



Digital Currencies Governance Group:

Position Paper on the Markets in Crypto Assets Regulation (MiCA)

DCGG strongly believes that the EU has the unique power to bring together disparate players in the crypto asset community, establishing a strong, risk-managed foundation for retail and wholesale access to of crypto assets (CAs).

DCGG's members share the view that regulation is needed to ensure legal certainty, investor protection and financial stability. It is of great importance that this regulation is flexible and adaptable to the fast development of the sector. DCGG encourages the EU to put governance structures, rules and policies in place in a way that stimulates both economic growth and consumer protection.

To this end, DCGG identifies five issues in MiCA which we urge the European Institutions to consider and set a clear, proportionate and future-proof benchmark for crypto asset regulation globally.

Issue 1: MiCA might not allow for any fees to be charged for the redemption of EMTs, in contrast to the E-Money Directive

- The original Commission MiCA proposal (Article 44) foresaw that redemption of e-money tokens can be subject to a fee if stated in the white paper and if such a fee is proportionate with the costs incurred by the issuers of e-money tokens.
- According to MiCA, EMT issues should seek authorisation under the E-Money Directive.
- The E-Money Directive (Article 11) provides that redemption may be subject to a fee if this is clearly stated in the contract and in specific cases:
 - o where redemption is requested before the termination of the contract;
 - o where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
 - o where redemption is requested more than one year after the date of termination of the contract.
- We understand that in Council there is support for banning redemption fees for EMTs entirely. In the Parliament, there is a divergence between the MEPs, as some would like to ban redemption fees completely, while others propose to align the redemption fees regime with that of the E-Money Directive.
- It is important to note that EMT issuers would incur servicing costs when redeeming e-money tokens and they should be able to charge a proportionate fee to cover the costs related to providing this service, as it is in traditional banking where this is the normal practice. It would be contradictory to not allow EMT issuers to impose such fees to their clients.



- It is also necessary to align both regimes (E-Money Directive and the rules for e-money tokens under MiCA) and the rights stemming from them, including when it comes to redemption fees, and allow for redemption fees to be charged in a proportionate manner, related to the costs incurred by the service.

Solution: Article 44, point 6 of MiCA should be aligned with the requirements under Article 11 of the E-Money Directive.

Issue 2: EMTs based on non-EU currencies may be limited in the EU.

- We understand that there is support in Council to the proposal that the use of non-EUR based EMTs should be limited. Specifically, if transactions in the Single Currency Area are, on average in the quarter, 1 million transactions at EUR 200 million value per day, the token has to stop being issued to users in the Single Currency Area.
- We understand that “being issued to users in the Single Currency Area” here is intended to mean “being used as means of payment in the Single Currency Area”. In this case, perhaps there will need to be clarity on how the level of usage is to be reported, and by whom (e.g., accepting merchants).
- If “being used as means of payment in the Single Currency Area” covers any holding of such tokens by EU residents, for any purpose, then the practicality of monitoring such thresholds needs to be seriously considered:
 - Once issued to a user, the EMT-issuer/offeror does not have visibility of the onward exchange of this token, much as a retail bank in the US will not be able to trace the onward movement of a US-dollar transfer once it is transferred out of this bank.
 - Even in the process of issuance, given the nature of the DLT technology, it needs to be clear that the limit does not factor in the location of the user verifying the transaction (the miner).
- Opinions in Parliament vary between the political groups as to whether non-EUR based EMTs should be limited or not.
- Any restriction of USD-based (or other non-EUR currency) is inconsistent with rules applied to e-money institutions. These are not restricted from allowing users to both store and transact within the Single Currency Area from e-wallets which are not denominated in EUR.

Solution: Due to the impracticality, disproportionate reporting burden and to be consistent with the treatment of e-money institutions, there should be no limit to transactions and issuance of non-EU currency based EMTs. At minimum, it should be made clear how the usage in scope for the limit is to be reported on, and by whom.



Issue 3: Decentralised Finance (DeFi) Crypto Asset Service Providers (CASPs) might be in scope of MiCA, while the regulatory regime is intended for centralised service providers.

- DeFi CASPs are typically open-source algorithms which allow users to exchange assets.
 - Unlike traditional service providers, they do not hold client assets in centralised reserves.
 - They are typically not set up as centralised legal structures. Governance is conducted through tokens, or de-facto votes, which each user has in proportion to their level of transactions.
 - Risk-management, including managing AML risk and consumer protection, are enshrined in the computer code of the algorithms.
- Recognising that DeFi CASPs are a nascent and innovative pocket of the crypto-asset industry, the European Commission had proposed that these are left out of scope for MiCA.
 - MiCA aims to harmonise rules for the largest and more established crypto business models
 - All provisions in MiCA presume a centralised structure which has the power to comply with them and can be liable for non-compliance.
 - The Commission proposes that DeFi is addressed in a subsequent report
- It is too early to dictate legislation on a technology that is currently evolving and does not have the characteristics of the centralised entities that MiCA intends to regulate. Should this be done without proper knowledge, the development of the industry in Europe will be obstructed by incompatible legislation, which is why DeFi CASPs should be out of the scope of the regime.
- Furthermore, the text of the proposal includes report clause which is aimed at examining the impact of the DeFi sector. To get a true understanding of DeFi in Europe and apply the appropriate measures, it would be best to do this report first before coming to any concrete policies.
- We understand that there is some support from the European Parliament for this view.

Solution: MiCA should clearly state that DeFi CASPs are out of scope in Recitals 12 or 13. There should be no changes to the proposed text of Title V, Article 53 stipulating that if a CASP service is not provided by a legal entity (de facto a DeFi CASP), then the rules written for entity-based regulation and supervision apply.