

DIGITAL FINANCE: AGREEMENT REACHED ON EUROPEAN CRYPTO-ASSETS REGULATION (MiCA) UNDER THE AEGIS OF THE FRENCH PRESIDENCY OF THE EUROPEAN UNION

On 30 June 2022, twenty-one months after the publication of its draft by the European Commission, the European regulation "Markets in Crypto-assets" or "MiCA", which aims to regulate and harmonise the market for crypto-assets within the European Union, the Council presidency and the European Parliament reached a provisional agreement on the markets in crypto-assets (MiCA) proposal, under the aegis of the French Presidency of the European Union.

In voting for this text, the European Union aims to set itself apart and become a strong zone for crypto-assets, a market that is constantly developing and creating new services attached to this family of digital instruments.

The "crypto" ecosystem should welcome this outcome that heralds the end of several months of negotiations, while ensuring that the interpretation of the text, or its revision already announced by some, does not hinder the development of their activities internationally.

The aim of the MiCA Regulation is to create a regulatory framework for the crypto-asset market that supports innovation and harnesses the potential of crypto-assets in a way that preserves financial stability and protects investors.

Partly inspired by the Markets in Financial Instruments Directive (MiFID) and the French regulatory framework dedicated to initial coin offerings (ICOs) and digital asset service providers (DASPs), MiCA consists of three main regimes:

- a framework for ICOs that includes the publication of an information document and allows issuers to issue their tokens within the 27 Member States;
- a framework for crypto-asset service providers (CASPs) subject to a mandatory authorisation to provide one of the services provided for in the text;
- and a general framework for fixed value tokens ("stablecoins") that distinguishes between tokens that fall under the e-money regime and tokens that refer to assets.

In its publication, the Council of the EU states that *"non-fungible tokens (NFTs), i. e. digital assets representing real objects like art, music and videos, will be excluded from the scope except if they fall under existing crypto-asset categories. Within 18 months the European Commission will be tasked to prepare a comprehensive assessment and, if deemed necessary, a specific, proportionate and horizontal legislative proposal to create a regime for NFTs and address the emerging risks of such new market"*.

Through a passport mechanism, the MiCA Regulation will enable EU crypto players to develop their activities within the 27 Member States, while providing their clients with a level of legal certainty that has; until now; been very uneven from one jurisdiction to another.

The text needed to strike a balance between the principle of technological neutrality and a regulation that takes into account the specific characteristics of the underlying technology, i.e. blockchain,.

French players who had been able to enjoy a certain "regulatory lead" thanks to the PSAN and ICO regime introduced by the French "Loi Pacte", will undoubtedly be able to move forward more easily to obtain their authorisation, as provided for in the MiCA regulation.

The provisional agreement is subject to approval by the Council and the European Parliament before going through the formal adoption procedure.

As soon as the text is finally adopted, Gide will host a conference on this regulation. If you wish to be informed of the date of this conference and its content, you can register beforehand [here](#).

To structure your "crypto" activities, or to find out more about changes to the related regulatory context, [please contact our Gide 255 team](#).

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