



DIGITAL CURRENCIES
Governance Group

THE MARKETS IN CRYPTO-ASSETS (MICA) REGULATION

DCGG POSITION PAPER

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ISSUE I: PROVIDING LEGAL CERTAINTY FOR E-MONEY TOKENS USED FOR PAYMENTS PURPOSES REFERENCING ANY CURRENCY

DCGG and our members place utmost importance at developing a regulatory framework for crypto-assets which leaves no space for interpretation on the ability of a e-money token referencing either Union currencies or other currencies can operate on the EU market, provided it is compliant with requirements stipulated in MiCA and the E-Money Directive (EMD).

- Any absence of legal certainty would jeopardize the Commission's objective to create a harmonized market for crypto assets, where these can scale across the EU, and where any EU citizen will benefit from consistent levels of both access and protection. This is a particularly strong concern for digital-native markets, such as those for crypto assets, which are cross-border in their very nature.
- DCGG support the definitions of EMTs as proposed under MiCA as well as the requirement that issuers of EMTs are authorised as e-money institutions.
- DCGG is also supportive that EMT would be subject to the same consumer protection regime as any other type of payment funds.
- However, there should be no space for interpretation by national conduct authorities (NCAs) on whether or not a token is an EMT or an ART, and further whether a token is a non-financial instrument and subject to MiCA or a financial instrument, and therefore subject to MiFID.
- Further, EMTs denominated in non-EU currencies should not be outright restricted. Otherwise, there would be a regulatory gap where EU citizens who own EMTs denominated in a third country currency would be in a situation where they lack the protection of MiCA Regulation.

Solution:

- The distinction between any tokens should be made on the basis of their design, rather than their in-practice purpose – as our experience shows us that function is very difficult to predict in an emerging, rapidly developing market.
- It should be clearly stipulated in MiCA that EMTs referencing any currency can be offered under MiCA / EMD, complying with the necessary risk-mitigation measures.

ISSUE II: ENSURING HARMONIZED CROSS-BORDER SUPERVISION FOR SIGNIFICANT ISSUERS OF EMTS

DCGG is in support of a single supervisory approach at the EU level. This would serve as the one main point of contact and decision-making across the EU which we believe should be the European Banking Authority (EBA) as laid down in the Commission's proposal.

- Considerations regarding the impact of EMTs on monetary policy should be set out upfront, allowing issuers to choose to comply with those and still domicile in the EU.
- Considerations voiced at EU27 (member state) level and at eurozone level should be given due weighting in the development of this emerging asset class. Votes should be considered within a supervisory college, and central banks should be consulted accordingly.
- Issuers choosing to domicile in the EU because of its forward-looking regulatory environment should benefit from a single supervisor and the efficiencies that come with such a set up.

Solution:

- Central Banks and national authorities should be able to balance their perspectives within Supervisory Colleagues, without any one authority having a binding vote.
- Any concerns regarding the impact of EMTs on monetary policy, and their mitigations, should be determined in Level 1 or Level 2 text.
- Issuers of significant EMT should be subject to a single supervisory approach, delegated to the EBA.

ISSUE III: RECORDING OF TRANSFER OF OWNERSHIP SHOULD NOT BE MANDATED ON THE DLT, SO LONG AS IT IS RISK-MANAGED

Most exchanges do not settle transactions in crypto assets on DLT, as it is slower, more expensive, and less safe for the majority of transactions.

- According to the provisions in MiCA, CASPs should ensure that the trades executed on their trading platform are settled and recorded on the DLT.
- Most CASPs, however, operate through omnibus accounts and only record transactions on the exchange's internal ledger, not the crypto asset's DLT, acting like a traditional brokerage.
- Only once a user moves their assets from one CASP to another would the transfer and owner be recorded on the DLT.
- This method is preferable because:
 - It is safer: the omnibus account can be protected in off-chain storage and less susceptible to interference.
 - It's faster and less expensive: Connecting all consumers' wallets to a DLT would increase transaction cost and slow down settlement times.

Solution:

- It should be clarified that only transactions between CASPs should be settled on the DLT.

ISSUE IV: ISSUERS OF EMTs SHOULD BENEFIT FROM SOME TRANSITIONAL ARRANGEMENTS

- There are currently crypto assets which are already issued in the EU, however there are no transitional arrangements that would currently cover EMTs and ARTs.
- Without a transitional arrangement, it will not be possible to issue EMTs / ARTs until national competent authorities authorise issuers and approve white papers.

Solution:

- The MiCA text should include a transition clause for all, and issuers affected by the Regulation which allows for a suitable transition period of 18 months.
- Grandfathering provisions should also be applied to any industry participants that were already present in the EU prior to the initial proposal in September 2020.

ISSUE V: ENSURING THE EU IS THE LEADING DESTINATION TO START A CRYPTO-ASSET BUSINESS BY ADDRESSING ISSUES RELATED TO PROPORTIONALITY

A. Issuers of Utility Tokens should not be in scope for MiCA

- Utility tokens can be used for a variety of non-payment or non-investment purposes, such as serving as a movie ticket or as tool to cast votes in a company's annual general meeting.
- Utility tokens that are created for such purposes only hold value within the specific circumstances they are used for.
- However, CASPs that may want to offer a utility token to the public as an investment asset class.

Solution to A:

- DCGG calls for a clarification in the MiCAR text to state that when a CASP offers a utility token to the public as an investment asset class, it should be the CASP, not the issuer that should comply with MiCAR. However, the issuers of utility tokens should be exempt from the requirements set out in the MiCAR Regulation.

B. Use the power of the blockchain technology for better auditing:

- Audit requirements in the traditional sense are much less frequent than what can be done with DLT.
- The text in MiCA mentions publication of audit information each month, but the reality is that all crypto-asset companies can publish their balance sheets on the blockchain thus ensuring transparency and consumer protection.
- Due to the increased level of transparency, MiCAR should clarify that if crypto-asset companies' information is published on the blockchain, then all requirements related to white paper notification, honest and professional conduct, managing conflict of interests and maintaining sound operations should be imposed on a case-by-case basis.

Solution to B:

- MiCAR provisions on audit can be amended to require the publication of necessary information on the blockchain making it accessible to authorities at any time.