MICA PROPOSED REGULATION
Provisional agreement reached between the Council presidency and the European Parliament

Luxembourg, 02 September 2022

The proposal for a Regulation on Markets in Crypto-Assets ("**MiCA**") is moving forward after a provisional agreement was reached between the Council presidency and the European Parliament on 30 June 2022. MiCA aims to harmonise the European Union ("**EU**") regulatory landscape on previously unregulated markets in crypto-assets by providing a comprehensive framework that protects consumers and the integrity of the markets, while allowing innovation and increasing the attractiveness of the markets.

Regulating Crypto-Assets and DLT in the Financial Sector

MiCA is part of the Digital Finance Package introduced by the European Commission in September 2020, which consists of several legislative proposals aiming to promote technological development in the financial sector, while ensuring consumer protection and financial stability. In addition to MiCA, the Digital Finance Package includes, among others, a proposal for a pilot regime for market infrastructures based on distributed ledger technology ("**DLT Pilot Regime**").

The DLT Pilot Regime was the first proposal to be adopted by the EU legislators, as Regulation (EU) 2022/858 which entered into force on 22 June 2022 and will be fully applicable from 23 March 2023. It introduces a temporary derogation regime from existing regulatory requirements for market infrastructures used for the trading or settlement of financial instruments that are issued, recorded, transferred and stored using DLT. The DLT Pilot Regime applies only to instruments that fall under the definition of *financial instruments* under Directive 2014/65/EU (MiFID II). On the contrary, MiCA will apply to crypto-assets that do not fall under the scope of existing EU financial services legislation, as further explained below.

Overview of MiCA

MiCA establishes a new EU legal framework relating to certain crypto-assets, namely, it lays down transparency and disclosure obligations for their issuers and regulates the authorisation and liability of crypto-asset service providers ("**CASPs**"), such as custodian wallets, crypto-asset exchanges and crypto-asset trading platforms. In addition, MiCA introduces rules to enhance consumer protection and to prevent market abuse in the crypto-asset markets.

The general definition of crypto-assets provided by MiCA captures any digital representation of value or rights, which may be transferred or stored electronically, using a distributed ledger or similar technology. Thus, a majority of crypto-assets that are not already governed by other existing regulations, such as security tokens and central bank digital currencies, will fall under the scope of MiCA. The applicable new rules will differ based on the characteristic of the token, as MiCA differentiates between e-money tokens, asset-referenced tokens and utility tokens.

Key Topics of the Provisional Agreement

The following summarises the main changes agreed under the provisional agreement between the Council presidency and the European Parliament.

- All crypto-asset market actors will be required to **disclose the environmental and climate impact of their activities**. The European Securities and Markets Authority ("**ESMA**") will provide draft regulatory technical standards on the content, methodologies and presentation as well as the formalities required to address such information.

- CASPs will be required to have a **registered office in the EU** and will be subject to a prior authorization by national competent authorities. Information related to largest CASPs will be regularly transmitted to ESMA. In addition, CASPs will be required to have in place adequate safeguards to protect, among others, consumers' wallets and will be subject to a liability regime in case of losses.

- CASPs will be obliged to **comply with existing anti-money laundering** and countering terrorism financing ("**AML/CFT**") legislation as well as the requirements arising from the proposed Regulation on information accompanying transfers of funds and certain crypto-assets ("**TFR**"), which is part of a legislative package to strengthen the EU's AML/CFT rules. Given the urgent need to ensure traceability of crypto-asset transfers, the Council suggested to synchronise the application of the TFR and MiCA.

- In addition, MiCA will require that the European Banking Authority ("**EBA**") maintains a **public register of non-compliant CASPs**.

- Issuers of so-called stable coins will be supervised by EBA and, in order to ensure proper supervision and monitoring, will need to be **located in the EU**. Stable coin issuers will be required to build up a liquidity reserve with a 1/1 ratio.

- **Non-fungible tokens ("NFTs") are excluded** from the scope of the current proposal, unless their *de facto* uses or features would qualify as crypto-assets covered by MiCA. However, the European Commission is mandated to assess whether a regime applicable also to NFTs would be required.

Next Steps

Before MiCA enters into force, the Council and the European Parliament will need to approve the provisional agreement and, subsequently, the proposal will need to go through the formal adoption process, which may still lead to further changes in the content of the proposed regulation. MiCA is expected to be applicable after 18 months following its formal adoption.

LuxCMA welcomes the continuing effort of a legal framework for crypto-assets at the EU level and will monitor all relevant developments accordingly.

All those who would like to become a LuxCMA member should visit www.luxcma.com or contact info@luxcma.lu.

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