

# Markets in crypto-assets (MiCA)

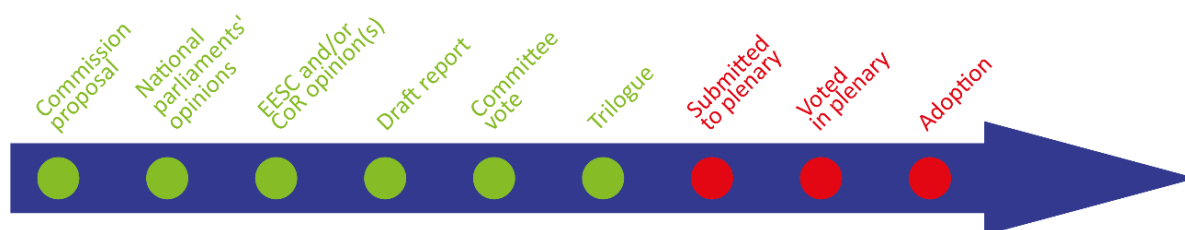
## OVERVIEW

The European Parliament will shortly vote on adopting the regulation on markets in crypto-assets (MiCA). The regulation would establish harmonised rules for crypto-assets at EU level, thereby providing legal certainty for crypto-assets not covered by existing EU legislation. By enhancing the protection of consumers and investors as well as financial stability, the regulation promotes innovation and use of crypto-assets.

The regulation identifies and covers three types of crypto-assets, namely asset-referenced tokens (ART), electronic money tokens (EMT), and other crypto-assets not covered by existing EU law. The legislation would regulate issuance and trading of crypto-assets as well as the management of the underlying assets, where applicable, with additional regulatory rules aimed at 'significant' ART and EMT. The provisional agreement resulting from the negotiations aims at securing liquidity and redemption, and envisages the inclusion of the environmental impact of crypto-assets in communications to investors.

### Proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2020) 593 24.9.2020
<i>Rapporteur:</i>	Stefan Berger (EPP, Germany)	2020/0265(COD)
<i>Shadow rapporteurs:</i>	Eero Heinäluoma (S&D, Finland) Ondřej Kovařík (Renew, Czechia) Ernest Urtasun (Greens, Spain) Antonio Maria Rinaldi (ID, Italy) Andżelika A. Możdżanowska (ECR, Poland) Chris Macmanus (The Left, Ireland)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Final first-reading vote in plenary	



## Introduction

On 24 September 2020, the European Commission [tabled](#) a proposal for a regulation on Markets in Crypto-assets (**MiCA**), and amending [Directive \(EU\) 2019/1937](#). The proposal is based on [Article 114](#) of the Treaty on the Functioning of the European Union (**TFEU**), which gives the European Union (**EU**) the competence to lay down appropriate provisions for the approximation of Member State laws, with a view to the establishment and functioning of the internal market ([Article 26](#), TFEU).

The new regulation would establish transparency and disclosure requirements for the issuance and admission to trading of crypto-assets.<sup>1</sup> It would also set the rules on the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens (**ART**) and issuers of electronic money tokens (**EMT**). It would regulate the operation, organisation and governance of issuers of ARTs, issuers of EMTs and crypto-asset service providers. It would also provide consumer protection rules for the issuance, trading, exchange and custody of crypto-assets, as well as measures to prevent market abuse to ensure the integrity of crypto-asset markets.

The proposal has four specific objectives. The first is to provide a legal framework for crypto-assets not covered by existing EU legislation on financial services. Secondly, by setting up a sound and transparent legal framework, it would support innovation, promote crypto-assets and the wider use of distributed ledger technology (DLT).<sup>2</sup> Thirdly, the proposal would secure an appropriate level of consumer and investor protection and market integrity. Finally, it would enhance financial stability, as some of the crypto-assets may 'become widely accepted and potentially systemic'.

## Context

The European Commission announced the [FinTech action plan](#)<sup>3</sup> in March 2018, aiming for a 'more competitive and innovative European financial sector' that examines the opportunities and challenges raised by crypto-assets. The latest developments have shown a considerable surge in crypto-assets in 2017, particularly 'stablecoins', which incorporate stabilising features.<sup>4</sup> Although they remain modest in size and are unlikely to pose systemic threats in its current state, the market for stablecoins may expand substantially in the future.

The proposal is part of the Commission's [priorities](#) to [make Europe fit for the digital age](#) and [an economy that works for the people](#). It is a component of the [digital finance package \(DFP\)](#) aimed at supporting the potential of digital finance in terms of innovation and competition while mitigating the risks for investors. The DFP also includes the [strategy on digital finance](#) and three proposals: a regulation on a [pilot regime on distributed ledger technology \(DLT\) market infrastructure](#), a regulation on [digital operational resilience](#) for the financial sector, and a directive [amending certain related EU financial services rules](#).<sup>5</sup>

## Current situation

The EU regulation of financial security markets is chiefly governed by [Directive \(EU\) 2014/65](#) on markets in financial instruments (**MiFID II**), which is the core component of EU legislation on financial markets. In particular, MiFID II defines and applies to 'financial instruments' ([Annex I, Section C](#)) and 'transferable securities' ([Article 4\(44\)](#)). Classifying a crypto-asset as a financial instrument under MiFID II depends on the application of the notion of 'transferable security' by Member States; a crypto-asset could be considered as a 'transferable security' in a Member State and not in another, resulting in fragmentation of the EU single market. Moreover, the range of crypto-assets is so diverse, with many of them encompassing hybrid features, that some 'investment tokens' could be considered as either transferable securities or other financial instruments.

## Parliament's starting position

In its [own-initiative resolution](#) of 8 October 2020 on digital finance (emerging risks in crypto-assets), the Parliament endorsed the DFP including the legislative proposal on MiCA, which it considers timely, necessary, and essential for legal clarity and developing a new regulatory regime. According to the initiative, digital finance will be a factor of success for the capital markets union (**CMU**), as it provides additional financing options for companies and citizens, as well as investment options. The resolution emphasises the increasing need for the implementation of measures for the monitoring and regulation of digital finance.

Parliament also considers that any new or updated legislation and supervision of digital finance should ensure that the same activities and services and associated risks are subject to the same rules. It should also ensure proportionality and technological neutrality,<sup>6</sup> as well as transparency and accountability, respect for fundamental rights – especially in the domain of the protection of privacy and personal data – a high level of consumer and investor protection, a level playing field and an innovation-friendly approach.

Finally, the regulation should find a balance between the promotion of innovation, financial stability, and consumer and investor protection. Parliament also called on the Commission to establish an EU-level framework for a pan-European sandbox for digital financial services, for the benefit of financial innovation and stability, and proposes a single EU level supervisor to cooperate with the other European supervisory agencies (**ESAs**) and NCAs.

## Council starting position

In its [statement](#) of 5 December 2019 on stablecoins, the Council – jointly with the European Commission – declared that it was ready to take the necessary measures to ensure 'appropriate standards of consumer protection and orderly monetary financial conditions', and that 'no global stablecoin arrangement should begin its operation in the EU until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed'. However, technological innovation also bears 'great economic benefits' for the financial sector by promoting competition and financial inclusion, broadening consumer choice, increasing efficiency and decreasing the costs. To the Council, 'stablecoins' may present opportunities in terms of cheap and fast payments, especially for cross-border payments.

However, stablecoins pose challenges and risks in several areas, including consumer protection, taxation, cyber security, money laundering, terrorism financing, market price manipulation and legal certainty. The potentially large and international size that some stablecoins may reach in the future creates concern regarding domains such as monetary sovereignty and monetary policy, as well as financial stability. Legal clarity about 'stablecoin' arrangements is thus required and entities issuing 'stablecoins' need to provide full and adequate information to allow for a proper assessment.

## Preparation of the proposal

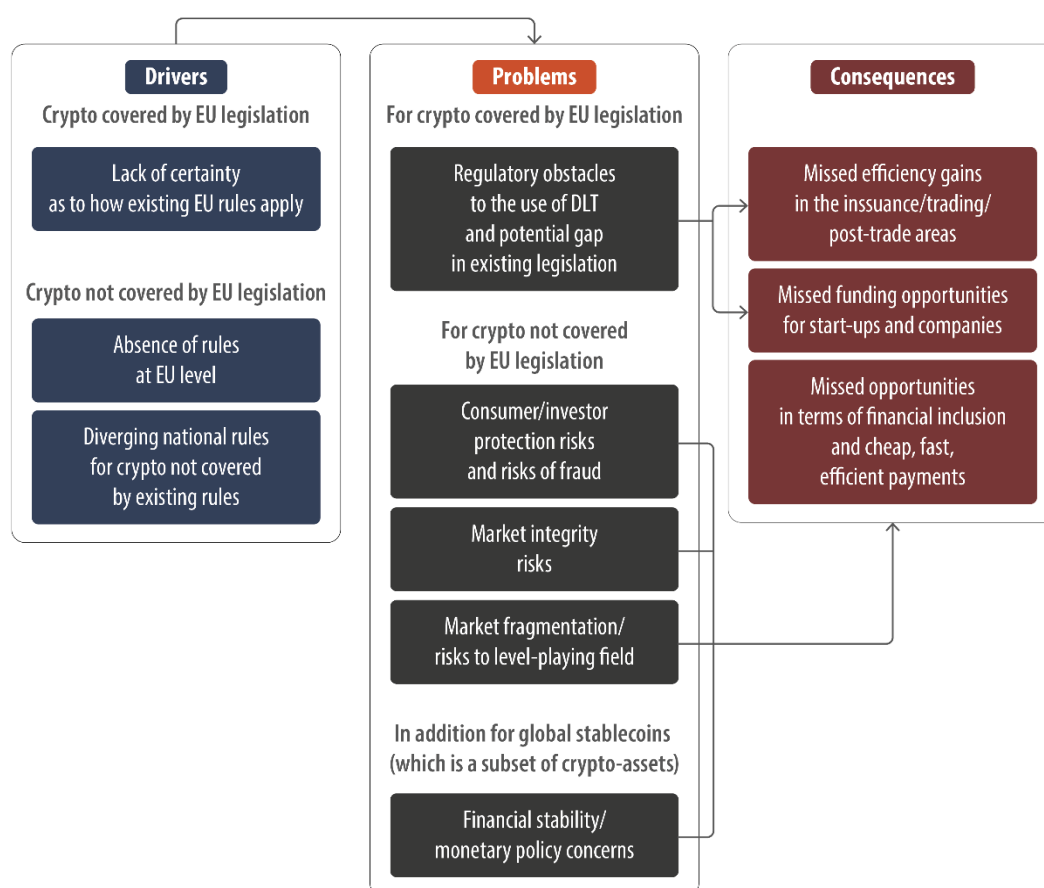
The Commission's proposal is accompanied by an impact assessment ([SWD\(2020\) 380](#)),<sup>7</sup> which differentiates the crypto-assets that are covered by EU financial regulation from those that are not. Where crypto-assets are not covered by EU financial regulation, some Member States have put bespoke rules in place at national level, creating regulatory fragmentation and distorting competition within the single market. Heterogeneous regulation also makes it more difficult for crypto-asset service providers to scale up their activities across the EU and creates risks for banks to exploit regulatory loopholes to seize on the fact that rules differ across countries and sectors – '[regulatory arbitrage](#)'. The regulatory treatment of the stablecoins, regarding which concern is greatest, should depend on their specific design. Consumer protection and market integrity have also become serious issues. Supervisory action at EU and national level has had mixed results in terms of protecting investors and there is evidence that fraud remains significant and constant over

time. Moreover, where crypto-assets are covered by EU legislation, there is a lack of legal certainty on how to apply existing EU financial regulation.

The impact assessment suggests two options:

- Option 1: opt-in regime for unregulated crypto-assets. The degree of trust in the EU crypto-asset market would increase thanks to enhanced investor protection and market integrity. Service providers would also be enabled to scale up their activities on a cross-border basis. Nevertheless, it would not entirely remove market fragmentation.
- Option 2: full harmonisation. This would reinforce the legal clarity for market participants, who would benefit from the same level of investor protection and market integrity across the EU. Regulating service providers would enhance financial stability and anticipate large market sizes. It would substantially mitigate the risk of regulatory arbitrage in the EU.

Figure 1 – Problem tree



Source: European Commission, staff working document SWD(2020)380.

## The changes the proposal would bring

The regulation proposed by the Commission would provide legal certainty for crypto-assets not covered by existing EU legislation. It would replace existing national frameworks and establish uniform rules for crypto-assets at EU level. The regulation would also set out specific rules for stablecoins, including when these are 'e-money'. The proposed regulation is divided into nine titles.

## Scope and general features

Title I sets out that the regulation would apply to crypto-asset service providers and issuers, and establishes uniform requirements for transparency and disclosure in relation to issuance, operation, organisation and governance of crypto-asset service providers. It also establishes consumer protection rules and measures to prevent market abuse, and the regulation is limited in scope to the crypto-assets that do not qualify as financial instruments, deposits or structured deposits under EU financial services legislation. The proposal also sets out the terms and definitions of the referenced crypto-assets. The regulation would allow the Commission to adopt delegated acts to specify some technical elements of the definitions, to adjust them to market and technological developments.

Proposal definitions of crypto-asset and sub-types ([Article 3](#)):

- '**Crypto-asset**' is the generic terminology for a 'digital representation of value or rights which may be transferred and stored electronically, using DLT (or similar technology)'.
- An '**asset-referenced token**' (**ART**) is a type of crypto-asset which is meant to maintain a stable value by referring to the value of several currencies that are legal tender ([fiat currencies](#)), one or several commodities, or one or several crypto-assets, or a combination of such assets.
- An '**e-money token**' (electronic money token, **EMT**) is type of crypto-asset which is meant to be a means of exchange and maintains a stable value by referring to the value of a fiat currency that is legal tender.
- Asset-referenced tokens and e-money tokens are often described as '**stablecoins**'.
- A '**utility token**' is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token.

The proposal includes three titles which set the authorisation rules for crypto-assets, other than ART and EMT ([Title II](#)), ART ([Title III](#)) and EMT ([Title IV](#)). In particular, the issuer must be established in the form of a legal person and will have to provide a **white paper** setting out the information requirements. Article 5 describes the content of the white paper, and the proposal is accompanied by an [Annex](#) providing the minimum content of the white paper.<sup>8</sup> The competent authorities would 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.

To be authorised to operate in the EU, issuers of ART should be incorporated in the form of a legal entity established in the EU and authorised in the EU, and they must publish a crypto-asset white paper approved by their competent authority.<sup>9</sup>

As for EMTs (Title IV), the issuer must be authorised as a credit institution or as an 'electronic money institution' within the meaning of Article 2(1) of [Directive 2009/110](#) (known as the [e-Money Directive](#)). Article 46 and [Annex III](#) sets out the requirements for the crypto-asset white paper accompanying the issuance of EMTs – for example: description of the issuer and the project; indication of whether it concerns an offering of EMTs to the public, or admission of these to a trading platform; as well as information on the risks relating to the issuer and the EMTs.

## Significant ART and EMTs

The European Banking Authority ([EBA](#)) would set out details determining whether ARTs and EMTs are **significant** based on rules set out in [Article 39\(1\)](#) and (6) but provide threshold values, in particular:<sup>10</sup>

- Customer basis: the threshold shall not be less than 2 million natural or legal persons;
- ART value or market capitalisation: the threshold shall not be lower than €1 billion;
- The number of transactions: the threshold shall not be lower than 500 000 per day;

- The volume of transactions: the threshold shall not be lower than €100 million per day;
- Number of Member States of use: the threshold shall not be lower than seven.

Article 39 also includes the power for the Commission to adopt a delegated act to further specify the circumstances and thresholds according to which an issuer ART would be considered significant. Additional obligations are applicable to issuers of significant EMTs.

## Competent authorities

Competent authorities and respective competences are set out in [Title VII](#). Chapter 1 establishes that EU Member States shall designate the national competent authorities (the NCAs) responsible for carrying out the function and duties provided by the regulation and inform the EBA and the European Securities and Markets Authority ([ESMA](#)). The NCAs' powers include requiring service providers, as well as members of management bodies, to provide information and documents (Article 82). The proposal also envisages that NCAs would have power to suspend or prohibit crypto-assets services. [Chapter 2](#) details the administrative sanctions and measures that can be imposed by NCAs. Finally, [Chapter 3](#) sets out that the EBA, in cooperation with ESMA and the European System of Central Banks, must develop draft regulatory standards to determine the most relevant trading platforms and custodians.

## Other titles: authorisation and market abuse

Title V sets out provisions on authorisation and operating conditions for crypto-asset service providers. Title VI sets prohibitions and requirements to prevent market abuse involving crypto-assets.<sup>11</sup>

## Advisory committees

In its [opinion](#) of 24 February 2021, the European Economic and Social Committee (EESC) endorses the legislative initiative and considers that the action proposed is urgently needed to regulate a growing technology that is constantly and rapidly changing. The EESC also supports a single regulatory framework and agrees with the objective of ensuring that issuers of 'global stablecoins' are subject to stricter requirements in terms of capital, investor rights and supervision, and with measures ensuring the provision of suitable information for consumers and small-scale investors.

In its [own-initiative opinion](#) adopted on 21 September 2022, the EESC 'strongly supports' the proposal for a regulation on markets in crypto-assets, calling for a robust regulatory and operational framework to 'improve the financial tracking of transactions and tax compliance of crypto-assets'. The EESC also strongly recommends that authorities should abide by the 'same activity, same risks, same rules' principle, and a regulatory framework for crypto-assets should be consistent across jurisdiction. It also stresses the environmental impact of crypto-assets, while the proposal can help enhance transparency and tax authorities' control.

## National parliaments

The deadline for the submission of [reasoned opinions](#) on the grounds of subsidiarity was 1 February 2021. No subsidiarity concerns were raised. The [Italian Chamber of Deputies](#) highlighted that consideration should be given to the potential advantages of enhancing coordination between the proposed regulations on MiCA and on the Pilot Regime Regulation,<sup>12</sup> with particular reference to the relationship between the 'multilateral trading facility'<sup>13</sup> DLT and the crypto-asset trading platforms. Furthermore, the [French Senate](#) emphasises that the crypto-asset market is international by nature, and therefore requires the establishment of a regulatory framework, at least, at EU level to allow for harmonisation and monitoring, to remedy regulatory fragmentation within the EU and to strengthen the CMU.

## Stakeholder views<sup>14</sup>

In its [opinion](#) of 23 August 2021, the European Data Protection Supervisor (**EDPS**) welcomes the proposal's objective, but underlines the need for a broader reflection and discussion regarding whether the technology underlying crypto-assets respects the data protection rules and principles, and considers that the new regulation should include obligations to guarantee data protection.

## European financial authorities

In [advice](#) regarding initial coin offerings and crypto-assets, issued on 9 January 2019, ESMA declared that crypto-assets need an EU level approach to guarantee investor protection. According to ESMA, a number of crypto-assets are not covered by the existing financial regulatory framework, giving rise to substantial risks to crypto-asset investors who benefit from limited protection, and setting rules at EU level would best safeguard fair competition ('level playing field'). In its supporting [survey](#) of NCAs, ESMA identifies a few gaps in the application of the existing legislation applicable to crypto-assets. Moreover, whenever crypto-assets qualify as a financial instrument, market-associated problems still hold. Monitoring market participants and their level of trading ability is particularly time and resource-consuming for platforms in the case of individual investors.

In its 29 June 2019 [response](#) to the European Commission's consultation, the European Banking Authority (**EBA**) strongly supports the Commission's new digital finance strategy and identifies action supporting concept, definition and reporting obligation standardisation across EU financial services legislation. The EBA emphasised the importance of safeguarding individuals and organisations' freedom to choose the most appropriate and suitable technology for their needs ('[technological neutrality](#)') in the regulatory and supervisory approaches, and supports enhancement of coordination mechanisms, such as the [EBA's FinTech Knowledge Hub](#) and the European Forum for Innovation Facilitators ([EFIF](#)).

In February 2022, the three European supervisory authorities (**ESA**) – namely, EBA, the European Insurance and Occupational Pension Authority ([EIOPA](#)) and ESMA – published a [joint report](#) in response to the European Commission's February 2021 [call for advice on digital finance](#). The proposals put forward aimed at maintaining a high level of consumer protection and addressing risks arising from the transformation of value chains, 'platformisation' and the emergence of new 'mixed-activity groups', i.e. groups combining financial and non-financial activities. The ESAs note that the use of innovative technologies in the EU financial sector is facilitating changes to value chains, that dependencies on digital platforms are increasing rapidly, and that new mixed-activity groups are emerging. These trends open up a range of opportunities for both EU consumers and financial institutions, but also pose new risks.

The ESAs therefore recommend rapid action to ensure that the EU's financial services regulatory and supervisory framework remains 'fit-for-purpose in the digital age'. The proposals include a holistic approach to the regulation and supervision of the financial services value chain and the strengthening of consumer protection, including by means of information disclosure, complaints handling mechanisms, and improved digital and financial literacy. The ESAs also recommend further convergence in the classification of cross-border services.

## Group of Seven Working Group

In its [report](#) investigating the impact of global stablecoins published in October 2019, the Group of Seven (**G7**) Working Group argues that global stablecoins could have significant adverse effects, both domestically and internationally, on the monetary policy effectiveness, as well as financial stability, in addition to cross-jurisdictional efforts to combat money laundering and terrorist financing. They could also have implications for the international monetary system more generally, including currency substitution, and could therefore challenge monetary sovereignty. Therefore, for stablecoin developers, a sound legal basis in all relevant jurisdictions is essential. Ambiguous rights and obligations could result in a loss of confidence in stablecoins, which is an 'unacceptable risk',

especially in a payment system of potentially global importance. Public authorities should coordinate to support responsible innovation in payments while ensuring a globally consistent response to mitigating risks.

## Industry groups

Some major [EU financial institutions](#), as well as EU associations of financial institutions such as the Association for Financial Markets in Europe ([AFME](#)), [welcome](#) the proposal for regulation, since business opportunities are likely to arise in response to clients' appetite for diversification, and ensuring crypto-asset harmonised regulation is suitable in the digital age. However, concerns regarding the proposal remain, including on the responsibility of the custodians of crypto assets if something goes wrong.<sup>15</sup>

Nevertheless, in a [joint letter](#) on the impact of MiCA restrictions on e-money tokens referencing United States dollars (USD), [Blockchain for Europe](#) and the [Digital Euro Association](#) fear that MiCA regulation could result in the three largest stablecoins by trade volume being banned in the EU from 2024,<sup>16</sup> and a major exit of crypto activities from the EU. The regulation could create high volatility in the short term and later, fragmented liquidity. In addition, they call for clarification of concepts introduced by MiCA, in particular the token being used as a 'means of exchange'.

## Academic and expert opinions

In a [study](#) published in 2018, Guntram Wolff and Maria Demertzis pointed to six major public policy questions raised by the development of crypto-assets:

- How great is the potential of crypto assets in advanced financial systems?
- What is the best way to combat illegal activity such as money laundering and terrorism finance?
- How can consumer and investor protection be ensured?
- What about financial stability?
- How might crypto assets be taxed? and
- How can blockchain applications be embedded into the existing legal framework?

The authors argue that, while regulation is the right approach, it should be coordinated at global level, and take place at [Group of Twenty](#) (G20) and [Financial Stability Board](#) level. The latter would set regulatory norms addressing the six policy questions, to manage risks of the new technology while taking advantage of the opportunities it undoubtedly provides. At the EU level, policy-makers need to move supervision of crypto assets from the national level to the EU level. Although different supervisory practices can allow for experimentation, diverging supervisory practices in the capital markets union can come with significant shortcomings, especially for highly mobile crypto assets.

In their [study](#) published in 2020, Robby Houben and Alexander Snyers observe the massive growth of the number of 'private tokens' issued on existing platforms to raise funds, and the emergence of 'stablecoins', and stablecoin initiatives. These new initiatives have the potential to scale up very quickly, with a global impact – thus they are known as 'global stablecoins.' Global stablecoins could provide several benefits to the financial system, most notably by lowering transaction fees in retail cross-border payments and promoting financial inclusion. However, their global scale poses new challenges and risks to financial stability and monetary policy. Moreover, the authors argue that EU financial legislation does not prohibit financial institutions from holding or gaining exposure to crypto-assets or from offering services relating to crypto-assets, which is a source of concern given the high degree of volatility of these assets. Moreover, the suitability of crypto-assets for use in financial crime, money laundering and terrorist financing is a problem that needs to be tackled.

## Legislative process

[Announced](#) in plenary on 13 November 2020, the proposal has been referred in the European Parliament to the Committee on Economic and Monetary Affairs (ECON). The rapporteur is

Stefan Berger (EPP, Germany). The committees from which opinions have been requested are: Budgets (BUDG), Industry, Research and Energy (ITRE), Internal Market and Consumer Protection (IMCO), Civil Liberties, Justice and Home Affairs (LIBE) and Legal Affairs (JURI), all of which decided not to give an opinion.

## Parliament's negotiating position

The [report](#) for interinstitutional negotiations was adopted in the ECON committee on 14 March 2022. On 23 March 2022, the Committee decision to enter into interinstitutional negotiations was announced in plenary, and confirmed in plenary on 4 April 2022.

The most notable changes the ECON report brings include further specification of the definition of crypto-assets and scope of the regulation. The report specifies that the regulation would not apply to utility tokens unless offered for investment purposes (recital 9) and demands further technically specific definitions from ESMA. It also inserts and defines 'offerors' of crypto-assets – a legal person who offers any type of crypto-asset to the public or seeks the admission of a crypto-asset to a trading platform for crypto-assets. The report also proposes enhanced information provisions and supervision suggesting the establishment of a single EU supervisor. The report strengthens the powers of the EBA for requesting specific information regarding EMTs (Article 104a). Finally, the report introduces considerations of the environmental impact of crypto-assets and that relevant information should be provided in the white paper.

## Agreement resulting from interinstitutional negotiations

The Council and Parliament [reached](#) a preliminary [agreement](#) on 30 June 2022, which was approved by the [Committee of the Permanent Representatives](#) (Coreper) on 5 October 2022 and by the [ECON committee](#) on 10 October 2022. The final text will be voted in a European Parliament plenary session and thereafter in the Council.

The main feature of the provisional agreement resulting from the interinstitutional negotiations is the reinforcement of safety measures. These include the allocation of key reserves, so that the assets are backed by the equal value of referencing currencies (1:1 rule), with seniority on the reserves given to crypto-asset holders. The issuer of crypto-assets must also provide a redemption plan in case of distress, so that crypto-asset holders are guaranteed to receive equivalent currencies. Redemption is also set without delay, avoiding liquidity issues. The text reaffirms EBA as the lead regulator and supervisor, while relevant information will be transmitted to ESMA. The issuer's presence in the EU is a precondition to issuance. The text also widens the regulation to offerors and service providers of crypto-assets, rather than to issuers alone.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

European Parliament, [Legislative train schedule](#).

Hofmayer, M., [Pilot regime on distributed ledger technology market infrastructure](#), At-a-glance, EPRS, March 2022.

Zandersone, L., [Updating the Crypto Assets Regulation and establishing a pilot regime for distributed ledger technology](#), Initial appraisal of a Commission impact assessment, EPRS, March 2021.

European Parliament, [Crypto-assets: Key developments, regulatory concerns and responses](#), Policy Department for Economic, Scientific and Quality of Life Policies, April 2020.

## OTHER SOURCES

Adachi, M., Bento Pereira Da Silva, P., Born, A., Cappuccio, M., Czák-Ludwig, S., Gschossmann, I., Paula, G., Pellicani, A., Philipps, S-M., Plooi, M., Rossteuscher, I. and Zeoli, P., [Stablecoins' role in crypto and beyond: functions, risks and policy](#), *Macprudential Bulletin* (18), European Central Bank, July 2022.

[Digital finance: Markets in Crypto-assets \(MiCA\)](#), Legislative Observatory (OEIL), European Parliament.

European Market and Securities Authority (ESMA), [Legal qualification of crypto-assets – survey to NCAs](#), 2019.

## ENDNOTES

<sup>1</sup> The European Supervisory Authorities (ESA) define [crypto-assets](#) as a 'digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology (DLT) or similar technology'. The [distributed ledger technology](#) (DLT) refers to the 'protocols and supporting infrastructure that allow computers in different locations to propose and validate transactions and update records in a synchronised way across a network'. However, the new regulation would provide regulatory definitions.

<sup>2</sup> See previous endnote for a definition of DLTs.

<sup>3</sup> FinTech, also spelled Fintech, stands for 'financial technology' and is a [term](#) used to refer to technology-based systems – and by extension, the firms providing such systems – that deliver innovative and cheaper financial services directly to end users or make traditional financial business more efficient. Fintech services and products include cashless payments, peer-to-peer lending platforms, robotic trading, crowdfunding, and virtual currencies.

<sup>4</sup> Adachi et al. (2022) define stablecoins as 'digital units of value that rely on stabilisation tools to maintain a stable value relative to official currencies or other assets (including crypto-assets). Stabilisation tools include reserve assets against which stablecoin holdings can be redeemed, as used by 'collateralised stablecoins', and algorithms that match supply and demand to maintain a stable value, as used by 'algorithmic stablecoins'.

<sup>5</sup> The regulation for a pilot regime on distributed ledger technology (DLT) market infrastructures was adopted and published in the [Official Journal](#) on 2 June 2022. The regulation [establishes](#) a scheme to trade and settle transactions of financial instruments in crypto-asset form. The regime follows the 'sandbox' approach that allows for temporary derogations from some specific requirements.

The interinstitutional negotiations resulted in a provisional [agreement](#) on the proposal for a regulation on digital operational resilience (also known as the 'digital operational resilience act', DORA) on 11 May 2022. DORA would set requirements for the security of network and information systems of companies and organisations operating in the financial sector as well as critical third parties that provide information and communication technology (ICT)-related services to them, such as cloud platforms or data analytics services. A plenary vote on the provisional agreement is tentatively scheduled to take place in the November session of the European Parliament.

<sup>6</sup> The European Data Protection Supervisor (EDPS) explains that [necessity](#) is a fundamental principle when assessing the restriction of fundamental rights, such as the right to the protection of personal data. Proportionality is a general principle of EU law enshrined in the Treaty on European Union (TFEU), [Article 5](#) stating that 'the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties'. In the context of fundamental rights, such as the right to the protection of personal data, proportionality requires that advantages due to limiting the right are not outweighed by the disadvantages to exercise the right.

<sup>7</sup> See also executive summary [SWD\(2020\)381](#).

<sup>8</sup> Some exemptions from the publication of a whitepaper are permitted, including for small offerings of crypto-assets (below €1 million within a 12-month period) and offerings targeting qualified investors as defined by the Prospectus Regulation ([Regulation EU 2017/1129](#)).

<sup>9</sup> There are exemptions for small-scale ARTs and for ARTs that are marketed, distributed and exclusively held by qualified investors.

- <sup>10</sup> Notice that the regulation empowers the Commission to adopt delegated acts to determine the criteria.
- <sup>11</sup> [Market abuse](#) consists of insider dealing, unlawful disclosure of inside information and market manipulation. [Insider trading](#) is where a trade in financial instruments is motivated by non-public (i.e., 'inside') and price-sensitive information in relation to those instruments. Insiders are those persons possessing the undisclosed information.
- <sup>12</sup> The DLT Pilot Regime Regulation [entered into force](#) on 2 June 2022. In its [report](#) published in September 2022, ESMA provides guidance on certain technical elements and makes recommendations. The regulation is part of the DFP and is aimed at developing trading and settlement for DLT financial instruments.
- <sup>13</sup> MiFID II Article 4(22) defines 'multilateral trading facility' or 'MTF' as a 'multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules'.
- <sup>14</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- <sup>15</sup> Crypto custodians are third parties securing the storage of crypto assets, protecting the latter from theft or hacks.
- <sup>16</sup> The letter states that Tether [USDT](#), Circle USD Coin ([USDC](#)) and Binance USD ([BUSD](#)) alone, account for almost 75 % of global crypto trade volumes. Moreover, according to [CoinIndex](#), a crypto-assets data tracker, at the time of writing, the total market capitalisation of stablecoins is about US\$150 billion, representing 16 % of the total crypto-asset market capitalisation; 92 % of stablecoins market capitalisation is made up of three stablecoins, alone: USDT (US\$68 billion), USDC (US\$49 billion) and BUSD (US\$21 billion).

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