Digital finance: Markets in Crypto-assets (MiCA)

2020/0265(COD) - 24/09/2020 - Legislative proposal

PURPOSE: to establish a new fully harmonised EU legal framework regarding the proper functioning of crypto-asset markets.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal is part of the Digital Finance package, a package of measures to further enable and support the potential of digital finance in terms of innovation and competition while mitigating the risks. The digital finance package includes a new Strategy on digital finance for the EU financial sector with the aim to ensure that the Union's financial services legislation is fit for the digital age, and contributes to a future-ready economy that works for the people, including by enabling the use of innovative technologies. The Union has a stated and confirmed policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including blockchain and distributed ledger technology (DLT).

This package also includes a proposal for a pilot regime on distributed ledger technology market infrastructures, a proposal for digital operational resilience, and a proposal to clarify or amend certain related EU financial services rules.

As a reminder, in finance, crypto-assets are one of the major DLT applications. Crypto-assets are digital representations of value or rights that have the potential to bring significant benefits to both market participants and consumers. By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a cheaper, less burdensome and more inclusive way of financing small and medium-sized enterprises (SMEs).

When used as a means of payment, payment tokens can present opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries. Some crypto-assets qualify as financial instruments. The majority of crypto-assets, however, fall outside of the scope of Union legislation on financial services.

There are no rules for services related to crypto-assets. The lack of an overall Union framework for crypto-assets can lead to regulatory fragmentation and a lack of users' confidence in those assets, which will hinder the development of a market in those assets and can lead to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for Union companies.

A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework.

CONTENT: this proposal therefore seeks to provide legal certainty for crypto-assets not covered by existing EU financial services legislation and establish uniform rules for crypto-asset service providers and issuers at EU level. It shall replace existing national frameworks applicable to crypto-assets not covered by existing EU financial services legislation and also establish specific rules for so-called 'stablecoins', including when these are e-money.

General objectives

This proposal, which covers crypto-assets falling outside existing EU financial services legislation, as well as e-money tokens, has four general objectives:

(1) provide legal certainty: for crypto-asset markets to develop within the EU, there is a need for a sound legal framework, clearly defining the regulatory treatment of all crypto-assets that are not covered by existing financial services legislation;

(2) support innovation and fair competition: to promote the development of crypto-assets and the wider use of DLT, it is necessary to put in place a safe and proportionate framework to support innovation and fair competition;

(3) instil appropriate levels of consumer and investor protection and market integrity given that crypto-assets not covered by existing financial services legislation present many of the same risks as more familiar financial instruments;

(4) ensure financial stability.

Crypto-assets are continuously evolving. While some have a quite limited scope and use, others, such as the emerging category of ‘stablecoins’, have the potential to become widely accepted and potentially systemic.

Specific objectives

These include:

- removing regulatory obstacles to the issuance, trading and post-trading of crypto-assets that qualify as financial instruments, while respecting the principle of technological neutrality;

- increasing the sources of funding for companies through increased Initial Coin Offerings and Securities Token Offerings;

- limiting the risks of fraud and illicit practices in the crypto-asset markets;

- allowing EU consumers and investors to access new investment opportunities or new types of payment instruments in particular for cross-border situations (EU passporting).

Safeguards

This proposal includes safeguards to address potential risks to financial stability and orderly monetary policy that could arise from ‘stablecoins’. Safeguards include capital requirements, custody of assets, a mandatory complaint holder procedure available to investors, and rights of the investor against the issuer. Issuers of significant asset-backed crypto-assets (so-called global ‘stablecoins') shall be subject to more stringent requirements (e.g. in terms of capital, investor rights and supervision).

Budgetary implications

This proposal holds implications in terms of costs and administrative burden for national competent authorities, the European Banking Authority and the European Securities and Markets Authority. The magnitude and distribution of these costs will depend on the precise requirements placed on crypto-asset issuers and service providers and the related supervisory and monitoring tasks. The estimated supervisory costs for each Member State (including staff, training, IT infrastructure and dedicated investigative tools) can range from EUR 350 000 to EUR 500 000 per year, with one-off costs estimated at EUR 140 000.