

Banking

The EU tightens its grip on crypto assets

While the Markets in Crypto-Assets regulation will create obstacles to asset service providers, it will bring more cohesion to crypto regulation in the EU

By **Natasha Teja**

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The response to the EU's Markets in Crypto-Assets (MiCA) regulation has been mixed. While the regulation will be challenging to crypto asset service providers, it will create more uniformity in regulating crypto assets across the EU

“Established companies and institutional investors are more likely to benefit from the confidence boost that MiCA is expected to bring to the market,” said Tanja Aschenbeck, partner at Osborne Clarke.

A more cohesive approach

For one thing, MiCA will provide greater cohesion among member states as it provides a more uniform regulation across the EU ecosystem. Jesse Spiro, chief government affairs officer at Chainalysis, said: “This will encourage innovation and adoption. So many previous proposed national frameworks made the environment difficult to navigate, and the harmonisation will enhance legal clarity.”

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Previously, EU member states retained autonomy over national crypto asset regulations except for anti-money laundering and combating financial terrorism (AML/CFT) regulation, which was required for all member states. Although member states did not all introduce these regulations in a timely manner.

“MiCA is promising in that it has introduced crypto formally as an asset class, and recognises the unique nuances,” said Spiro.

With recognition comes regulation

The MiCA touches on two important points. Firstly, it focuses on the regulation of stablecoins. Secondly, it will set out rules for authorisations and operating conditions of crypto asset service providers (CASPs) in the EU, including regulation on investment advice on these products.

“The EU proposal goes beyond currencies and extends to crypto assets of all sorts,” said John Ahern, partner at Covington & Burling. “What they are doing is playing catch up in a sense because innovative markets are often ahead of the regulatory curve.”

For CASPs, MiCA will bring a number of challenges. These include the requirement of licences, costs associated with reporting obligations and the establishment of a secure IT infrastructure. For smaller firms and projects, even moderate regulation can already be a great obstacle.

“While the MiCA will require CASPs to have a licence, it will allow CASPs to extend their operating licence from one EU country to the whole EU without the need to apply for different licences,” said Karan Kapoor, head of regulatory change and regtech at Delta Capita.

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He continued: “Being able to operate across the 27 member states under one licence will mean that CASPs could be subject to less operation risk as more uniformed controls are in place.”

While the associated regulatory burdens fall onto CASPs in the short-term, it could provide a long-term benefit.

“The advantages associated with operating in a regulated market, such as increased consumer confidence, higher level of external investor interest and lower risk, together with the ability to operate across the EU under one licence, will create ample benefit to be derived by CASPs,” added Kapoor.

Grey areas prevail

MiCA still lacks clear definitions, which in turn provide room for legal uncertainty. For example, it remains unclear, whether hybrid tokens, which contain elements of a security token, fall within the scope of MiCA or Markets in Financial Instruments Directive (Mifid II).

“Furthermore, MiCA doesn’t clearly address AML/CFT regulation within the framework and given the previous issues that have been seen with the AML directive’s adoption universally, this could potentially be a gap,” said Spiro from Chainalysis.

***See also:** [UK ban on cryptocurrency derivatives may stifle innovation](#)*

The context of decentralised finance could also be explored in more depth, especially with the case of stablecoins. For example, coins such as Dai that is released by MakerDAO, which is a Decentralised Autonomous Organisation (DAO) with no central control or management figure, might be out of the MiCA regulatory framework.

“This will raise concerns in regard to accountability, and operating licences and authorisations as it would be difficult for decentralised entities that have no physical jurisdiction to provide the necessary documentation and adhere to specific national and international guidelines,” said Kapoor from Delta Capita.

Nevertheless, scope for regulation to catch up further to innovation is evitable. MiCA provides the first steps forward to regulating the crypto asset sphere.

“MiCA – as a centrepiece of the EU’s Digital Finance Strategy (DFS) – can largely be seen as a genuine attempt to promote the crypto market that aims to put Europe at the forefront of innovation,” said Aschenbeck from Osborne Clark. This can only be a good thing.

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