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Crypto-asset markets: the MiCA regulation adopted by the European Parliament

The European regulation on crypto-asset markets ("Markets in Crypto-Assets" or "MiCA") was adopted by the European Parliament on Thursday 20 April. The Autorité des Marchés Financiers (AMF) is preparing the transition towards MiCA and is contributing to the drafting of the implementing technical standards and guidelines that are to be published by the European Securities and Markets Authority (ESMA) before entry into application of the text.

A European framework for crypto-asset markets

Part of the EU Digital finance package, the European regulation on Markets in Crypto-Assets ("MiCA") seeks to regulate crypto-assets that are not covered by existing European regulations on financial instruments and products, and create a balanced European regulatory framework that aims to protect European investors.

The European Parliament formally adopted this regulation in a plenary session on Thursday 20 April.

The text covers the offering and admission to trading of crypto-assets (including stablecoins), as well as the provision services in relation to such crypto-assets. It also contains a framework for the prevention and prohibition of market abuse in crypto-assets that will apply to anyone involved in trading these assets. The regulation will replace the national frameworks put in place by EU member states, including the French framework introduced

by the PACTE law of 22 May 2019, which established a specific regime for initial coin offerings (ICOs) and for digital asset service providers (DASPs).

The MiCA regulation requires mandatory licensing for crypto-asset service providers (CASPs), with requirements similar to those of the optional licensing regime for DASPs under France's current framework. Providers licensed under the MiCA regulation will be able to benefit from the European passport and provide their services in all EU countries.

Non-fungible tokens (NFTs) are excluded from the scope of the MiCA regulation, unless they meet certain criteria mentioned in the text. The European Commission will be tasked to review developments in relation to this aspect, and assess the need to propose a specific regime in relation to NFTs within 18 months of the text's entry into force.

Where services on crypto-assets are provided in a fully decentralized manner without intermediaries (Decentralized Finance or DeFi), they are excluded from the scope of the text. The Commission will also review developments in relation to decentralized finance and assess the potential to develop rules in this area.

The AMF welcomes the adoption of the text and of the progress made in the European legislative process. This regulation will help to increase the competitiveness of French and European players by creating a harmonised European framework, and will ensure better protection for investors.

Organization of the transition towards MiCA

The French parliamentary Law of 9 March 2023 that contained various provisions adapting French law to various European Union legislative requirements in relation to economic, health, labor, transport and agricultural matters (DDADUE Law) has clarified certain provisions relating to MiCA. It clarifies the provisions that relate to the additional transitional period of 18 months that will apply after entry into application of the text, and which will be granted to DASPs that have either a "simple" registration, an "enhanced" registration, an optional license, or for those providing services referred to under 5° of Article L. 54-10-2 of the Monetary and Financial Code^[1]. During this period, these providers may continue to offer their services to the French public only.

In addition, the DDADUE Law, within one year of the enactment of the law, empowers the government to adopt by decree any measure intended to adapt the provisions of national law to ensure their consistency and compliance with MiCA.

In consultation with stakeholders, the AMF will adapt its General Regulation and its policy documents in order to facilitate the transition of DASPs towards MiCA:

- alignment of capital requirements applying to licensed DASPs with those required under MiCA;
- alignment of the documentation required for DASP licensing with those required for a CASP license;
- clarifications on the scope of the conflicts of interest policy required under a DASP license ;
- clarifications on the digital asset custody policy;
- considerations around a potential "fast-track" type approval between DASP status and that of CASP under MiCA, pursuant to Article 143 (6) of MiCA;
- clarification of the respective roles of the AMF and ACPR regarding the application of MiCA.

Next steps

Subject to adoption by the Council of the European Union, the text will enter into force in July 2023. It will be applicable 18 months after this date, from January 2025^[2].

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) will also have to publish the implementing technical standards and guidelines that will specify the implementation of certain provisions of the regulation. These texts will initially be the subject of public consultation, prior to their final publication in 2024. The AMF is taking an active role in the preparation of these texts so that stakeholders can have access to the technical standards as quickly as possible in order to prepare for entry into application.

In consultation with the Autorité de Contrôle Prudentiel et de Résolution (ACPR), the AMF is already working with stakeholders and industry associations to support the transition from the French framework to the European framework.

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Keywords


CRYPTO-ASSETS

INNOVATION

[1] Reception and transmission of orders for digital assets, management of digital asset portfolios, advice to investors in digital assets, digital asset underwriting, guaranteed placement of digital assets, non-guaranteed placement of digital assets.

[2] Except measures relating to stablecoins, which will come into force 12 months after the entry into force of the text, i.e. in July 2024.

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