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The European regulation Markets in Crypto-Assets (MiCA)

29 November 2024

Crypto-asset services requiring authorisation, obligations to be met, procedures for submitting a crypto-asset service provider (CASP) application, notification of offers to the public and admission to trading of crypto-assets, provisions relating to market abuse: in this "in-depth" you will find the main provisions of the European regulation on Markets in crypto-assets (MiCA) and its regulatory and implementing technical standards and guidelines.

What is the MiCA regulation?

Part of a series of measures relating to digital finance in Europe ("Digital finance package"), the European regulation on Markets in Crypto-Assets (MiCA) aims to regulate crypto-asset issuance and services that are not covered by existing regulations on financial instruments and financial products, by creating a harmonised European regulatory framework.

Thus, under French law and in the other Member States of the European Union, financial instruments (e.g., shares, bonds, units or shares in UCITS) registered via distributed ledger technology remain subject to pre-existing European regulations and are not crypto-assets covered by the MiCA regulation.

This text covers several areas, including:



— The offer to the public and admission to trading of crypto-assets;

- The offer to the public and admission to trading of stablecoins;
- The provision of crypto-asset services by service providers;
- Preventing market abuse on crypto-assets.

It replaces the national frameworks established by some EU Member States (subject to a transitional period described below). For instance, the French framework introduced by the PACTE Law of 22 May 2019, which established a specific regime for Initial Coin Offerings (ICOs) and digital asset service providers (DASPs), will be phased out.

Who is subject to the MiCA regulation?

The MiCA Regulation applies to natural and legal persons engaged in the issuance, offer to the public and admission to trading of crypto-assets, or who provide services related to crypto-assets in the European Union (EU).

Under the MiCA regulation, crypto-assets are defined as "*a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology*".

The MiCA regulation excludes from its scope:

- Crypto-assets that qualify as financial instruments. These are subject to existing regulations governing financial instruments. The criteria for qualifying a crypto-asset as a financial instrument are set out in guidelines published by ESMA;
- Other products such as deposits, structured deposits, funds, securitisation positions, insurance, life insurance and reinsurance products, or certain pension products, falling within the scope of existing European regulations;
- The borrowing or lending of crypto-assets. MiCA refers to the application of Member States' national rules in this regard.

Decentralised finance (DeFi):

According to its Recital 22, the MiCA Regulation "*should apply to natural and legal persons and certain other undertakings and to the crypto-asset services and activities performed, provided or controlled, directly or indirectly, by them, including when part of such activities or services is performed in a decentralised manner.*"



However, the same recital states, "*where crypto-asset services are provided in a fully decentralised manner without any intermediary, they should not fall within the scope of this Regulation*".

Non-fungible tokens:

The MiCA regulation does not apply to crypto-assets that are unique and non-fungible with other crypto-assets (NFTs), unless they meet certain criteria set out in the text.

Regarding the determination of whether a crypto-asset is fungible or non-fungible, Recital 11 of the Regulation states that:

- *"Fractional parts of a unique and non-fungible crypto-asset should not be considered as unique and non-fungible"* ;
- *"The issuance of crypto-assets as non-fungible tokens in large series or collections should be considered as an indicator of their fungibility"* ;
- *"The mere attribution of a unique identifier to a crypto-asset is not, in and of itself sufficient to classify it as unique and non-fungible."*

The criteria for qualifying a crypto-asset as an NFT under MiCA Regulation will be set out in detail in guidelines published by ESMA.

The provision of crypto-asset services

Who can provide crypto-asset services?

According to the MiCA Regulation, from 30 December 2024, only crypto-asset service providers (CASPs), authorised prior to carrying on their activity, may provide crypto-asset services, as follows:

- Either, after obtaining authorisation from the national authority as a crypto-asset service provider;
- Or, for certain crypto-asset services, after notifying the national authority if the legal entity is already authorised under one of these statutes: credit institution, central securities depository, investment firm, market operator, electronic money institution,



management company of an undertaking for collective investment in transferable securities (UCITS) or alternative investment fund manager (AIFM).

Transitional period

The MiCA provisions relating to CASPs will apply from 30 December 2024.

Crypto-asset service providers who can demonstrate that they provided services in accordance with the applicable national law before that date may continue to provide them for a maximum period of 18 months until 1 July 2026. This provision applies until they are granted or refused authorisation under MiCA, with the event occurring first being retained.

For example, the French law of 9 March 2023 containing various provisions for adapting to European Union law in the fields of the economy, health, labour, transport and agriculture (DDADUE law) states that DASPs registered (simple or enhanced) or licensed in France or providing the services mentioned in 5° of the article L. 54-10-2 on 30 December 2024 may continue to provide these services in France until July 2026.

What is a crypto asset service provider (CASP)?

A legal person or other undertaking whose occupation or business is to provide one or more crypto-asset services to clients on a professional basis, and which is authorised to provide such crypto-asset services in accordance with the provisions of the Regulation.

MiCA defines the following crypto-asset services:

- Providing custody and administration of crypto-assets on behalf of clients;
- Operation of a trading platform for crypto-assets;
- Exchange of crypto-assets for funds within the meaning of MiCA or for other crypto-assets;
- Execution of orders for crypto-assets on behalf of clients;
- Placing of crypto-assets;
- Reception and transmission of orders for crypto-assets on behalf of clients;
- Providing advice on crypto-assets;



- Providing portfolio management on crypto-assets;
- Providing transfer services for crypto-assets on behalf of clients.

MiCA requirements for CASPs

CASPs will be subject to obligations common to all the services provided as well as specific obligations for each service.

Service providers authorised under MiCA will be able to benefit from the European passport and provide their services in all EU countries.

Obligations common to all services

Regardless of the service provided, CASP must comply with a number of rules, including the following:

<p>General obligations (art.59)</p>	<ul style="list-style-type: none"> — Be incorporated as a legal person ; — Have its registered office in a Member State where the CASP provides at least part of its crypto-asset services; — At least one of the directors shall be resident in the EU and have their place of effective management in the EU.
<p>Obligations of good conduct (art. 66)</p>	<ul style="list-style-type: none"> — Act honestly, fairly and professionally in the best interests of their clients; — Provide fair, clear and not misleading information (including in marketing communications); — Make available to the public information on the principal adverse impacts on the climate and the environment of the consensus mechanism used to issue each crypto-asset; — Warn their clients of the risks associated with crypto-asset transactions; — Be transparent about the costs associated with the services provided.
<p>Prudential requirements (art. 67)</p>	<ul style="list-style-type: none"> — Have prudential safeguards corresponding to the higher of a fixed minimum equity threshold (either €50k, €125k or €150k) depending on the service provided, and a variable minimum threshold of a quarter of the previous year's fixed overheads.
<p>Governance arrangements (art. 68)</p>	<p>Meeting governance requirements:</p> <ul style="list-style-type: none"> — Repute and competence of directors and shareholders; — Review of operational processes; — Use of sufficient and appropriate resources for business continuity; — Risk management and information processing and storage; — Have a business continuity policy, including information and communication technology (ICT) business continuity plans and ICT response and recovery plans established in accordance with the provisions of the DORA regulation.
<p>Safekeeping of clients' crypto-assets and funds (art.70)</p>	<ul style="list-style-type: none"> — Comply with the requirements relating to the safekeeping of crypto-assets and their clients' funds, including in particular provisions relating to potential situations of insolvency; — Segregation of assets and the obligation to deposit assets with a credit institution or central bank.
<p>Complaints-handling procedures (art. 71)</p>	<ul style="list-style-type: none"> — Establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of client complaints and publish descriptions of these procedures; — Investigate all claims in a timely and fair manner, and communicate the results of this investigation to clients within a reasonable period.
<p>Identification, prevention, management and disclosure of</p>	<ul style="list-style-type: none"> — Implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest;



<p>conflicts of interest (art. 72)</p>	<p>— Disclose to clients and potential clients, in a prominent place on the website, the general nature and sources of conflicts of interest, and the measures taken to mitigate them.</p>
<p>Outsourcing (art. 73)</p>	<p>— Take all reasonable steps, with regard to the outsourcing of services, to avoid additional operational risks, for which the CASPs remain fully responsible.</p>
<p>Orderly wind-down of CASP (art. 74)</p>	<p>— Have a plan in place to support an orderly wind-down of the CASP's activities, including the continuity or recovery of any critical activities carried out by these service providers.</p>

In addition, the CASPs will also be subject to the AML-CFT Directive (Directive (EU) 2015/849 of 20 May 2015, as amended by Regulation (EU) 2023/1113 known as the "TFR") and to the provisions of the DORA Regulation (Regulation (EU) 2022/2554 of 14 December 2022) and the TFR Regulation.

Obligations specific to each service provided

The regulation also lays down specific rules depending on the service provided:

<p>Custody and administration of crypto-assets on behalf of clients (art. 75)</p>	<ul style="list-style-type: none"> — Framework for the contractual agreement with the client (including in particular details of the responsibilities of the parties, security and authentication systems, and user fees); — Recording of client positions and segregation of assets between those belonging to the custodian and those belonging to clients (particularly in the event of insolvency); — Securing assets and cryptographic keys, in particular to minimise the risk of losing crypto-assets; — Subcontracting only to other custodians authorised under MiCA.
<p>Operation of a crypto-asset trading platform (art. 76)</p>	<ul style="list-style-type: none"> — Setting up procedures for the admission of crypto-assets to trading; — Rules for participant access to the platform and client due diligence procedures; — Fair and orderly trading, efficient order execution and transaction settlement; — Conditions for maintaining access to trading, including the establishment of liquidity thresholds and periodic disclosures to the market; — Circumstances dictating the suspension of crypto-asset trading; — Ban on dealing on own account; — Resilience of trading systems (including under stress conditions); — Pre and post-trade transparency, detection and prevention of market abuse; — Obligation to initiate settlement of transactions on the blockchain within 24 hours of execution on the platform or, if settlement takes place outside the blockchain, by the end of the day at the latest.
<p>Exchange of crypto-assets for funds or other crypto-assets (art.77)</p>	<ul style="list-style-type: none"> — Non-discriminatory commercial policy indicating the client profile accepted; — Obligation to execute client orders at the prices displayed at the time when the order is final; — Obligations to publish transparent information on: <ul style="list-style-type: none"> ■ Pricing determination; the conditions for considering an order as final. ■ Obligation to publish details of transactions, including transaction volumes and prices.
<p>Execution of orders for crypto-assets on behalf of clients (art. 78)</p>	<ul style="list-style-type: none"> — Best execution obligations; — Consideration by the CASP of factors such as price, cost, speed of execution, the purpose of execution and settlement, and the conditions for securing or for the custody of crypto-assets.
<p>Placing of crypto-assets (art. 79)</p>	<ul style="list-style-type: none"> — Communication to the offeror or the person seeking to admit crypto-assets to trading of information relating to the nature of the placement, in particular in relation to the existence of a minimum or guaranteed placement amount, fees, the procedure followed and the targeted purchasers; — Obtaining the issuer's agreement before proceeding with the placement; — Specific rules on the management of conflicts of interest, particularly with regard to the management or even disclosure of conflicts of interest in situations where the placement is made with clients of the CASP, or where the price has been overestimated or underestimated, or where there are <i>incentives</i> from the offeror.

<p>Reception and transmission of orders for crypto-assets on behalf of clients (art. 80)</p>	<ul style="list-style-type: none"> — Prompt and proper transmission of orders; — Prohibition of incentives for routing client orders to a specific trading platform or service provider; — Prohibition on the misuse of information relating to client orders.
<p>Providing advice on crypto-assets and providing portfolio management of crypto-assets (art. 81)</p>	<ul style="list-style-type: none"> — Assessment of the client's suitability for the crypto-assets or crypto-asset services offered (in particular with regard to their knowledge and investment experience in crypto-assets, their objectives, including their risk tolerance, and their financial situation, including their ability to bear potential losses); — Take all reasonable steps to ensure that the information collected about clients or potential clients is reliable and review the assessment carried out at least every two years after the initial assessment; — Refrain from providing services on crypto-assets where clients do not provide the required information or where such services appear unsuitable for clients; — Indication of the nature (independent or not) of the advice provided; — Disclosure of the costs and charges associated with the provision of the service and, where applicable, the crypto-assets recommended or marketed and the manner in which the client is authorised to pay for the crypto-assets, including any third party payment; — Where advice is provided on an independent basis, a sufficiently diversified portfolio of crypto-assets that is not limited to assets originating from parties related to or having a relationship of an economic or legal nature (such as contractual) with the CASP; — Prohibition on receiving benefits or remuneration from a third party in connection with services provided independently to the client for portfolio management and independent advice services (excluding certain minor non-monetary benefits); — Ensure that natural persons who provide advice or information about crypto-assets or crypto-assets services on behalf of the CASP have the knowledge and skills necessary to fulfil their obligations; — Send clients periodic statements of the portfolio management activities carried out on their behalf.
<p>Providing transfer services for crypto-assets on behalf of clients (art. 82)</p>	<ul style="list-style-type: none"> — Obligation to conclude an agreement with the client to specify the duties and obligations of the CASP, including the identity of the parties to the agreement, the modalities of the service provided, a description of the CASP's security systems, the fees applied by the CASP and the law applicable to the agreement.

When and how to submit a CASP application?

Although the MiCA regulation does not come into force until 30 December 2024, since 1 July 2024 it has been possible to apply for authorisation to the *Autorité des marchés financiers* to become a crypto-asset service provider, with a view to pre-examination by the AMF. MiCA authorisation cannot be granted until the regulation comes into force.

To prepare this file, reference should be made to the RTS on the content of the application for authorisation for CASPs, which specifies the requirements set out in Article 62(5) of the Regulation. Pending approval by the European Commission, the RTS is available on



[page 75 of the Final Report published by ESMA on 25 March 2024](https://www.esma.europa.eu/sites/default/files/2024-03/ESMA18-72330276-1634_Final_Report_on_certain_technical_standards_under_MiCA_First_Package.pdf) URL = [https://www.esma.europa.eu/sites/default/files/2024-03/ESMA18-72330276-1634_Final_Report_on_certain_technical_standards_under_MiCA_First_Package.pdf] (see Annex V - Draft RTS pursuant to Article 62(5) of MiCA).

Applications can be sent by e-mail to psan@amf-france.org URL = [mailto:psan@amf-france.org].

The regulatory and implementing technical standards and guidelines currently being finalised (see the dedicated section) may mean that applicants will have to supplement the application. However, it is possible to anticipate most of the requirements by reading the texts under consultation. Applicants for authorisation are also invited to keep a regular legal watch on the [page of the ESMA website dedicated to the MiCA Regulation](https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica) URL = [https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica].

What special provisions apply when a service provider seeking MiCA authorisation already has registration, enhanced registration or DASP licence under French law?

Service providers with "enhanced" DASP registration or "DASP" licence will be able to benefit from a "simplified" procedure designed to facilitate the examination of MiCA authorisation applications.

Providers eligible for this procedure will have to send the AMF a complete authorisation file that complies with the requirements of the MiCA Regulation. The file will include any information previously sent to the AMF under the enhanced registration/PACTE licence procedure and will specify whether there have been any significant changes. The information already analysed by the AMF and which has not changed significantly will be subject to a limited review without any duplication of diligences already carried out.

How does the AMF intend to support the stakeholders in their transition to MiCA?

In addition to this thematic in-depth, which will be updated regularly, the AMF's departments will be organising events to help stakeholders understand the authority's expectations and obtain answers to their questions.

On 1 July 2024, they organised a webinar for all stakeholders involved in the sector, with a view to clarifying the transition from the PACTE regime to the MICA regulation. The [webinar presentation is available here](https://www.amf-france.org/fr/actualites) URL = [https://www.amf-france.org/fr/actualites-



publications/evenements-de-lamf/colloques-et-conferences-de-lamf/webinaire-mica-1er-juillet-2024-de-psan-psca-video-et-presentation] (in French only)

The offer to the public and admission to trading of crypto-assets (other than asset-referenced tokens or electronic money tokens)

The MiCA Regulation distinguishes between offers and admissions to trading of crypto-assets involving asset-referenced tokens or electronic money tokens (Titles III and IV of the MiCA Regulation, so-called "*stablecoin*", whose issuers must be authorised by the *Autorité de contrôle prudentiel et de résolution* (ACPR)) and crypto-assets other than asset-referenced tokens or electronic money tokens (Title II of the MiCA Regulation), set out below.

Unlike the framework resulting from the PACTE Law, which proposes an optional regime, the MiCA Regulation provides for a mandatory framework regulating the offer to the public of crypto-assets and their admission to trading on a platform.

Under the MiCA Regulation, a person shall not offer a crypto-asset to the public or apply for it to be admitted to trading in the European Union unless that person satisfies the following obligations:

- 1 • Is a legal person;
- 2 • Has written a white paper on crypto-assets focusing on this crypto-asset;
- 3 • Has notified the national authority of the white paper on crypto-assets;
- 4 • Has published the white paper on crypto-assets;
- 5 • Has drafted any marketing communications relating to this crypto-asset;
- 6 • Has published any marketing communications relating to this crypto-asset;
- 7 • Complies with the requirements of good conduct applicable to offerors.

The MiCA Regulation therefore requires the national authorities to be notified of various documents relating to the offering or admission of crypto-assets, in particular:

- A white paper providing various information on the issuer and the offer of crypto-assets;
- An explanation of the reasons why the crypto-asset described in the white paper should not be considered as (i) a crypto-asset excluded from the scope of the Regulation under Article 2(4); (ii) an electronic money token; or (iii) an asset-referenced token;

- Where applicable, at the request of the national authority, the marketing documentation associated with the offer or admission of crypto-assets.

This notification must be made at least 20 working days prior to the date of publication of the white paper on crypto-assets. Such publication must itself occur within a reasonable time prior to the offer to the public of their crypto-assets or the admission to trading of such crypto-assets, and in any event prior to the start date of such offering or admission to trading.

Certain exemptions from these obligations are provided for issuers of crypto-assets who do not intend to admit their crypto-assets to trading or who meet certain conditions set out in Title II of the MiCA Regulation.

Contents of the white paper:

Article 6 of the regulation sets out the general points to be included in the white paper to be notified to the national authority.

The white paper on crypto-assets shall also contain all of the following information, according to the plan set out in Annex I to the Regulation:

- Information about the offeror or the person seeking admission to trading;
- Information on the issuer, where this is different from the offeror or the person seeking admission to trading;
- Information on the operator of the trading platform in cases where the operator is drafting the white paper on crypto-assets;
- Information on the crypto-assets project;
- Information on the offer to the public of crypto-asset or its admission to trading;
- Information on the crypto-asset;
- Information on the rights and obligations attached to the crypto-assets;
- Information on the underlying technology;

- Information on the risks;
- Information on the principal adverse impacts on the climate and other negative environmental impacts of the consensus mechanism used to issue the crypto-asset;
- A statement from the management body of the offeror, the person seeking admission to trading or the operator of the trading platform, confirming that the crypto-asset white paper complies with Title II of MiCA and, to the best of the management body's knowledge, the information contained therein is fair, clear and not misleading, and that the crypto-asset white paper is free from omissions likely to affect its substance;
- A summary that provides, in brief and non-technical language, key information about the offer to the public of the crypto-asset or its intended admission to trading.

All such information must be fair, clear and not misleading. The white paper on crypto-assets must not contain any material omissions and must be presented in a brief and understandable form.

In addition, the white paper on crypto-assets should contain the following clear and prominent statement on the first page:

" This crypto-asset white paper has not been approved by any competent authority in any Member State of the European Union. The offeror of the crypto-asset is solely responsible for the content of this crypto-asset white paper » "

The white paper on crypto-assets will have to be available in a machine-readable format.

Market abuse of crypto-assets

The MiCA regulation also incorporates a number of provisions aimed at detecting and preventing market abuse on crypto-asset markets.

In this respect, the regulation lays down rules to prohibit certain types of behaviour, in particular insider dealing, disclosure of inside information and market manipulation.



These provisions apply not only to transactions on trading platforms but to all transactions in crypto-assets, whether on or off a trading platform.

All participants who professionally organise or execute transactions involving crypto-assets must have systems in place to prevent and detect market abuse. This applies in particular to CASPs that provide the services of operating a crypto-asset trading platform, exchanging crypto-assets for funds or other crypto-assets, executing crypto-asset orders on behalf of clients, receiving and transmitting crypto-asset orders on behalf of clients and managing crypto-asset portfolios.

Regulatory and implementing technical standards and guidelines

ESMA and EBA are working on the drafting of technical standard (regulatory and implementing technical standards - RTS/ITS) and guidelines that will specify the implementation of certain provisions of the Regulation.

A distinction is made between *regulatory technical standards* (RTS) and *implementing technical standards* (ITS).

These texts are grouped by consultation package. Final publication will take place during 2024.

Consultation package n°1

In July 2023, ESMA published a [first consultation package](https://www.esma.europa.eu/sites/default/files/2023-07/ESMA74-449133380-425_MiCA_Consultation_Paper_1st_package.pdf) URL = [https://www.esma.europa.eu/sites/default/files/2023-07/ESMA74-449133380-425_MiCA_Consultation_Paper_1st_package.pdf], covering the following texts:

- RTS on the notification by certain financial entities of their intention to provide crypto-asset services;
- ITS on standard forms, templates and procedures for the notification by certain financial entities of their intention to provide crypto-asset services;
- RTS on authorisation of crypto-asset service providers;
- ITS on standard forms, templates and procedures for authorisation of crypto asset service providers;
- RTS on complaints handling by crypto-asset service providers;

- RTS on identification, prevention, management and disclosure of conflicts of interest;
- RTS on the proposed acquisition of a qualifying holding in a crypto-asset service provider.

Consultation package n°2

In October 2023, ESMA published a [second consultation package](https://www.esma.europa.eu/sites/default/files/2023-10/ESMA75-453128700-438_MiCA_Consultation_Paper_2nd_package.pdf) URL = [https://www.esma.europa.eu/sites/default/files/2023-10/ESMA75-453128700-438_MiCA_Consultation_Paper_2nd_package.pdf], covering the following texts:

- RTS on content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment;
- RTS on measures that crypto-asset service providers must take to ensure continuity and regularity in the performance of services;
- RTS on trade transparency;
- RTS on content and format of order book records;
- RTS on record-keeping by crypto-asset service providers;
- RTS on the data necessary for the classification of white papers;
- ITS on standard forms and templates for the crypto-asset white paper;
- ITS on technical means for appropriate public disclosure of inside information.

Consultation package n°3

In January 2024, ESMA published a [third consultation package](https://www.esma.europa.eu/sites/default/files/2024-03/ESMA75-453128700-1002_MiCA_Consultation_Paper_-_RTS_market_abuse_and_GIs_on_investor_protection_and_operational_resilience.pdf) URL = [https://www.esma.europa.eu/sites/default/files/2024-03/ESMA75-453128700-1002_MiCA_Consultation_Paper_-_RTS_market_abuse_and_GIs_on_investor_protection_and_operational_resilience.pdf], covering the following texts:

- RTS on arrangements, systems and procedures for detecting and reporting suspected market abuse in crypto-assets;
- Guidelines on certain aspects of the suitability requirements and format of the periodic statement for portfolio management activities under MiCA;



- Guidelines on the procedures and policies, including the rights of clients, in the context of transfer services for crypto-asset;
- Draft guidelines on the maintenance of systems and security access protocols in conformity with appropriate Union standards;
- [Guidelines on conditions and criteria for the qualification of crypto-assets as financial instruments](#) ;
- Guidelines on reverse solicitation under the Markets in Crypto Assets Regulation.

ESMA also publishes [Q&A](#) URL = [https://www.esma.europa.eu/esma-qa-search-page?created%5Bmin%5D=&created%5Bmax%5D=&title=&field_qa_level1_target_id%5B%5D=20011&field_qa_question_value=%22%20%5Ct] on the practical application and the implementation of MiCA.

Timetable for application of the MiCA regulation

The MiCA Regulation entered into force on 29 June 2023. It will apply from 30 December 2024, with the exception of the provisions on *stablecoins* (Titles III and IV of the Regulation), which came into force on 30 June 2024.



Find out more



ESMA's Activities on MiCA

Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU)

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