

# MiCAR

## The EU Approach to Regulation

Regulating Digital and Crypto-finance:  
A Conversation Across Borders

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# The EU Digitalisation Agenda (only a selection)

Digital Markets Act (2022)

Markets in Crypto-Assets  
Regulation (MiCAR, 2022)

Regulation on Artificial  
Intelligence (2023?)

Pilot Regime for DLT Market  
Infrastructure (2022)

Digital Services Act  
(2022)

Digital Euro (2025?)



Crowdfunding Service Provider  
Regulation (2020)

Digital Operational Resilience  
Regulation (DORA, 2020)

# The Current Regime: MiFID2

- Directive on Markets in Financial Instruments, 2014/65/EU
  - provides key definitions for EU financial markets and AML regulation
  - regulates financial services (including market platforms)
  
- The Key Issue:
  - tokens as „transferable securities“ under Art. 4(1)(4) MiFiD2?
    - *‘transferable securities’ means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as: shares (...), bonds (...), any other securities giving the right to acquire or sell any such transferable securities (...)*
  
- Result: Investment/Security Tokens as Securities

# The New Approach: MiCAR

## ➤ Legislative Process

- Commission Draft of 20 September 2020
- Current Status: Trilogue (Commission, Parliament, Council)
- Process expected to be finished by the end of 2022
- Will come into force in January 2024 (approx.)

## ➤ Key ideas:

- One stop shop for crypto assets in the EU
- Emphasis on tokens issued by “Big Tech”
- Global approach
- Will be flanked by a pilot regime for DLT infrastructure

# Key Concepts – Token Categories

- Types of Crypto-Assets, Art. 3(1)(2-5) MiCAR
  - ‘crypto-asset’ means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology
  - Specific token types
    - Asset-referenced token
    - Electronic money token / e-money token
    - Utility token
  
- Not covered
  - security token (as financial instruments, Art. 2(2)(a) MiCAR)
  - payment services

# Key Concepts – Significant Tokens

## ➤ Significance

- Asset-references tokens and e-money tokens can be classified as „significant“ by the EBA (Art. 39 / 50)
- Criteria:
  - Size of customer base, value of the asset-referenced tokens, number of transactions, interconnectedness with the financial system
- Consequences:
  - Supervision by EBA (not: national authorities)
  - Imposition of a prudential regulation regime (additional obligations for issuers; asset reserve)

# Key Concepts – „The Rest“

- A patchwork of regulatory approaches:
  - Disclosure regime (whitepaper) for regular tokens (Art. 4-14)
  - Authorisation regime for the offer of asset-backed tokens (Art. 15-22) and e-money tokens (Art. 43-49)
  - Authorisation regime for crypto-asset services (Art. 53-58)
  - Further obligations for specific crypto-asset services, e.g.
    - Custody (Art. 67)
    - Operation of crypto platforms and exchange services (Art. 68-69)
  - Prohibition of market abuse (Art. 76-80)

# What is missing (cf. Australia)?

- a market licensing regime for Digital Currency Exchanges be established
  - **Check.**
- a custody or depository regime for digital assets with minimum standards be established
  - **Check.**
- a token mapping exercise be conducted to determine the best way to characterise the various types of digital asset tokens in Australia
  - **Check.**
- Treasury lead a policy review of the viability of a retail Central Bank Digital Currency in Australia
  - **Check.**
- a new Decentralised Autonomous Organisation company structure be established
  - **Missing. What might the reasons be?**



**Thank you.**