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Europe TMT Series

# Webinar 5: Decoding MiCA: A Deep Dive into the EU's Crypto Asset Regulation

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# Welcome

## Today's Speakers



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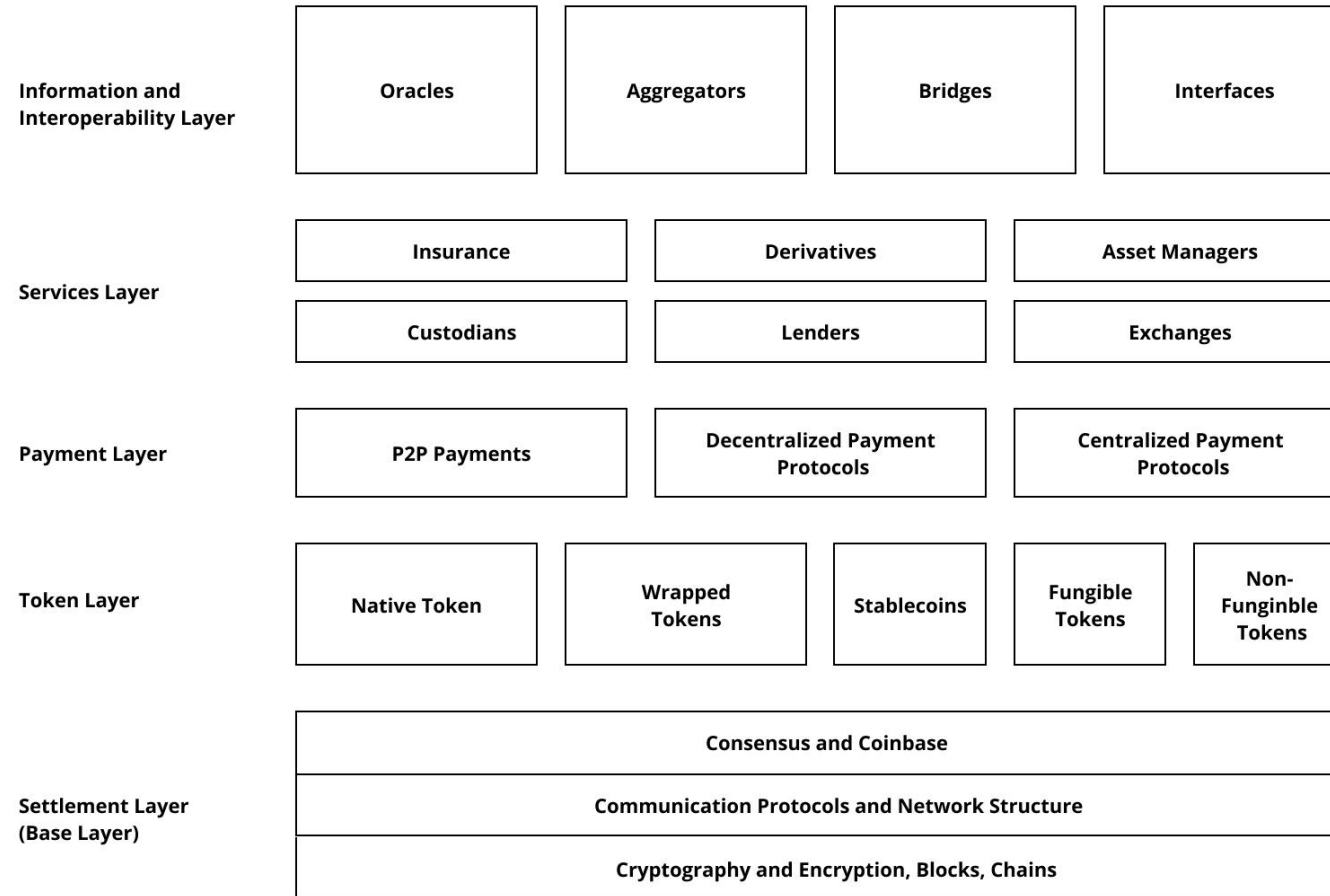
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# Agenda

- Scope of application
- Requirements in respect of issuers, offeror, person seeking admission to trading
- Requirements in respect of the crypto assets service providers
- Competent authorities
- Next Steps
- Q&A
- How Dentons can support you



# Crypto Technology Stack



# MiCA

## A brief history



24 September 2020

**The Commission submitted MiCA proposal to the Council**

The European Central Bank, the European Economic and Social Committee, other stakeholders delivered their opinions



20 April 2023

**The European Parliament adopted its position at first reading on the Commission proposal.**



16 May 2023

**European Parliament's position approved by the Council**



# Scope of the application

## Scope - Person

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

- **Issuers**
- **Offerors to Public, Persons seeking admission to trading**
- **Crypto assets service provider**

# Scope

## EU nexus

*Markets in crypto-assets are global and thus inherently cross-border. There is an importance of international efforts.*

What activity related to crypto-assets **in the Union should mean?**

### **For CASP**

Where a third-country firm provides crypto-asset services on the own initiative of a person established in the Union, the crypto-asset services should not be deemed to be provided in the Union.

### **For e-money**

A token that references an official currency of a Member State shall be deemed to be offered to the public in the Union.

### **For significant tokens**

A transaction shall be considered to take place in the Member State when the payer or the payee are established in that Member State.

# Scope

## Crypto-assets - Classification

### “Crypto-assets”

- a digital representation of a value or of a right
- that is able to be transferred and stored electronically
- using distributed ledger technology or similar technology

3 Categories: **E-money tokens, Assets referenced tokens and Other tokens**

### Offerors, issuers for:

- **ART's** – to submit a **legal opinion** on the due classification
- **Other Tokens** - to submit to the competent authority an **explanation** on the due classification
- A standardized test for the classification of crypto-assets, guidelines and template for the explanation and the opinion to follow - by ... (18 months after the date of entry into force of this Regulation).

How “similar technology” will be interpreted?

Challenges in classification?



# Types of Crypto-assets



## E-money tokens

A type of CA that purports to maintain a stable **value by referencing** the value of **one official currency**; should be deemed to be **‘electronic money’** and their issuers should, **unless specified otherwise in this Regulation**, comply with the relevant requirements set out in Directive 2009/110/EC.



## Asset-referenced tokens (“AR”)

Covers all other crypto-assets, than e-money tokens, whose value is backed by assets: *“that purports to maintain a stable value by **referencing another value or right** or a combination thereof, **including one or more official currencies**.”*



## Crypto-assets other than asset-referenced tokens and e-money tokens

A wide variety of any other crypto-assets (no referencing another value or right with the aim to stabilise their value), including utility tokens.

# Significant ART and E-money tokens

Subject to more stringent requirements and should be deemed significant when they *meet, or are likely to meet*, certain criteria-including a large customer base, a high market capitalisation, or a large number of transactions

## At least three of the criteria are to be met



- the number of holders is larger than 10 million;*
- the value of the token issued, its market capitalisation or the size of the reserve of assets of the issuer of the is higher than EUR 5 000 000 000;*
- the average number and average aggregate value of transactions in that asset referenced token **per day** during the relevant period, is higher than **2,5 million transactions and EUR 500 000 000 respectively;***
- the issuer is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU) 2022/1925 ...*
- the significance of the activities of the issuer token on an international scale, including the use of the token for payments and remittances;*
- the interconnectedness of the asset-referenced token or its issuers with the financial system;*
- the fact that the same issuer issues at least one additional asset-referenced token or e-money token, and provides at least one crypto-asset service*

**EBA shall classify tokens as significant.**

# Scope

## Out of MiCA scope, exemptions

Crypto assets that qualify as **financial instruments** (as defined in Directive 2014/65/EU).

*ESMA to follow with guidelines on the criteria and conditions for the qualification of CA as financial instruments*

- **Deposits; insurance products, pension products, etc**
- **CBDC**, other digital assets issued by central banks, crypto-assets issued by other public authorities
- Digital assets that are that are accepted only by the issuer or the offeror, such as **loyalty schemes**.
- **NFT - not all, and not always** (see some guidance under MiCA)
- Where crypto-asset services are provided in a **fully decentralised** manner without any intermediary

What does “fully decentralized manner” mean?

Application to the existing crypto-assets?

# Requirements to the issuers

## Authorizations



### **E-money tokens**

- Can be issued either by a credit institution (authorized under Directive 2013/36/EU) , or by an electronic money institution (authorized under Directive 2009/110/EC).
- No additional authorization under MiCA is required.



### **Asset-referenced tokens (“AR”)**

- Issuers of ART should have a registered office in the Union.
- Subject to the authorization under MiCA.



### **Other tokens**

- Issuers of Other Tokens should not be subject to supervision under MiCA when the issuer is not an offeror to public or a person seeking admission to trading.

# Requirements to the issuers

## E-money tokens



### Invest the funds received in exchange for e-money tokens

- In the same currency to which the token is referencing
- At least 30 % to be deposited in separate accounts in credit institutions
- The remaining funds received are invested in secure, low-risk liquid financial instruments.

### Requirements on Recovery and Redemption plans

# Requirements to the issuers

## Assets-referenced tokens



**Reserves requirements** (to cover the issuers' liability towards Union holders)

**Redemption requirements** - at any time, upon request by the tokens holders to pay an amount in funds, *other than electronic money*, at the market value of the assets referenced by the ART, or by delivering the assets referenced by the tokens.

**Own funds requirements**

**Issuers obligations** (regulatory technical standards, guidelines to follow):

- Governance; Risk management; Audit requirements; Information disclosure, Complaints handling procedures; etc

**The issuer shall stop issuing ART if the threshold is reached** - 1 million transactions and value of EUR 200 000 000 per day; to submit a plan to the competent authority to ensure that the thresholds are not breached

# Requirements for the offerors to public or persons seeking admission – White paper



## Other Tokens

**Notify** the competent authority and publish. *Competent authorities are not required to approve a white paper but may request amendments, inclusion of additional information.*

## Exemption from the white paper requirements

- To offers that are made to fewer than 150 persons per Member State, or;
- The total consideration of Other Tokens does not exceed EUR 1 000 000 over a period of 12 months.
- That are addressed solely to and can only be held by the **qualified investors**.

If White paper is nevertheless drawn up voluntarily, MiCA requirements shall apply

# Requirements for the offerors to public or persons seeking admission – White paper



## ART

- White paper is **to be approved** by the competent authority (simultaneously with obtaining by the issuer of the authorization)

**Exemption** (a white paper is to be duly published, notified)

- Where the ART are addressed solely to, can only be held by **qualified investors** or
- Over a period of **12 months**, the average outstanding value of the issued ART never **exceeds EUR 5,000,000**

## For credit institutions

- No additional authorization under MiCA is required, but the **white paper still needs to be approved**



## E-money tokens

- The white paper to be notified to the competent authority, published



# Requirements for the offerors to public or persons seeking admission

## Other tokens

### Requirements

- Publish the results on their offer,
- If the offer is cancelled – return funds collected within 25 day
- Retail holders shall have a **right of withdrawal** during a period of 14 days after their acquisition **before the end of the subscription period**, subject to other limitations.
- Safeguarding of the collected funds with 3d parties (credit institutions, CASP)
- Due information disclosure, risk management
- Maintain **their systems and security access protocols in conformity with the Union standards** (ESMA follow up with guidelines to specify those standards).

### Exemptions

- That are offered for free (see guidance what free should mean)
- That are automatically created as a **reward** for the **maintenance** of the distributed ledger or the **validation of transactions**.
- Utility tokens providing access to an existing good or service
- The holder of the crypto-assets has the right to use them only in exchange for goods and services in a limited network of merchants.



# Requirements to CASP

## Authorization

### Types of services subject to MiCA

- Custody and administration of crypto-assets on behalf of clients;
- Operation of a trading platform for crypto-assets;
- Exchange of crypto-assets for funds;
- Exchange of crypto-assets for other crypto-assets;
- Execution of orders for crypto-assets on behalf of clients;
- Placing of crypto-assets;
- Reception and transmission of orders for crypto-assets on behalf of clients;
- Providing advice on crypto-assets;
- Providing portfolio management on crypto-assets;
- Providing transfer services for crypto-assets on behalf of clients;

**The lending and borrowing of CA, including e-money tokens - *should not prejudice applicable national law. The feasibility and necessity of regulating such activities should be further assessed.***

# Requirements to CASP

## Authorization

### Requirements

- To be a legal person or other undertaking that has been authorized as CASP under MiCA (“**Authorized CASP**”)
- A credit institution, central securities depository, investment firm, market operator, electronic money institution, UCITS management company, or an alternative investment fund manager that is allowed to provide crypto-asset services pursuant to MiCA (Art 60) (“**Certain Firms**”).

#### Authorized CASP

- to be registered in a Member State in which they carry out at least part of activities.
- Have their place of effective management in the Union
- At least one of the directors should be resident in the Union.

#### For Certain Firms

- No specific MiCA authorizations (subject to Union legislative acts on financial services). But prior notification to the competent authorities
- They could provide limited scope of CAS (Art 60)
- Will be deemed CASP and should be subject to requirements applicable to CASP under MiCA (with some exceptions).

### Exemptions\*

- Where a client established or situated in the Union initiates at its own exclusive initiative, the provision of a CAS by a third-country firm, the requirement for CASP authorization shall not apply.
- For providing CAS in respect of Other Tokens which fall under the MiCA exemption and not admitted to a trading platform.

# Requirements to CASP

Operational, organizational and prudential requirements at Union level applicable to CASP

## General Requirements

- **Information disclosure** - including warning about the risks associated with CA; establish complaints handling procedures
- **Due Governance** - org requirements - Due skills, experience, reputation of the management and staff; sufficiently good repute to the shareholders - that have qualifying holdings in CASP
- **Risk management** - Sound internal control and risk assessment mechanisms as well as adequate systems and procedures to ensure the integrity and confidentiality of the information received; conflicts of interest policy
- **Prudential requirements** - (own funds; insurance covering operational risks, liability of CASP). Minimum capital requirements depends on specific services (from EUR 50K to EUR 150K)
- **Safekeeping of clients' crypto-assets and funds**

## Requirements to specific services

- ESMA shall establish the **Register of crypto-asset** white papers, issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers.
- As well as the **Register of non-compliant CASP**

Next Steps ?  
What is the fate of the existing crypto?

# Competent authorities

Powers in respect of specific crypto assets and players involved

**NCA:** Default supervisory authority

**EBA:** Direct supervision of significant EMTs/ARTs (information requests and investigative powers, on-site visits, “general cooperation” + supervisory measures/fines) + “uniformity”

**ESMA:** “Coordination” of significant CASPS + “Facilitating and coordinating role”, information exchange + registries, coherence/compiling information

# Competent authorities

## Temporary intervention powers

### **ESMA (Art. 103) vs. EBA (Art. 104)**

Crypto assets vs. ARTs/EMTs

#### **Marketing/Distribution/Sale/Misc.**

- Significant investor protection or stability concerns
- Not addressed by other reg. requirements
- No NCA action
- No detrimental effect/regulatory arbitrage

#### **NCAs (Art. 105)**

- Same requirements as above
- Prohibition or restriction
- Notification 1 month before taking place



# Competent authorities

Coordination among authorities and interaction with other regulators and third-party countries

## General rule (Art. 95)

- NCA/EBA/EMSA (close coordination by EU level)

## Colleges for significant EMTs/ARTs

- Non-binding opinions for stricter measures/changes or potential shortcomings of a supervisory measure envisaged, coordinating and exercising supervisory tasks, EBA/ESMA/ECB/NCAs

## Third countries

- (Efficient) exchange of information with the supervisory authorities, enforcement of obligations



# Next steps for the MiCA implementation

## Reports





# Next steps for the MiCA implementation

## Transitional measures

### Entry into force (Art. 149)

- 20 days after publication in the Official Journal of the European Union + 18 months

**Exemption:** ARTs/EMTs = 12 months



### Grandfathering (Art. 143 para 3):

- CASPS: 18 months vs. license/refusal vs. national shortening
- ARTs: 12 months (Issuers vs. Credit Institutions)


# Next steps for the MiCA implementation

EU Digital Finance Strategy + X

## MiCA

- DLT Pilot Regime (MiFID II)
- DORA

## MiCA II?

- 
- National legislation?
  - Equivalence regimes?

A close-up photograph of a lavender field with a semi-transparent purple overlay on the left side. The text "Questions?" is written in white on the overlay.

**Questions?**

# Roadmap of upcoming EU TMT regulations



**Check out  
our guide!**

1. Artificial Intelligence Act
2. AI Liability Directive
3. Chips Act
4. Cyber Resilience Act
5. Data Act Regulation
6. Data Governance Act
7. Digital Markets Act
8. Digital Operational Resilience Act
9. Digital Services Act
10. European Digital Identity Regulation
11. E-Evidence Agreement
12. ePrivacy Regulation
13. The Pillar Two Directive
14. Media Freedom Act
15. Network and Information Security Directive 2
16. Product Liability Directive
17. Privacy Shield 2.0. Trans-Atlantic Data Privacy Framework
18. Regulation on Machinery Products
19. Regulation on targeting of political advertising
20. Interoperable Europe Act
21. MiCA (Markets in Crypto-assets)

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# Thank you



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