

Markets in Crypto-Assets Regulation (MiCAR)

General

As stated in our more detailed [position paper](#) on the topic from early this year, we see the MiCAR as a political milestone for crypto-adoption. We strongly commend the European Commission on having chosen a fully harmonized and a directly applicable and binding approach that creates legal certainty as well as a globally competitive single market for crypto-assets and crypto-asset service providers. We believe that the MiCAR could spur institutional adoption and potentially set global standards for crypto regulation.

However, we are convinced that some of the key aspects of the proposal need to be further addressed and amended in order to make the MiCAR a success. In its current form, the proposal raises major obstacles and questions for the use of non-financial utility tokens (raising the question of technology neutrality), for decentralized applications (DeFi), crypto-asset service providers, and an emerging stablecoin market. We therefore urge all involved political stakeholders in the European Commission, the European Parliament and the Council of the EU to consider final adjustments particularly concerning the following aspects.

Specific

▪ Clear scope & technology neutrality

The current scope of MiCAR is very broad and partially unclear. In order to fulfil the purpose of a technologically neutral regulation, we strongly urge policy makers to sharpen the scope of MiCAR with regard to crypt-assets with a focus on financial functions and use cases and lesser on the DLT or technical functionalities in the background. A regulation that tries to define a constantly evolving technology such as DLT will soon face some limitations. In case a legal definition of DLT is considered to be necessary, we recommend focusing on the coordinative functions and data security which allows data sets to be consistent and verifiable. We suggest the following definition of DLT: 'A Multi-Party-System in which all participants reach consensus on a common set of data and its validity in the absence of a central coordinator'.

▪ Utility tokens

Currently, Title II would cover a wide range of utility tokens (vouchers etc.) that do not have any investment or payment purposes. This could prevent token-based non-financial use cases to emerge due to regulatory hurdles, compliance costs, and tax reasons. Therefore, we suggest the implementation of regulatory exemptions for crypto-assets without financial purpose, e.g. following the example of the exemptions for e-money with limited application outlined in recital 5 of the EMD2. Also, we strongly support a framework that is more flexible and less restrictive for offers of crypto-assets and shifts the regulatory focus to those crypto-assets that seek admission to trading, thereby undeniably manifesting a financial purpose.

▪ Decentralized Finance (DeFi)

The nascent DeFi ecosystem is the major driver of innovation in the crypto sector. If the EU wants to enable a thriving crypto industry it should do its utmost to not prevent, restrict, and potentially drive these innovations out of the EU. Hence, the EU should clarify in the recitals that crypto-asset issuances and applications without a central, identifiable party are not subject to MiCAR's scope and requirements. In accordance with Art. 122, EBA and ESMA should establish DeFi-specifications with the aim of identifying those DeFi applications that, after a predefined time-period, still exhibit an evident degree of centralization and should comply with MiCAR.

- **Crypto-Asset Service Providers**

In its impact assessment, the EU Commission estimates 2,8-16,5 € million one off-compliance costs for unregulated entities, plus 2,2-24 € million recurrent compliance costs (IT-security, governance etc.). These financial and administrative burdens are already substantial and potentially insurmountable for younger market participants. The ECON draft report in the European Parliament now proposes additional requirements for service providers such as an orderly wind-down plan (amendment 13) or effective procedures for full traceability of all crypto-assets transfers (amendment 12). These measures are not only disproportionate, but would also extend MiCARs scope to AML (already covered by the AMLD) for no apparent reason. If MiCAR overburdens young market players, we stifle innovation and drive it off-shore to other jurisdictions. These measures should thus be reconsidered.

- **Stablecoins**

The MiCAR has been drafted with a clear focus and intention to impede global stablecoins. E-money-token (EMT) and asset-referenced-token (ART) issuers face high regulatory hurdles (Credit institution or e-money licence requirements for EMT, capital/liquidity/governance/interoperability provisions etc.), and at the same time the possible authorization refusal by national and European supervisory authorities for hitherto unquantified criteria. Plus, under current “significance” thresholds, many of already existing stablecoins would be regulated even stricter as “significant” EMTs or ARTs. The stablecoin market is growing rapidly on a global scale and addresses market needs in both the traditional and the crypto economy. With outlined rules, the EU might fall behind and suppress EURO-based stablecoin innovation even before its emergence. We therefore urge the commission to reconsider licence requirements and at the least double the amounts for “significant” stablecoins (e.g. market capitalization and daily trading volume).