

## **The Changing Landscape of Crypto Regulation in Europe**

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### **1. Introduction**

Over the past ten years it has been demonstrated that the market for digital assets is growing significantly. It is no longer considered a kind of a niche concept, but rather has turned into a multi-trillion-dollar industry. Now, that the crypto-assets are gaining popularity with institutional investors, asset managers, as well as ordinary everyday investors, it has become important to have one clear and coherent framework within which such assets can be placed. In Europe, the remarkable implementation of the Markets in Crypto-Assets Regulation (MiCA) represents a paradigm shift on the continent's philosophy towards cryptocurrency regulation, providing sorely needed clarification and safeguards and enhancing processes that seek to promote competition and creativity in the financial services business<sup>i</sup>.

The legal structure overview of Cryptocurrency related assets in the European union had been historically complex and yet incomplete, wherein each member worked out its own system of treatment of the digital assets and the blockchain technology. This has posed huge obstacles to cross-border companies as the compliance level varied considerably between jurisdictions. For instance, on the other side, France occupied a robust position through the development of bespoke tools to develop a framework for the ICO in 2019, but other countries like Germany were kinder where they used existing other forms of selling and marketing tools of financial deployment. The absence of a regulatory harmonization caused the European economic area (EEA) to miss the European opportunities for the crypto evolution, and risks emerged for institutional clients that wanted to do business with that market.

MiCA attempts to solve this problem through establishing a single system of regulation, which is applicable in all the member states of the EU. MiCA, by putting forth systematic and orderly rules defining issuance, trading of crypto-assets and on those who provide crypto-

asset services is likely to create confidence among market players and hasten the assimilation of digital asset within the wider economy<sup>ii</sup>. Licensing of providers of services using virtual currencies, broader disclosure requirements, and protection of the investing public are some of the regulatory tools that are sought to be created to help curb the digital asset risks with adequate legal certainty on the side of the market participants<sup>iii</sup>.

In principle, MiCA is an approach that tries to balance the need for innovation and the need for regulation. European Union legislators clearly articulated the desire to develop the crypto-asset market while trying to deal with the associated market risks of high volatility, fraud, and financial instability<sup>iv</sup>. This is very interesting because the regulation seems to now regulate the volatility of stablecoins or asset backed tokens that have become popular because they aim at reducing the high-level volatility of cryptocurrencies such as Bitcoin and Ethereum. MiCA moves to enhance monetary stability at the expense of massive capital flows associated with liberalization by implementing stringent reserve requirements and periodic assessments, supervising activities or operations of stablecoin providers<sup>v</sup>.

For asset managers and institutional investors, the impact of MiCA is even greater. The framework is expected to bring more institutional money into the market as it introduces rules and stability into the markets. This article will examine the basic provisions of the regulation as companies across Europe prepare for MiCA's full implementation and forecast market developments and trends and offer actionable recommendations to the businesses operating in this dynamic environment.

## **2. Considered Space in Space Regulation: The Birth of MiCA**

The approval of the Markets in Crypto Assets Regulation (MiCA) by the European Union is a game changing event in the way regulation of digital assets has been conducted. MiCA is one of the foremost initiatives aimed at tackling the challenges of crypto assets – utility tokens, stablecoins, and asset-backed tokens – adopting a comprehensive approach from issuance to trading. Aiming to provide not only the safety of the market but also the development of its key segment, an ecosystem's constituent, MiCA seeks to offer clarity on the legal status of crypto assets and introduce high standards of consumer protection measures<sup>vi</sup>.

## 2.1. A Response to Market Fragmentation

Before MiCA came into force, the legal landscape in relation to crypto-assets was very loose in Europe. Every member state went its own way, which caused different regulatory regimes. For example, in France a regulatory sandbox was deployed at an early stage, allowing issuers of crypto-assets to test new technologies in the confines of a relaxed regulatory environment<sup>vii</sup>. At the same time, some authorities, like Germany's Federal Financial Supervisory Authority (BaFin), took a fallow approach, declaring that some of the crypto assets had to be regarded as financial instruments and therefore regulated by the high standards of the banking world<sup>viii</sup>. This haphazard scenario created a great deal of regulatory compliance difficulties for such business firms with international operations and increased unnecessarily costs and inefficiencies.

It was therefore, against this background that MiCA was brought in to manage the regulation of the individual member states without disrupting the established norms in those respective areas. It is designed to harmonize the regulations that users migrate and decrease taxes on duty free, so that businesses dealing in the crypto market systems are of a minimum standard<sup>ix</sup>. Given that such free movement of capital for a euro-shares market has always existed, this is essential for further integration and establishment of a Europe-wide market for crypto-assets.

## 2.2. Scope and Coverage of MiCA

MICA has a wider conceptional connotation, which encompasses a spectrum of assets fully or partially managed in a digital form, ranging from the popular cryptocurrencies to newer forms such as stable coins and asset-supported tokens. It does not include Central bank digital currencies and any other government issued currencies as it is intended to focus on private digital currency assets that are being used for payments or investment purposes<sup>x</sup>.

MiCA's other notable feature is the regulation of crypto-asset service providers in a fully inclusive manner, which is regarded as an innovation in MiCA. This category covers segments of the industry that hold, exchange and trade services in legal tender and crypto-assets. Under MiCA, licensing of Crypto asset service providers (Casps) is mandatory by national authorities of those member states where they intend to operate. After licensing, they enjoy a

mechanism of “passporting” wherein they provide services in the entire domain of the EU without the requirements of further national approvals<sup>xi</sup>.

This policy is envisaged to boost more outsourcing and competition in the crypto asset market especially among smaller companies that may have found previous barriers such as high expenses and the need to comply with various national law regimes as inhibitive<sup>xii</sup>. Thus, by providing a clear procedure for companies willing to comply with regulations- individuals hungry for regulatory arbitrage- humorously take down the competitive edges which some companies may want to recreate on the continent.

### 2.3. Key Regulatory Innovations: Stablecoins and Consumer Protection

MiCA seeks to regulate the stablecoin issuance processes sternly and their operation through the establishment up to strain inherent in stablecoins by leaning towards lower volatility as opposed to other forms of crypto-assets such as bitcoin. Stablecoins are described as being very supportive of payment systems especially when the individual currencies and other assets combine into one and therefore are very dangerous for the international monetary system if unregulated. Performance against this target is relatively poor and therefore all provisions envisaged in the MiCA favourable as they would encourage innovation among stablecoin issuers who target markets. Stablecoin issuers on the other hand under MiCA will have to accept the required minimum statutory reserves in a requirement. This is meant to prevent risks of project default and stress the need for management of the asset-supported tokens otherwise uncontrolled market would be exited.

In addition, MiCA’s regulatory approach makes client protection an overriding priority. Crypto-asset issuers are required to make extensive disclosures in a manner prescribed in conventional securities markets such as the issuing of a detailed white paper showing the features, risks, and governance of that asset<sup>xiii</sup>. This literalness aims at enabling investors to better comprehend the kinds of assets they are purchasing to reduce the chances of any fraudulent occurrences as well as curbing the vice of market manipulation which is prevalent in poorly regulated crypto markets around the world.

### 2.4. Regulatory and Market implications

MiCA is also highly anticipated especially in regards to the change of behaviour of both the regulatory bodies as well as market actors. To regulators, there is likely to be a containment of the excessive use of crypto-assets with the introduction of MiCA. This is because it provides the legal structure to monitor and supervise cryptographic assets in both the member states and at EU level. It also promotes collaboration among the different regulatory bodies including the European Central Bank (ECB) and other national bodies to better manage the rapidly emerging risks and deal with them as they arise<sup>xiv</sup>.

MiCA poses both prospects and challenges for market participants. On the one hand, the regulation is reassuring since it gives firms the legal assurance that they need in order to grow and raise institutional inward investment. On the flip side, the additional costs of compliance, particularly for smaller players, may cause barrelling of the market since fewer and fewer firms will be able to comply with the new onerous demands. The major institutional or well-funded players are predicted to be the ones reaping the benefits of the MiCA uniform framework creating further market concentration<sup>xv</sup>.

To summarise, MiCA is the beginning of a new era in how the sphere of industrial applications of crypto-assets will be controlled, with the emphasis not so much on suppressing innovations as on their regulation for the healthy growth of the foundation of the European crypto- asset market.

### **3. Key Provisions of MiCA and Their Implications for Market Participants**

The Markets in Crypto-Assets Regulation (MiCA) introduces several key provisions that will profoundly impact the operations of crypto-asset issuers and service providers in the European Union. These particular provisions of the regulation which will affect the manner of operation of the crypto-asset issuers and service providers within the territory of the European Union – pose a danger of regulating the current systems of further development of the market. In general, these provisions are aimed at reducing the regulatory burden and improving consumer as well as market resilience, on the background of encouraging the wider acceptance of the digital assets in the current financial ecosystem. This section introduces the main characteristics of MiCA such as rules regarding licensing, disclosure policies, protection of consumers, and the classification of stablecoins.

### 3.1. Licensing and Compliance Requirements for Crypto-Asset Service Providers (CASPs)

MiCA's most notable impact is likely to be the new licenses required to be obtained by any crypto-asset service provider (CASP). This refers to persons providing services such as custody, exchange, trading or investment advice in relation to crypto-assets<sup>1</sup>. Within this new structure, any operating CASP wishing to enter the EU must seek permission from underlying national authorities such as AMF in France or BaFin in Germany<sup>xvi</sup>.

The licensing process is not a walk in the park it contains a number of rigorous steps. The CASPs is for example expected to show evidence of well-structured governance mechanisms including proper internal control and well-defined segregation of duties. In addition, there is a minimum capital that they must maintain which is meant to ensure that such companies have enough resources to discharge their liabilities toward clients. Particularly this goes for crypto custodians as they have to protect customers' funds in a dynamic, even though at times turbulent, environment. Furthermore, such entities need to apply specific and effective management of risks associated with money laundering and the terrorist financing which is consistent with general trends within the European Union towards the measures in the fifth directive on money laundering.

The introduction of the MiCA licensing regime is possible to take place the explaining expansion of a professional Secretarial services. First, the rules ensure that faster legal frameworks for participants in the currency market relations are necessary through the regulation of different members of Member States. The passporting mechanism enables providers licensed in one or more EEA states to provide services in any other EEA state in which they were not licenced initially with the exception only of the need to flag a licensed status thus helping in lowering operational expenses and red tape revenue. Expect the requirement to foster competition and foster innovation in the European crypto market, as the same sets of institutions provide these services regardless of size.

Nevertheless, the strengthened requirements might not appeal to some of the smaller market players. The expenditures that come with fulfilling such advantages to a lot of emerging businesses and several start-ups could serve as an overkill, potentially turning the market inwards due to many of the small market players exiting the market or being bought out by bigger companies with the means to perform a regulatory navigation. Although this

consolidation enhances market discipline to a degree, it, however, poses a fair level of danger to the quality of market participants and the rate of inventive activity in general but especially in peculiar sections of the crypto economy.

### 3.2. Disclosure Consideration in the Issuers' Circumstances

In MiCA we can see balanced and justifiable disclosure requirements for crypto-asset issuers, focused on e.g., ICOs and/or issuing semi-stable coins. Issuers, for example, are required to make available to the public an investment memorandum or a white paper developed upon taking into account all relevant considerations which prospective investors depend on while assessing the proposed offering. The white paper must contain details of the objectives of the project, its management, technical description, and importantly, the risks related to that crypto-asset.

Another requirement of the MiCA which specifies documentation that will be published before the issuance of the securities is quite similar to prospectus for ordinary securities with respect to transparency and investor protection from fraudulent or highly risky investments. What is more, the acting procedures envisaged within MiCA put a requirement that such documents should first be approved by appropriate national regulators, before the said issuance proceeds<sup>xvii</sup>. This process serves an additional purpose to investors, in that, the investors can be able to 'rest assured' that the authority will check the language of the whitepaper to ensure that it has covered all the relevant information and there are no exaggerations or omissions.

These disclosure policies, more so the addendum, are generally expected to bring both favourable and unfavourable consequences from a market perspective. In the first place, they raise the level of protection of the investors since all the elements of the offering of the crypto-assets will be put under adequate supervision. This may make it easier for more institutional investors to come in as they have been hesitant in the past to venture into the crypto market because of the fear of regulatory risk and chances of fraud. Conversely, such increased disclosure requirements, on the other hand, may extend the period within which new kinds of cyberassets are brought into the market as new issues since some of the projects in the incubation stage may fail to satisfy regulatory expectations for such issues<sup>xviii</sup>.

### 3.3. Consumer Protection Measures

Another important element of MiCA is consumer protection. This is because there are particular provisions which are designed to protect retail investors who might not be aware of the risks that they are exposed to in crypto-assets. For instance, MiCA brings forth marketing guidelines barring the respondents from making false or over-optimistic statements regarding expected returns from their capital in crypto<sup>xxix</sup>. It should also be noted that, CASPs have to ensure that adequate and pertinent information is made available to consumers regarding the risks inherent in virtual currency, and including that there is a risk of high price fluctuations and loss of investment<sup>xx</sup>.

MiCA also requires that the assets, which are held by a custodian for protective custody of other customers, are well secured. In this regard, funds which are held for clients must remain separate from those which are utilized by the custodian in order to protect clients from instances where they might lose their funds due to the custodian being insolvent<sup>xxi</sup>. The introduction of such measures is making the environment less favourable for retail clients who likely do not possess the same level of financial knowledge and know how as institutional clients.

It is planned that these laws aimed at consumer protection will help increase trust in the crypto market in general, and especially among the retail investors. Provided that the service providers of crypto-assets meet such strict standards of openness and security as envisaged in MiCA, the chances of fraudulent activities or other malpractices which have always beset the industry<sup>xxii</sup>, could be lessened. Nevertheless, just as with the disclosure obligations, these provisions may also add to the compliance burden on the market participants, which comes predominantly from the need for smaller firms that will have to spend on new systems and processes in order to be within the law.

### 3.4. Regulation of Stablecoins

One of the most important provisions of MiCA is the stablecoin regulation – an area which is growing in prominence in the world of cryptocurrencies. Stablecoins refer to a class of cryptocurrencies with a value that is contractually, or algorithmically, backed by support assets, commonly fiat money or government debts<sup>xxiii</sup>. It is worth noting that Stablecoins have



gained increased regulatory scrutiny with recognition to the recent radical changes that they can bring to the existing payment systems and financial services.

Within the MiCA framework, stablecoin additional provisions, such as capital reserves and audit sanctions, come into effect for the issuers of stablecoins. The same vulnerabilities are posed by energy exchange trading where these stablecoins are used more specifically in relation to asset parties<sup>xxiv</sup>. Also, apart from these stablecoin issuers, those issuing asset-referenced tokens should also be complying to further policies concerning wage gap equality and consumer rights protection<sup>xxv</sup>.

MiCA's approach to stablecoin regulation is intended to address the systemic risks that these assets could pose to the financial system if not properly regulated. Stablecoins are increasingly being used as a means of payment, particularly for cross-border transactions, and their widespread adoption could impact monetary policy and financial stability. By imposing strict oversight on stablecoin issuers, MiCA seeks to mitigate these risks while allowing for the continued growth and development of the sector.

#### **4. The Other Side of the Coin: Forecasted Market Impact**

At the current stage of the progress of the March implementation across the European Union we expect some effects especially to the broader crypto asset market. Even if the objective of MiCA is to promote a more organized and legally cohesive structure, the fact remains that its use creates possibilities as well as difficulties for, among others, asset managers, institutional investors and fintech developers. In this context, the section defines the ways of these impacts and their consequences in relation to the position of institutions in the trade, merger activities and in the interaction of creativity and regulation.

##### **4.1. Increased Institutional Participation: Bracing the Market**

Perhaps the most critical enhancement which will be received as an advantage under MiCA is its effect in the tokenization of institutional investment across the entire crypto-asset class. Over time, there has been an inclination for institutional investors to adopt the crypto market due to the regulatory issues, volatility of the pad and lack of adequate investor safety<sup>xxvi</sup>. MiCA specifically sought to these worries through a coherent framework that governs the creation, trading, and safeguarding of virtual currencies throughout the EU.

A single strong framework is expected to facilitate the attractive nature of crypto-assets, especially among institutional investors, such as pension funds, hedge funds, and insurance which usually require a high level of regulatory scrutiny before getting into new asset classes<sup>xxvii</sup>. Also, based on this proposition, one can assure that crypto products for consumers will be as good as traditional ones, thanks to MiCA robust consumer protection measures, disturbing risks of negative reputation for asset managers and other participants in the "soft" economy considering crypto exposure.

This growing institutional interest may also translate to additional inflows of euros to the European crypto markets and provide crippling of volatility which is usually the greatest impediment to this model of investors<sup>xxviii</sup>. Lastly, professional investors come with more advanced risk management approaches, further growth is anticipated in the delivery of with new financial tools for example crypto derivatives, and exchange-traded funds ETF<sup>xxix</sup>. This could enable a connect between the ecosystem of crypto assets and the monetary ecosystem promoting digital assets as an asset category in the long-term investment regime.

Nevertheless, this change will also create a higher burden to the compliance functions of the institutions. Asset managers will understand the necessity of putting additional due diligence processes in place making sure that the crypto-assets within their investments are compliant with the provisions of MiCA. This will entail not only evaluating the legal status of the assets being invested but also reviewing the legal status of the assets of the service providers such as custodians and exchanges. These costs of compliance will act as barriers and discourage small institutions from coming into the market leading to a situation in which only the big boys of asset managers will be able to avail these profits in such opportunities.

#### 4.2. Market Structure: Consequence of A More Regulated Environment

While addressing the critiques of the Directive on the regulation of crypto asset markets (MiCA), there is even the possibility that it could promote a greater level of market consolidation than currently exists. Smaller companies operating in the crypto environment, particularly very young companies and start-ups, will most likely struggle to overcome levels mandated by MiCA such as capital requirements, reporting requirements, and governance requirements for example. For example - when during the providing of custody or trading of bitcoin/ether the bitcoin/ether service providers have to obtain a license meeting a certain

entry barrier this will be quite painful in terms of things like legal and tech resources and people resources.

In this case, stronger firms that are able to endure these costs will likely become the successful ones in the European crypto business landscape in the foreseeable future. Market share may be concentrated within a few large and well-funded firms, making it possible less levels of innovations and variety in the system<sup>xxx</sup>. In fact, quite the opposite is true, all innovation is limited by regulations and there are no resources for small innovative companies to grow and implement new approaches and new technology.

Yet such market consolidation would, for example, benefit asset managers and institutional investors. This is because bigger firms are always able to properly manage risk and implement security and compliance controls in place. All these factors could as well result in the general advancement of the legitimation and the safety of the market, hence eliminating the chances of more scandals or breach of security which has been a bottleneck within the crypto industry<sup>xxxi</sup>. Such a bracketed approach to distribution within portfolios may attract a higher allocation to digital assets in a lower risk profile market, free from the risks of smaller and less secure players in the market.

#### 4.3. Innovation vs. Compliance: Finding the middle ground

A major concern with the introduction of MiCA is the need to strike a balance between the drive for designing new products or systems and the ability to operate within existing laws or policy styles. Despite the fact that many in the industries require its enactment, for clarification and legal certainty, others believe this regulation is bound to be detrimental to development of these new sectors including decentralized finance (DeFi) and non-fungible tokens (NFTs). Moreover, these industries are still within the nascent phases and often exist outside out standard economic scenarios making them hard to regulate using normal approaches<sup>xxxii</sup>.

MiCA in its current state does not address all the issues concerning DeFi or NFTs which within the minimalism approach creates a potential risk for the firms in those areas<sup>xxxiii</sup>. This is particularly the case with DeFi protocols whose basic function of providing services such as lending and trading does not include any central authority that can be operated and regulated

in the normal way. Such a void in the regulation could discourage firms in Europe from formulating or using DeFi solutions as the case may be thus leave the EU behind in a rapidly growing international market<sup>xxxiv</sup>.

Still, within MiCA, there seem to be provisions for nurturing creativity while imposing some levels of control. For instance, the European Commission established the idea of regulatory sandboxes, which enable businesses to pilot new technologies and new business models in a safe space under the watch of regulators<sup>xxxv</sup>. These sandboxes might solve the problem of striking a balance between excessive growth and excessive control over ideas and processes. New products and services may be created but not at the expense of the consumers and the financial system. Asset managers and fintech companies would participate in such sandboxes and capitalize on the burgeoning DeFi sector and other areas without the challenge of compliance with all regulations.

In addition, MiCA's measures, especially those regarding stablecoins and asset-referenced tokens, can drive the advancement of the payment industry. With stablecoins, issued and regulated, the Regulation of Cross-border payments use will be more enhanced, and the development of more customers' friendly cross-border payment solutions will be achieved<sup>xxxvi</sup>. Stablecoins have the potential to minimize payment costs and time in making payments across different jurisdictions to institutional clients dealing with high-value transfers. This may save a lot of costs for asset managers, especially those dealing with overseas markets.

#### 4.4. The Road Ahead: Navigating the New Regulatory Landscape

The decentralised Sphere, Cryptography, is and is going to bear some noticeable change once MiCA Provisions come into full swing. In order to take full advantage of the opportunities created by the regulation, the asset managers will need to tackle compliance head on and have a deep understanding of the regulation evolution. Even though the MiCA regulates and provides a serious framework to the market participants, the adoption of the same will come at a great cost in terms of compliance especially for those firms that wish to venture into the ever-changing markets such as DeFi and stablecoins.

Having reviewed these provisions, it is apparent that MiCA is a landmark achievement when it comes to the cryptocurrency market in Europe. Upon defining the rules and increasing the disclosure requirements, this legislation will be able to legitimize the market and bring the much-anticipated institutional investors which will stabilize the industry. Still, more regulation comes at a cost which should be avoided at all costs more so for the smaller players and new emerging technologies. How successful MiCA will be within the above stated framework will depend on how well the legislation seeks to encourage innovation while having regards to regulation so that Europe remains at the forefront in the dealing of crypto-assets amongst all other international jurisdictions<sup>xxxvii</sup>.

## **5. Compliance Obligations and the Harmonization of Practices across Member States: Emphasizing an EU perspective**

Apart from being the fuel, regulatory milestones such as MiCA represent a big achievement in the regulation of the European crypto space and also the harmonization of regulation beyond borders. As stated above, MiCA seeks to achieve business compliance efficiency for businesses that extend their operations in different jurisdictions encouraging being more efficient in terms of the integrations of the market. This section looks at how MiCA's harmonization efforts facilitate the cross-border operations, examines the relevance of the passporting mechanism and looks at the barriers which non-EU businesses might meet while looking to establish their presence in the European market.

### **5.1. The Barriers to Harmonization in a Politically Divided Market**

Before the promulgation of the MiCA, there was an overwhelming divergence in Europe with regard to the regulation of crypto-assets. Each country established its regulatory rules, resulting in a possibility of disparate treatment of the tax and legal regimes of crypto-assets. For example, the French Financial Authority (AMF) introduced a specific regime for ICOs 2019 including a voluntary licensing scheme for issuers and a compulsory offering visa<sup>xxxviii</sup>. At the same time, there have been and are still enduring terrorist financiers, for instance cryptocurrency in ICOs and Ethers in coin offerings was treated by BaFin as financial instruments and hence adhered to the principles governing other forms of securities<sup>xxxix</sup>.

This regulatory patchwork caused many compliance headaches for the companies that did business internationally. Crypto-asset service providers (CASPs) had to deal with more costs and wastes due to differing national legislations. This fragmentation created difficulties for institutional investors and asset managers in examining the risks related to regulatory practices across several countries where crypto-assets are issued or traded.

MiCA mitigates these problems by establishing a single law which 27 EU member states shall be governed by<sup>xl</sup>. This invariant will likely prevent the firms from being forced to adhere to a number of often contending countries' laws, leading to lowered expenses and simplify internal procedures on cross-border activity. This so-called MiCA aims at improving competition on the market by establishing a fundamental set of rules for all participants - issuers and providers of services related to crypto-assets.

## 5.2. Passporting Mechanism: Expanding Potential of Cross Border Considerations.

The most praised innovations of MiCA are the creation of the passporting. In this case, it is applicable solely to the European union's integrated EU regulatory framework. However, it cannot prevent the negative consequences of regulatory competition that is likely to occur even in such a unified system<sup>xli</sup>. It is based on the cross-border provision of services under the same regulatory regime, which is common in the traditional financial services industry of the EU.

For crypto-asset service providers, that is a paradigm shift. A firm once authorized in its country domicile can undertake provision of services such as crypto custody, exchange services and advisory services to any market in the EU. It eliminates the frustration and cost of chasing different permissions from different countries to operate in those countries<sup>xlii</sup>.

With regard to asset management, it will be anticipated that a passporting will increase the proliferation of crypto-asset services across Europe. Crypto-asset management firms will be able to target recipients of services and issuers of more diversified portfolios, which will make the market more efficient. More competition might result in better prices, enhanced services and new products, which will be advantageous to asset managers and their clients<sup>xliii</sup>.

Still, in as much as passporting expedites market penetration in the EU, it also shifts the burden onto the approving authorities to enforce MiCA uniformly in all jurisdictions. There

are still some differences in the national supervisory convergence and the interpretation of EU law making regulatory fragmentation possible notwithstanding the efforts of harmonization. It will be important for other EU bodies, such as the ESMA, to crack down on national regulators and guarantee that MiCA's rules are applied uniformly across member states.

### 5.3. Problems for Non-EU Entities: Finding their Way within MiCA

However, even if MiCA was built mainly for the EU, those provisions will extend considerations to the firms beyond the EU that are more active on the European market. Those crypto-assets service providers and issuers from third countries that intend to provide services or create tokens on the territory of the European Union will be subject to the requirements of MiCA, which is a mixture of both risk and reward.

For non-EU firms, the most immediate challenge is how to adapt to the robust licensing as well as compliance requirements of MiCA which is applicable to them. Some countries such as Switzerland as well as Singapore have already put in place strong laws on crypto-assets. Others may not be as advanced in terms of regulatory affairs and organizations. Companies from these tend to be unregulated markets may find it hard to fit into the high standards that are expected of them by MiCA in regards to transparency, consumer protection and capital adequacy<sup>xliv</sup>. Markets about these efforts have found firms entrenched doing business outside the political jurisdictions of regulatory authorities. The European Union has positioned itself as a leader in universal stablecoins' issuers with the help of its unique regulatory policies and easiness towards the governing consent of multinationals.

In particular, Non-European Union staple issuers wishing to operate within the European region are likely to experience some restrictions. MiCA requires stablecoins issuing firms to meet such requirements such as maintained reserves as well as audited stability of the issuers' assets to avoid being over-leveraged unless liquidated<sup>xlv</sup>. These provisions seem to be aimed at both safeguarding consumers and averting systemic risk in financial markets; however, they also incur extra legal expenses for the companies. Foreign issuers will have to determine if such expenses are acceptable or excessive considering potential opportunities that expansion of business into the European marketplace may offer as well as what the competitive landscape may be.

However, MiCA provides benefits in terms of imposition of its regulatory requirement to non-EU firms. The regulation details well how international firms can seek the best and one of the most attainable markets in the world. Without being part of the EU but acquiring a MiCA license, these firms may be more attractive to institutional investors and may be able to extend their operations to other markets that are equally institutional with strong regulations<sup>xlvi</sup>.

Furthermore, there might be another usefulness of MiCA in terms of passporting the operations of the non-EU firms increased from one country to another country in Europe housed under the EU. A significant reduction in the business operating complexity and costs in Europe about the MiCA compliance is to be practiced by a non-EU firm that is compliant with the requirements<sup>xlvii</sup>.

#### 5.4. Taming the Regulatory Arbitrage

MiCA containing provisions aimed at harmonizing the European Union's approach to the regulation of cryptocurrencies may also serve as a point of reference in international regulatory harmonization process. Since the Directorate is overwhelming in the regulation of crypto industry's operations in the EU, they are more comparable to other large economies and will likely adopt similar changes if this leads to a regulatory order on the currency utilized. The regulation on MiCA is already raising the issue of whether there is a need for a global approach to the regulation of matters regarding crypto assets, in particular AML, CTF, and consumer protection<sup>xlviii</sup>.

This seen trend of regulatory harmonization may ease the cross-border investments in crypto-assets for the institutional investors. If other jurisdictions adopt regulations that are similar to MiCA, there are associated with substantial risk given the extra layers of regulatory compliance and indeed potential profit as the environment towards the investors becomes predictable and standard compliance workload reduces<sup>xlix</sup>.

However, this journey towards harmonization of regulations across the world will not be smooth. On the one hand, the MiCA regulation offers Europe a relatively best framework for the regulation of crypto-assets, other countries may adopt variations within the same regulatory framework because of the peculiarity of their markets, and their regulatory thrusts. Both the UK and the EU have found it rather difficult to come up with a complete set of



regulations covering the Canadian cryptocurrency scenario. This phenomenon of divergence may pose a challenge to firms wishing to establish themselves within the EU as opposed to other of the world's largest markets.

Finally, the operationalization of the G20 and FSB structures as well as their established governance models may facilitate comprehensive institutional arrangements for the governance of crypto-assets in future. The actions of these bodies would help cut down on the creation of such practices, which are not compatible with the global consensus concerning crypto regulation!

## **6. Conclusion**

A single regulation that explicitly focuses on crypto-assets, such as the Markets in Crypto-Assets Regulation (MiCA) allows digital assets to be controlled within the specific boundaries of European Union legislation. MiCA has set the objectives of improving clarity, stability, and safety in a fast-moving market by building a strong regulatory framework to manage the issuance, trading and services provision of crypto-assets. The regulation addresses most of the core issues which have always existed in the industry i.e., silo regulatory structures, absence of consumer safeguards etc. but it also raises stringent rules on how crypto industry players will operate. The future success of MiCA and the broader crypto market will be determined by its ability to remain responsive to the changes posed by decentralized finance (DeFi), non-fungible tokens (NFTs) and stablecoins.

For its part, MiCA provides opportunities and challenges for asset managers and institutional investors since they are the main focus of the regulation. The former involves broader legal certainty reducing the risks of operating within the crypto-asset space. The latter relates to the existing rules, which will compel even more spending on compliance and may also lead to an oligopoly where access to the market is restricted to only a few and large firms that will favour the less productive players in the market. Asset managers will find themselves in a position where they are forced to weigh the risks and rewards of actively participating in the growth of the digital asset market all the while working with partners that observe all the tenets of MiCA.

The situation is rather worrying for the strategic management of the entities, which are obliged to conform to the requirements of MiCA. Standard compliance procedures, implementation of RegTech, and general collaborations with regulators from the onset of the process are part and parcel of successful transitioning to market requirements. As the implementation of MiCA progresses, the organizations will have to adopt a more dynamic approach to the regulation and its changes. For companies operating within the nascent spheres of DeFi or NFT, on-going communication with the regulators and use of innovative testing environments may be necessary in the future to prevent regulatory capture and promote development in the sector.

On the way forward, the efficiency of MiCA will not only rely on its first application but also on the functionality and capacity of regulators in the provision and enforcement of the directive in all other EU nations. The cooperation of national competent authorities and European institutions, for example, ESMA will be instrumental in the promotion of a healthy market and in ensuring that the environment for the operation of the cryptos business is well defined and equitable.

As a distant point to conclude, we can assert that MiCA is certainly an advancement in regulating crypto assets and further progress is even required. It is clear that the market for digital assets will grow and therefore changes in the regulatory framework will have to follow. For businesses, investors, and regulators themselves – the delicate process of transition to regulation of the crypto market has only just started. Having on board both factors of compliance and of innovative activity ‘within the rules’, the European Union is likely to strengthen its position as an influencer in the domain of digital assets regulation, and leverage best practices to other evidence-based policies across different jurisdictions.

**Reference:**

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<sup>i</sup> European Securities and Markets Authority (ESMA), "Crypto-assets and ICOs: ESMA's Response to the European Commission's Call for Evidence," February 2019.

<sup>ii</sup> European Commission, *Markets in Crypto-Assets Regulation (MiCA)*, Regulation (EU) 2020/0265, September 2020

- 
- iii Auer, Raphael, et al. "The Technology of Decentralized Finance: Blockchain, AI& Regulation," *BIS Working Papers*, 2021
- iv European Central Bank, "Stablecoins: The Quest for Stability in Crypto Markets," September 2020
- v Eidenmüller, Horst. "Regulating Stablecoins: The European Approach," *European Organization Law Review*, 2021
- vi European Commission, *Regulation of Markets in Crypto-Assets (MiCA): Impact Assessment*, 2020.
- vii Autorité des marchés financiers (AMF), "French Regulatory Framework for ICOs," 2019
- viii BaFin, "Crypto Custody Business: Licensing and Compliance Requirements," 2020
- ix European Securities and Markets Authority, "Opinion on Regulatory Divergence in the Crypto-Asset Sector," 2021
- x European Central Bank, Report on Digital Euro and MiCA, 2021
- xi European Parliament, "MiCA Passporting Mechanism for CASPs," 2021
- xii Deloitte, "MiCA and the Future of Crypto Regulation in Europe: A New Era for Cross-Border Services," 2021
- xiii PwC, "MiCA and Investor Protection: How Crypto-Asset Disclosures Will Evolve," 2021
- xiv European Banking Authority (EBA), "MiCA and the Role of the ECB: Supervisory Coordination," 2021
- xv McKinsey & Co., "Crypto Market Consolidation: The Regulatory Catalyst," 2022
- xvi BaFin, "Regulation of Crypto-Assets: MiCA and the German Perspective," 2021
- xvii European Parliament, "Approval Process for Crypto-Asset Issuances," 2021
- xviii McKinsey & Co., "The Impact of MiCA on Crypto-Asset Issuances: A Market Perspective," 2022
- xix European Consumer Organisation (BEUC), "MiCA and Consumer Protection: Regulatory Impacts," 2021
- xx PwC, "Risk Disclosure Requirements for CASPs under MiCA," 2021
- xxi European Commission, *Client Fund Safeguarding under MiCA*, 2020
- xxii Deloitte, "Building Consumer Confidence in the Crypto Market through MiCA," 2021
- xxiii European Central Bank, "The Role of Stablecoins in Payment Systems," 2020
- xxiv Deloitte, "Building Consumer Confidence in the Crypto Market through MiCA," 2021
- xxv Financial Stability Board (FSB), "Global Approaches to Stablecoin Regulation," 2021
- xxvi European Commission, *The Role of Institutional Investors in Crypto Markets Post-MiCA*, 2021
- xxvii PwC, "Institutional Investor Interest in Crypto-Assets: Trends and Challenges," 2021
- xxviii McKinsey & Co., "The Impact of MiCA on Crypto Market Liquidity," 2022

- 
- xxxix Financial Times, "Crypto Derivatives: A New Frontier for Institutional Investors," 2021
- xxx PwC, "Market Consolidation in the Crypto Sector Post-MiCA," 2021
- xxxi Financial Stability Board (FSB), "Enhancing Market Stability through Regulatory Oversight," 2020
- xxxii European Commission, *The Challenges of Regulating Decentralized Finance (DeFi)*, 2021
- xxxiii European Parliament, "MiCA and the Regulation of NFTs: Gaps and Opportunities," 2022
- xxxiv Deloitte, "Decentralized Finance: Regulatory Challenges and Opportunities," 2021
- xxxv European Commission, *Regulatory Sandboxes for Financial Innovation*, 2021
- xxxvi European Central Bank, "Stablecoins and the Future of Cross-Border Payments," 2021
- xxxvii Financial Times, "How Stablecoins Could Revolutionize Cross-Border Payments," 2021
- xxxviii Autorité des marchés financiers (AMF), *French ICO Regulatory Framework*, 2019
- xxxix BaFin, "Crypto Assets as Financial Instruments: Regulatory Approach," 2020
- xl European Commission, *MiCA Regulation: A Pan-European Framework*, 2020
- xli European Securities and Markets Authority (ESMA), "Passporting in the Crypto-Asset Sector under MiCA," 2021
- xlii PwC, "The Passporting Mechanism and Its Impact on Crypto-Asset Providers," 2021
- xliiii Deloitte, "Cross-Border Compliance and Market Access under MiCA," 2021
- xliv Financial Times, "Adapting to MiCA: Challenges for Non-EU Crypto Firms," 2021
- xlv European Central Bank, "MiCA's Impact on Stablecoins and the Payments Ecosystem," 2021
- xlvi PwC, "Opportunities for Non-EU Crypto Providers under MiCA," 2021
- xlvii European Commission, *Passporting Mechanism for Non-EU Firms under MiCA*, 2020
- xlviii Financial Stability Board (FSB), "Global Regulatory Convergence: Lessons from MiCA," 2021
- xlix Deloitte, "The Impact of MiCA on Cross-Border Crypto Investments," 2021
- <sup>1</sup> G20, *International Cooperation on Crypto Regulation*, 2021