

NEW REGULATION ALERT!

MARKETS IN CRYPTO-ASSETS REGULATION TAKES EFFECT TODAY



JUNE 29, 2023

1. Introduction.

The first EU-wide regulation of crypto assets (MiCa) enters into force today, 29.06.2023. MiCa is the first legal act to introduce comprehensive regulation of the issuance, admission to trading and provision of services related to crypto-assets.

Under the MiCa, crypto-assets are broadly defined as: *"a digital representation of a value or a right that uses cryptography for security and is in the form of a coin or a token or any other digital medium which may be transferred and stored electronically, using distributed ledger technology or similar technology"*.

MiCa sets forth rules on:

- the issuance and admission to trading of crypto-assets;
- the provision of crypto-assets services;
- consumer protection;
- the prevention of market abuse and manipulation and insider dealing;
- co-operation and sanctions framework between competent authorities;

2. Who does MiCa apply to and what services does it regulate?

The Regulation is, broadly, applicable to all legal entities, who offer to the public or apply for admission to trading of any type of crypto-assets, or who offer certain categories of crypto asset services, on the territory of the EU.

MiCa recognizes the following type of crypto-services:

- Custody and administration of crypto-assets on behalf of clients;
- Operation of a trading platform for crypto-assets;
- Exchange of crypto-assets for funds or other crypto-assets;
- Execution of orders and providing transfer services 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;

At this stage, decentralized finance services (such as staking, borrowing funds with collateral, etc.) are not covered by MiCA, but could be covered by other existing regulations (e.g., MiFID II).

Under the MiCA, the public offering of crypto-assets, the admission to trading of crypto-assets, and the provision of crypto-related services require respective licenses and authorisations. Maintaining those licenses and authorisations is linked to on-going compliance with numerous obligations depending on the type of issued assets and / or the type of crypto-services provided. The supervision of the obligations of participants in the crypto-market in Bulgaria will be carried out by the Financial Supervision Commission, which is also responsible for the supervision of investment firms and listed companies.

3. What type of assets does MiCA regulate?

MiCA distinguishes between three types of crypto-assets based on function and design:

- asset-referenced tokens (ART) - tokens the value of which is pegged to a basket of other assets (such as PAX Gold, DIAM, etc.);
- e-money tokens – tokens the value of which is pegged to a single fiat currency (such as USDT, USDC, BUSD, etc.);
- other crypto-assets that are not ART or EMT, including utility tokens;

The application of MiCA is subsidiary to other existing legislation and applies to crypto-assets insofar as they are not already covered by existing legislation - for example, security tokens that fall under the definition of securities are and shall continue to be regulated by MIFID II.

MiCA does not encompass all types of crypto-assets known to date – for example, unique non-fungible tokens (such as NFTs) are currently excluded from its scope. Additionally, a particular topic of debate is whether MiCA shall apply to crypto-assets that have non-identifiable issuer (most notably, Bitcoin), which category these would fall into, and which party in that case would be responsible for observing the various obligations under MiCA.

Clients engaging or intending to engage in crypto-asset activities should obtain qualified advice as to the nature of the underlying crypto-assets to ascertain that they adhere to the appropriate rules and regulations.

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