

Possible Reflections of the Legislation on Crypto-Assets Being Implemented in the European Union on Türkiye

12 May 2023

On 20 April 2023, the European Parliament adopted the Regulation Proposal dated 24 September 2020 pertaining to Markets in Crypto Assets ("**MiCA**"), with 517 votes in favor, 38 against and 18 abstentions, which was submitted by the European Commission as part of its digital finance strategy. This regulation is the most comprehensive legislation regarding crypto-assets to date and sets out the legal status of crypto-assets within the European Union ("**EU**") and the standard rules to be applied, including monitoring transactions of crypto-assets, consumer protection, preventing market manipulation and combating financial crime.

Although licensing regulations have already been introduced in some EU countries, notably Estonia and Malta, divergences in practice and deficiencies in the supervisory function have made it necessary to adopt a uniform regulation to establish consumer protection rules for the issuance, trading, exchange and storage of crypto-assets and to take measures to prevent market manipulation in order to ensure the integrity of crypto-asset markets. In light of these reasons, the EU's main objective with MiCA is to **(i)** ensure transparency and disclosure requirements for the issuance and trading of crypto-assets, **(ii)** authorize and supervise crypto-asset service providers and issuers of asset-referenced tokens ("**ART**") and electronic money tokens ("**EMT**"), and **(iii)** ensure the functioning, organization and governance of ART and EMT issuers and crypto-asset service providers.

Compliance with MiCA will be required for the public offering of crypto-assets, the admission of crypto-assets to trading and the providing of crypto-asset services within the EU. Regulations have been introduced for the **(i)** issuers of crypto-assets other than ART and EMT ("**CAI**") or **(ii)** issuers of ART or **(iii)** issuers of EMT or **(iv)** crypto-asset service providers ("**CASP**") that perform these services. Hence, in order to protect consumers and investors; MiCA includes a number of provisions and rules on transparency, authorization and supervision of transactions regarding the issuance and trading of crypto-assets, that are currently not regulated under the existing financial services legislation.

MiCA aims to inform consumers about the risks and costs associated with their transactions and to ensure market integrity and financial stability. Accordingly, under MiCA, those who offer crypto-assets to the public or provide a crypto-asset trading platform will be required to prepare a technical report ("white paper") containing information about the relevant assets. Specific rules have also been introduced to prevent unlawful insider trading and market manipulation; and incomplete, unfair or unclear white papers, misleading information or the faults of the crypto-asset issuers will entitle those who suffer losses to compensation.

MiCA also includes measures against market manipulation and measures to prevent money laundering, financing terrorism and other criminal activities. To counter money laundering risks, the European Securities and Markets Authority ("**ESMA**") will monitor non-compliant and unauthorized crypto-asset service providers operating in the EU. ESMA has been given powers to prohibit or restrict services if investors are not adequately protected or if market integrity or financial stability appears to be threatened. The implementation of the procedures and principles of MiCA will be determined by the cooperation of EU member states with ESMA and the European Banking Authority ("**EBA**").

	Scope and Provisions	Out of Scope
Crypto-Asset Issuers	<ul style="list-style-type: none">✓ Should be established as a legal entity.✓ The draft technical report should be prepared and	<ul style="list-style-type: none">X Offering of crypto-assets forX Automated creation of

Crypto Asset Service Providers (CASP)

- ✓ Crypto-asset services can be provided by legal entities that are authorized and have a registered office in an EU member state. At least one director-level person should be residing in the EU.
- ✓ Legal entities wishing to provide crypto-asset services must apply for authorization before the competent authority of the EU member state where their registered office is located.
- ✓ Passport rights have been introduced, which enabled CASPs to provide crypto-asset services in more than one EU Member State. Accordingly, CASPs are obliged to provide the competent authority with information regarding the Member States in which they will provide services, the commencement date of the service and the services they will offer.
- ✓ MiCA sets out requirements for the risk management of CASPs, including measures to safeguard clients' funds and prevent conflicts of interest. These regulations aim to ensure that CASPs operate with integrity, transparency and accountability and prevent the misuse of crypto-assets for unlawful purposes.
- ✓ CASPs will be registered with ESMA and will provide regular reports on relevant information to the competent authorities.
- ✓ Depending on the nature of the crypto-asset service offered, CASPs are required to have precautionary security in the amount of, the higher of the minimum equity capital set out in MiCA or the amount equivalent to one quarter of the previous year's fixed overheads.
- ✓ Additional safety measures regarding outsourcing CASPs have been introduced.

EMT Issuers

- ✓ Should be authorized as a credit institution or an electronic money institution by the competent authorities of EU member states.
- ✓ Should publish a technical report on their website before the EMT is publicly offered or admitted to trading in the EU.
- ✓ The terms of redemption, including fees, should be clearly stated in the crypto-asset white paper. This gives EMT holders the right to redeem EMTs for cash.
- ✓ As in the case of AFTs, a "Significant EMT" distinction

- X Electronic money tokens issued and distributed by qualified issuers can only be held by qualified investors
- X The average unpaid value of outstanding EMTs, calculated at the end of each day, not exceeding EUR 100 million or equivalent in another currency

ART Issuers

- ✓ Should be authorized by the competent authorities of EU Member States.
- ✓ The competent authorities should be notified of the technical report and, where available, of the information on marketing communications. With authorization, the technical report will be deemed approved.
- ✓ The authorization is effective throughout the whole EU.
- ✓ In addition to the technical report, applications for authorization should include information such as the company's articles of association, operational program, information on the administrative staff (senior managers are required to have no criminal record), internal control and risk management procedures.
- ✓ Are required to have equity capital in the amount specified in MiCA. In this context, ART issuers are required to have an equity capital equal to EUR 350,000 or 2% of the average amount of reserve assets, whichever is higher.
- ✓ Unlike equity capital, ART issuers are required to establish and continuously maintain asset reserves.
- ✓ The term significant ARTs and additional obligations regarding them have also been introduced. An ART may be considered as a "Significant ART" based on the assessment of criteria such as the size of the customer base, market capitalization, the size of the crypto asset reserve, and cross-border activities.

For the technical report, ESMA, in consultation with EBA, will develop a draft application technical standard by preparing standard forms, formats and templates.

- X The average unpaid value at the end of each calendar year shall not exceed EUR 5,000,000 or its equivalent in any other currency for 12 months.
- X The public offering of ARTs shall be limited to only for qualified investors and shall be restricted to these qualified investors.

Within the scope of compliance with the EU, amendments may be expected to be made to the draft, which is being worked on in Turkey, which previously envisaged the introduction of licenses for crypto-asset platforms. It is likely that there will be differences in practice, especially for CASPs providing services abroad, and that the requirements of MiCA will be expected to be met.

Related Practices

- Financial Markets and Services
 - Financial Loans and Facilities
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