publication of whitepapers) as well as how to remedy areas where greater compliance obligations may apply.

MiCA is not subject to a specific timeframe. It will have to go through to the European Parliament and subsequently to the European Council for the first review at first reading under the EU's "Ordinary Legislative Procedure" (formerly the co-decision procedure) (the **OLP**).[66] If MiCA is not agreed at first reading, the proposal would have to go through a second or possibly third reading, which unlike the first reading, do have time limits and may trigger the conciliation phase.[67] In practice the vast majority of new acts under the OLP have been adopted at first reading with few (if any) reaching second reading stage and close to zero reaching the third reading or conciliation phase. The OLP's efficacy has also been strengthened by a rise in the use of "informal trialogue meetings" at which the European Parliament, the Council and the European Commission aim to reach a compromise agreement on the text of the proposed legislative instrument. The ECB, ESMA and the EBA are expected to be involved on the MiCA trialogue meetings. The European Parliament's Rapporteur is Stefan Berger (MEP)[68], who was appointed October 15, 2020 of the European Parliament's Economic and Monetary Affairs (ECON) committee.

We anticipate that if MiCA is passed, possibly by mid-2021, that the phased 18 month period (which does not apply for crypto-assets that would be EMTs or ARTs i.e., stablecoins) of introduction of its requirements will also be complemented by a raft of subsidiary legislative instruments, notably technical standards issued by EU supervisory policymakers.[69] These may be supplemented by further possible institutional changes, including due to complementarity of regulatory approaches and increased central bank oversight, which are subject to forthcoming consultations.

Lastly, the EU's efforts in MiCA and further afield in its regulatory reform efforts may also need to be contrasted with the continuing efforts

66 Details on the process are available here.

67 First reading process has no time limits. At second reading stage the review must be completed within three months and an optional one month. At third reading stage this is reduced to six weeks and the option of an additional two weeks.

68 Further details are available here and equally here. Mr. Berger has been a MEP since his election 2019.

69 Recital 75 specifically states: "The date of this Regulation should be deferred by 18 months in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to specify certain elements of [the MiCA] Regulation."

of policymakers in the United States as well as the United Kingdom. Ultimately, differences between the various regimes may provide further opportunities for agile actors to provide innovative services and while MiCA is comprehensive and extensive it does provide certainty for those looking to do business in the EU-27 where crypto-assets, decentralized finance and fintech have now moved very much to the center of policymakers efforts to ensure the EU remains and expands its role as hub for innovation. MiCA marks a first step in that direction but one that is complemented by the overall Digital Finance "package" as well as the digital operational resilience proposal, as well as further reforms from the EBA, ESMA and the ECB, including in its Banking Union supervisory role.

If you would like to discuss any of the items mentioned above, in particular how to forward-plan and benefit from changes that are being proposed as well as how these developments fit into the 2021 supervisory priorities of the ECB-SSM, EBA and other ESAs, or how they may affect your business more generally, please contact any of our key contacts or the wider team from our Blockchain and Distributed Ledger Technology Team or our Eurozone Hub.

Dentons Blockchain Capital Markets and Distributed Ledger Technology Capabilities

The Dentons' Capital Markets practice has been active from the beginning, when Blockchain and Distributed Ledger Technology in general first became a topic for discussion within the finance industry. Our team on the ground and cross-border specialists can offer a comprehensive in-depth analysis on Blockchain and DLT use cases and business processes in all relevant jurisdictions around the world. This not only includes understanding of the technological difference between Blockchain, Ethereum, IOTA etc. or the custody wallet technology, but also their programming capability and advanced IT skills, which enable our legal experts to understand the industry and projects, and provide corresponding and comprehensive advice.

In particular, we actively support clients with the following workstreams:

- Tokenization of existing securities;
- Issuance and distribution of crypto-assets including, initial coin offerings (ICOs), securities token offerings (STOs) and token generating events (TGEs);
- Crypto custody set-up and related regulatory matters;
- Assistance with anti-money laundering and financial crime prevention frameworks;
- Digtial onboarding channel support, including in the context of digital ID and authentication systems;
- Data protection and overall compliance with regard to the issuance and distribution of crypto assets and general set-up of business processes on DLT;
- Taxation analysis and structuring; and
- Intellectual property review and counseling surrounding blockchain technology advancements.

Eurozone Hub: what we do and how we can help you

Our **Eurozone Hub** can deliver value to you by solving regulatory issues and using regulation to your advantage. Our team operates on a multijurisdictional and multilingual level. It includes bilingual native speakers of Central and South Eastern European languages, including Croatian and Bulgarian and we have experience in assisting on Banking Union "readiness projects" across the region.

We cover all regulatory topics at the EU and at national levels as well as across all sectoral rulebooks.

We help financial institutions during investigations from national and EU level regulators/ supervisory agencies.

We lead on financial service license applications and other regulatory approvals.

We are fully familiar with the financial supervisory culture and expectations at every level across the EU.

We deliver workable solutions to address all "hot" key regulatory topics under global, EU and national rulebooks such as compliance, governance, risk management and cyber security.

We design, structure and implement new or evaluate existing regulatory capital instruments, financial products and trading documentation.

We advise on acquisitions and divestitures of regulated businesses.

We help clients participate and shape the debate amongst policymakers by representing needs of clients.

We help clients in the design, implementation and auditing of compliance with internal policies and procedures in a manner that meets Eurozone, EU and global requirements.

We help clients when faced with supervisory examinations, thematic reviews, sanctions or otherwise to "defend files".

Download Dentons' **Eurozone Hub brochure** to learn more about navigating Eurozone regulation, supervision and monetary policy.

Eurozone Hub

To find out about our Eurozone Hub and how to keep connected on Eurozone-specific regulation, supervision and monteary policy.

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His structured finance practice focuses on derivatives, securities financing transactions and securitizations. Dr. Huertas also has experience advising on conduct of business and governance arrangements (in particular, the managing of NPLs and non-performing assets) and financial market infrastructure, collateral and custody arrangements.

Michael is a member of the steering assembly of the provident fund of lawyers in Hessen (Versorgungswerk der Rechtsanwälte im Lande Hessen) and lectures on derivatives and structured finance at the ILF (Institute for Law and Finance) at the Goethe-University in Frankfurt am Main as well as on EU consolidated supervision at the Frankfurt School of Finance and Management.

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Before joining Dentons, Holger handled regulatory and derivative matters for more than ten years at other international law firms. He also gained valuable in-house insights during his two years at DZ BANK AG, where he took a leading role in the implementation of the EU markets in financial instruments regulation (MiFIR).

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In this context, he advises listed companies with regard to compliance and post-listing obligations and issuers of structured products (warrants, certificates and bonds). Furthermore, Robert has an in-depth knowledge of in tokenization of securities and digital assets and regulatory treatment of DLT-based financial services (e.g. crypto custody). Another focus of Robert is the alternative finance industry and SME financing, making him a recognized expert in FinTech.

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Dr. Clemens Maschke is an emerging markets specialist. Clemens is part of Dentons' Corporate, Mergers and Acquisitions and Private Equity practices. He is also a member of Dentons' global Venture Technology group and the Dentons Iran team.

Clemens has advised on numerus domestic and cross-border transactions, the structuring of joint ventures, complex restructurings and venture technology deals, with a strong industry focus on automotive and TMT. Further, Clemens has extensive experience with international integration and compliance projects. He has worked across a wide range of industries, in particular, for global clients relating to their post-merger integration and subsidiary management, including, performing worldwide integrity checks followed by rectifications relating to the non-compliance matters / discrepancies observed and conducting business partners due diligences.

Before joining Dentons, Clemens worked at other leading global law firms where he led governance, risk and compliance practices and the Iran desk. He holds a doctorate from Heidelberg University.

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Valeria Hoffmann is a senior associate in Dentons' Frankfurt office. She is qualified as a lawyer and works primarily within the legacy German International practice group. Her areas of practice include capital markets and securities law as well as alternative financing issues. She advises national and international clients, in particular foreign issuers in connection with listings/IPOs on European Stock Exchanges and corporate bonds regarding compliance and post-listing obligations. Valeria further advises crowdinvesting and crowdlending platforms as well as Fintech companies in particular with regard to Initial Coin and Token Offerings and overall cryptocurrency compliance issues.

Valeria also focuses on data protection and overall privacy compliance. In this regard, she constantly advises national and international companies in relation to the implementation of and compliance with the EU General Data Protection Regulation, cross-border data transfer and data protection compliance in general.

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Arno is a financial services and markets lawyer in Amsterdam and the only Dutch lawyer ranked band 1 for FinTech Legal - the Netherlands in Chambers. He has a special focus on Payments and FinTech (payments, cards, e-money, consumer credit, savings, crypto, alternative finance). Arno advises Dutch and foreign banks, other financial institutions, FinTech companies and investors on market entry (license applications) and product launches. He also assists his clients with (the regulatory aspects of) commercial agreements, (cross-border) transactions and cooperation's in the Payments and FinTech space. Arno also assists companies that are confronted with (potential) enforcement measures of the Dutch financial supervisors DNB and AFM.

Arno regularly publishes articles on Payments and FinTech in professional magazines in the Netherlands. He is also the author of a Dutch textbook on the revised European Payment Services Directive (PSD2). Arno joined Dentons as partner as per 1 April 2020.

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Pien helps her clients navigate smoothly through the ever-evolving web of Dutch and European regulatory law. Due to her knowledge and experience, analytical skills whilst maintaining a practical approach, Pien is seen by her clients as a valuable advisor and sparring partner.

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ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

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