



European Digital Finance Association

POSITION ON MARKETS IN CRYPTO ASSETS REGULATION

European Digital Finance Association welcomes the European Commission intent to introduce legal certainty in the area of crypto assets, safeguard consumer protection and the integrity of markets.

MiCA establishes uniform requirements for transparency and disclosure in relation to issuance, operation, organisation and governance of crypto-asset service providers. In specific

- **Issuers of crypto-assets** other than asset referenced tokens and e-money tokens it will have to:
 - Be established in the form of a legal person
 - Draw up a crypto-asset white paper in accordance with Article 5 (with Annex I)
 - Notify the of crypto asset white paper to the competent authorities (Article 7) along with with an assessment whether the crypto-asset at stake constitutes a financial instrument under the MiFID (Directive 2014/65/EU); white paper will not be subject to a pre-approval process by the national competent authorities (Article 7)
 - Publish the white paper, provide information and marketing materials in accordance with requirements provided in Article 8, Article 5 and Annex I, and Article 6 respectively
 - Competent authorities will have the power to suspend or prohibit the offering, require the inclusion of additional information in the crypto-asset white paper or make public the fact that the issuer is not complying with the Regulation (Article 7)
 - small offerings of crypto-assets (below €1 million within a twelve-month period) and offerings targeting qualified investors as defined by the Prospectus Regulation (Regulation EU 2017/1129) are exempted from the requirement to issue a white paper
 - act honestly, fairly and professionally (Article 59), be subject to prudential safeguards (Article 60 and Annex IV), organisational requirements (Article 61), rules on the safekeeping of clients' crypto-assets and funds (Article 63) the obligation to establish a complaint handling EN 13 EN procedure (Article 64), rules on conflict of interests (Article 65) and rules on outsourcing (66)
- **Asset-referenced tokens** will be subject to:
 - authorisation and the approval of their crypto-asset white paper by national competent authorities (Articles 16 to 19 and Annexes I and II).
 - rules for the publication of the crypto-asset white paper and potential marketing communications (Article 24) and the requirements for these communications (Article 25)
 - ongoing information obligations (Article 26)
 - establish a complaint handling procedure (Article 27)
 - comply with the rules on conflicts of interest (Article 28), notification on changes to their management body to its competent authority (Article 29), governance arrangements (Article 30), own funds (Article 31), rules on the reserve of assets backing the asset-referenced tokens (Article 32) and requirements for the custody of the reserve assets (Article 33)
 - disclosure of the rights attached to the asset-referenced tokens, including any direct claim on the issuer or on the reserve of assets (Article 23)

- rules for the acquisition of issuers of asset-referenced tokens, with Article 37 detailing the assessment of an intended acquisition, and Article 38 the content of such an assessment
 - their issuers can only invest the reserve assets in assets that are secure, low risk assets.
- Introduces the concept of **significant asset-referenced** and sets out the criteria that EBA shall use when determining whether an asset-referenced token is significant:
 - the size of the customer base of the promoters of the asset-referenced tokens,
 - the value of the asset-referenced tokens or their market capitalisation,
 - the number and value of transactions,
 - size of the reserve of assets,
 - significance of the issuers' cross-border activities and the interconnectedness with the financial system
- Obliges the issuer to have a procedure in place for an orderly wind-down of their activities.
- **'E-money tokens'** are deemed electronic money for the purpose of Directive 2009/110/EC (Article 43) and:
 - are subject to authorisation of their issuer as a credit institution or as an 'electronic money institution' within the meaning of Article 2(1) of Directive 2009/110/EC, otherwise they cannot be offered to the public in the Union or admitted to trading on a crypto-asset trading platform
 - Their issuer has to publish a white paper accompanying the issuance of e-money tokens, for example: description of the issuer, detailed description of the issuer's project, indication of whether it concerns an offering of e-money tokens to the public or admission of these to a trading platform, as well as information on the risks relating to the e-money issuer, the emoney tokens and the implementation of any potential project.
 - shall be issued at par value and on the receipt of funds, and upon request by the holder of e-money tokens, the issuers must redeem them at any moment and at par value
 - Their issuer is prevented from granting any interest to holders of e-money tokens
 - Article 47 includes provision on the liability attached to such crypto-asset white paper related to e-money tokens.
 - Article 48 sets requirements for potential marketing communications produced in relation to an offer of e-money tokens and Article 49 states that any funds received by an issuer in exchange for emoney tokens, shall be invested in assets denominated in the same currency as the one referenced by the e-money token
- ESMA will establish a register of all crypto-asset service providers (Article 57), which will also include information on the crypto-asset white papers notified by competent authorities
- EBA gains the powers and competences related to the supervision of issuers of significant asset-referenced tokens and significant emoney tokens
- Cross-border activities of cryptoassets should be communicated from the competent authority of the home Member State to that of the host Member State. notification duties of Member States (Article 86),

- Chapter 3 sets out requirements for specific services: custody of crypto-assets (Article 67), trading platforms for crypto-assets (Article 68), exchange of crypto-assets for fiat currency or for other crypto-assets (Article 69), execution of orders (Article 70), placing of crypto-assets (Article 71), reception and transmission of orders on behalf of third parties (Article 72) and advice on crypto-assets (Article 73). Chapter 4 specifies the rules on acquisition of crypto-assets service providers.
- Prohibitions and requirements to prevent market abuse involving crypto assets, including ban insider dealing

EDFA understands that the rules on authorisation, customer protection and prevention of market abuse are necessary for the sector of crypto assets to mature. There are however several issues we deem problematic in a way that could prevent the application of DLT in the financial sector and beyond:

- Too broad scope
- The principle of “same risk, same rules” is not applied
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