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FIRST DRAFT OF CRYPTO-ASSET REGULATION (MICA) WITH THE EUROPEAN UNION AND POTENTIAL IMPLEMENTATION

Abstract

This article focuses on the very first working draft of new crypto-asset regulation within the European Union. The primary aim of this article is to evaluate the newly defined institutes in the draft and confirm or disprove the hypothesis that this new system of crypto-assets may be implemented to the actual regulation of capital markets as well as payment system, in effect within the European Union.

As mentioned above, hypothesis will count on an ideal adoption of the MiCA regulation into the existing legal framework of both, capital markets as well as payments regulation in the European Union, not interfering with existing laws or regulations.

Within the first part of this article, synthesis will be used as well as compilation for the description of crypto-asset categories and of the issuers of crypto-assets or crypto-asset service providers. Subsequently, analysis will be applied for the specification of missing elements for the purpose of finding the right connection and implementation into the existing regulation of capital markets and payments industry.

Key words: crypto-asset, issuer of crypto-assets, crypto-asset service provider, MiCA, payments, utility token, stablecoin, whitepaper.

JEL Classification: K23

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1. Introduction

After multiple years of not paying significant attention to the marginal area of virtual currencies or crypto-assets, as defined in the new MiCA proposal for the European Union (from now on and for the sake of unified interpretation of MiCA, crypto-assets will be used in this article), when in particular virtual currencies used within the capital markets industry were neglected markedly, European authorities undertook first steps towards a more comprehensive regulation in this area.

Multiple issues related thereto arose, from simply unclear regulation of specific areas to even numerous fraudulent entities, misusing the missing definitions or specifications. Thus, the main point was to ensure legal certainty for customers as well as entrepreneurs, so it's clear what they may expect within the existing framework, as well as the need of protecting investors/customers against any kind of illegal activities related to crypto-assets. Improved legal certainty could even support entities within these industries, conducting their business properly, observing legal rules, so they won't be discriminated by the use of crypto-assets within their activities.

Based on these experiences and despite the fact that certain supervisory authorities intentionally avoided this area to be regulated, EU authorities changed their approach towards crypto-assets and following problematic interpretations within both areas, capital markets as well as payments, they prepared first proposal for the crypto-asset instruments. In September 2020, first proposed draft of the "Markets in Crypto-asset Regulation" (abbreviated "MiCA") was published, firstly unofficially in different news providers, later also officially in the EUR-lex database [Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937].

The aim of the article is to provide basic explanation of the newly proposed system with most important definitions and specification while evaluating the potential implementation into the existing capital markets and payments system with the definition of gaps in the actual proposal and existing framework.

By now, taking into account the almost unregulated area within the European Union (exception may be found only in Malta, Gibraltar or Estonia), the only existing sources for this area may be found in official documents and just a few articles on the proposal.

Based on the mentioned fact, the hypothesis for this article is the expectation that this new system of crypto-assets may be implemented to the existing regulation of capital

markets as well as payment industry in general with only specific insufficiencies to be defined to make the entire regulation complete.

From the official sources, we may mention the Report of the European Banking Authority with advice for the European Commission on crypto-assets from January 9, 2019 [Report with advice for the European Commission on crypto-assets by the European Banking Authority, or the Advice of the European Securities and Markets Authority on Initial Coin Offerings and Crypto-Assets [Advice of the European Securities and Markets Authority on Initial Coin Offerings and Crypto-Assets].

As for the articles, it's worth to mention the professional article of attorney firm White & Case on EU Regulation on Markets in Crypto-assets and DLT Pilot Regime [EU Regulation on Markets in Crypto-assets and DLT Pilot Regime] or published by attorney firm Eversheds & Sutherland with the name "Draft of an EU-Regulation on Markets in Crypto-Assets (MiCA)" [Draft of an EU-Regulation on Markets in Crypto-Assets (MiCA)].

2. New Regulation Published

Following the permanent pressure and questions arising in relation to crypto-assets, in particular due to the need of conducting business related to these instruments as well as due to the need of reduction of any fraudulent activities related to crypto-assets from different investment schemes to payment institutions, taking advantage of missing regulation or neglecting approach of the central monetary authority, European institutions reacted by the preparation of the absolute first proposal (by now only working paper) for crypto-asset regulation in September 2020.

These works were initiated by the European Commission, following the pro-active approach of the European Banking Authority ("EBA") and of the European Securities and Markets Authority ("ESMA"). Their mutual cooperation brought results in a way of the Communication from the Commission with the subject of "FinTech Action plan: For a more competitive and innovative European financial sector" [Communication from the Commission: FinTech Action plan: For a more competitive and innovative European financial sector]. This document called for the identification of best practices all over the EU for the purpose of setting up common principles and criteria for innovations hubs and regulatory sandboxes along with their promotion. Additionally, it focuses on the support of FinTech applications within the EU, education among regulators, enhancing security within financial industry etc.

Another important document came from the ESMA in January 2019 in relation to public offerings of crypto-assets and tokens, called “Advice on Initial Coin Offerings and Crypto-Assets” [Advice: Initial Coin Offerings and Crypto-Assets].

By these days, regulatory bodies faced serious issues due to the legal vacuum, in particular in the area of categorization of respective instruments, money laundering, terrorism financing and different fraudulent activities. We can see it summarized by the European Parliament's Special Committee on financial crimes, tax evasion and tax avoidance (TAX3) in its report for cryptocurrencies and blockchain [Cryptocurrencies and blockchain: Legal context and implications for financial crime, money laundering and tax evasion].

Based on this, works on the proposal of new Regulation on Markets in Crypto-assets, (“MiCA”) [Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937] were initiated and in September 2020, the first working version came out, identifying the basic elements of this new regulation, providing hints to the approach of lawmakers.

3. New instruments defined

In this new regulation, we can see the efforts of lawmakers to regulate basic digital representants of value or rights that may be shared or stored electronically by the use of distributed ledger technology (“DLT”) or any kind of analogy thereof.

This proposal brought **three new categories of crypto-assets** (general term), not yet defined formally, just being a subject to different interpretations during tests of instruments, whichever is used. These are the following:

1. So-called **stablecoins** that are called also as **asset-referenced tokens** thanks to their reference to the value of:
    a) several (not a single one) fiat currencies, representing legal tenders (so-called fiat collateralised, e.g. Tether, Paxos Standard, Binance),
    b) one or several commodities (asset-backed, e.g. Gemini Dollar, Digix, HelloGold etc.),
    c) one or several crypto-assets (so-called crypto-collateralized, e.g. MakerDao, Celo, Bitshares, Synthetix etc.),
    d) combination of any from above.

    A good example of these stablecoins is the Libra coin, backed by a basket of currencies.

2. **Utility tokens** represent crypto-assets whose main purpose is not based on keeping their value, but rather on ensuring access to certain asset or service while being available on DLT. Utility tokens are accepted by the issuer of such token. [MiCA: A Guide to the EU's Proposed Markets in Crypto-Assets Regulation].

3. **E-money tokens** are crypto-assets, whose main purpose is to be used as a means of exchange. Their value remains relatively stable by their reference to the value of fiat currency that is a legal tender (a single one, in case of multiple fiat currencies, it would be qualified as a stablecoin). As an example, we can mention USD Coin that is issued by Circle while only U.S. dollars back its value [White & Case: EU Regulation on Markets in Crypto-assets and DLT Pilot Regime].

However, what is important to note, is the non-applicability of MiCA to different instruments that are already being regulated by other existing laws and this is one of the crucial points where lawmakers need to make clear how they want to implement this new regulation into the existing system of legal acts within capital markets and payments regulation.

Following categories may not be interpreted as crypto-assets:

1. Financial instruments under the Directive 2014/65/EU (MiFID II), more specifically those states in Section C of Annex I to the directive (these are in particular, transferable securities, money-market instruments, options, futures, swaps etc. relating to securities, currencies, commodities etc.) – all these categories will be strictly regulated by MiFID II and its transposition into local acts [Directive 2014/65/EU on markets in financial instruments, Annex 1, Section C].
2. Electronic money under the Directive 2009/110/EC, more specifically under the art. 2 point 2 [Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions, art. 2 p. 2]. Here, the main point of difference will be related to the fact if the instrument may be qualified as electronic money or e-money token. The main difference will be in the DLT as previous one was the redemption, however, on the basis of new regulation, redemption of such tokens should be ensured.
3. Deposits under the directive 2014/49/EU on deposit guarantee schemes [Directive 2014/49/EU on markets in financial instruments, art. 2 p. 3].

4. Structured deposits pursuant to the MiFID II directive as they are defined in art. 4 p. 1, point 43, that represent deposits under the Directive on deposit guarantee schemes [Directive 2014/65/EU on markets in financial instruments, art. 4 p. 1, point 43].
5. Any kind of securitization follows the Regulation on general framework for securitisation [Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, art. 2 p. 1].

But what are the crypto-assets then as a general category? This is defined by the MiCA as follows [MiCA, art. 3 p. 1 point 2]:

"*a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology*".

This definition may look very similar to the definition of electronic money, we can see in the Directive 2009/110/EC. Nevertheless, the are 4 fundamental elements of electronic money, separating them from the crypto-assets. Following the definition, electronic money means a monetary value (even right in case of crypto-assets), representing claim on the issuer for respective value, stored electronically (or magnetically) and issued on receipt of funds for the purpose of execution of transactions.

Here we see some parameters being different, in particular the claim on the issuer that is usually a problematic part in crypto-assets (in particular due to the missing regulation that may, following the adoption, change this aspect for the benefit of customers). In fact, this means that if any customer or investor buys crypto-asset within the actual legal environment, he has no warranty that such crypto-asset will be re-purchased, i.e. converted into a fiat currency he purchased it for (or any other one). Therefore, in particular based on this, we make the difference between e-money tokens and standard electronic money under the Directive 2009/110/EC while also the DLT represents a differentiating point.

4. Issues of crypto-assets

MiCA regulation proposal brought two new categories of subjects, more specifically the issuers of crypto-assets and crypto-asset service providers.

So, who are the issuers? This category is limited to legal persons/entities that offer any of the above-mentioned kinds of crypto-assets to public or are putting efforts to have the crypto-assets admitted to trading platform for crypto-assets.

However, there's one specific important aspect of issuers that has an analogical institute for the issuers of securities too. For securities it's the prospectus while crypto-assets issuers, it's the **whitepaper**.

Original whitepapers were trying to emulate the prospectus in their content (and by the time of missing regulation in force and effect, we may expect these current conditions to remain), usually containing introductory explanation of instrument offered through a public offer of crypto-assets, basic definitions or explanations, technical basics or the method of mining, forging etc., along with the potential use of the crypto-asset and it benefits for investor. A very good example for a higher quality whitepaper is the one of Ethereum where we can find all these elements, albeit being issued within a non-regulated environment, well defined [Ethereum Whitepaper].

New MiCA proposal improved the whitepaper (and its mandatory contents) to an institute closer to prospectus, if compared to art. 6 of the actual regulation of the EU on prospectus [Regulation (EU) 2017/1129 on the prospectus, art. 6, p. 1]. However, the sole whitepaper still lacks a strict procedure for the supervisory body to review it as we could expect not only from the securities legislation, however, also based on the existing regulation in Malta. For example, within the procedure of whitepaper, there's no approval, only an obligation of notification to respective supervisory authority [MiCA, art. 4 p. 1(c)]. An interesting fact is that Malta, when adopting new legislation for the virtual financial assets ("VFA", what could be considered here as analogy to crypto-assets to certain extent), it has also adopted obligatory registration of such VFA whitepapers at the Malta Financial Service Authority (Maltese supervisory body), however its regulation (incl. its content) is stricter as in case of the MiCA proposal, e.g. a registered VFA agent performs the registration of whitepaper, it's submitted through a registration for, there's a mandatory test of financial asset (here we need to take into account that tests of financial instruments were the option when there was no regulation for them and based on resemblance, specific rules for other securities or instruments could apply to such undefined VFA), independent auditor's report etc. [MFSA: Circular to issuers of virtual financial assets].

Specific requirements for whitepaper under MiCA can be found in art. 6 with similar descriptions as in case of original unregulated (more extensive) whitepapers, but for the sake of protection of investors, also the elements of warnings, clear and fair communication with the avoidance of misleading communication, liability of the issuer etc. [MiCA, art. 6].

In general, we can see that European authorities dropped the idea of keeping the regulation as strict as the one in Malta, significantly oriented on the system implemented by the MiFID II directive, and opted for certain **combination** of aspects from the **capital markets'** system and **payments** area.

First such area where we can see such difference, are the **minimum capital requirements**, defined in art. 31 p. 1 MiCA. As the article states, any issuer of asset-referenced tokens shall keep at least **€350,000** amount as the minimum capital or, in case it's a higher amount, **2% of the average amount of the reserve assets**, whose custody is defined in art. 32 and serves for the purpose of back-up for crypto-assets used. In the event of significant tokens, the average amount is increased to 3%.

This is in contrast with the Maltese approach, as the country tried to tackle this new industry from the perspective of MiFID II system mainly, and we see a very similar structure of the Maltese legislation, consisting of three major acts, to the capital markets system. This is in contrast with this new EU perspective of crypto-asset regulation, combining elements from the payments perspective as well.

As definitions of the MiCA state, reserve assets represent a basket of fiat currencies, having the status of a legal tender, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets.

An interesting aspect for example, compared to the Singaporean new Payment Services Act (PSA), is the limitation of safeguarding institution or the custodial institution for reserve. According to the art. 23 of the PSA [Payment Services Act, art. 23], such safeguarding institution may be strictly an institution under the supervision of the Monetary Authority of Singapore while in case of the EU, there is no strict requirement of national institution.

Nevertheless, this is not the only subject of mandatory information provision to the investors or customers. **Information obligations** are related, besides reserve assets, also to any kind of events that could affect the value of asset-referenced tokens or reserve assets, where the protection of investors play a role for the purpose of warning them about such risks. Moreover, additional risks (and related information obligations) are based on potential changes to the exchange rates (in case of conversion of fiat currency for crypto-assets), current price quotes (in case of crypto exchanges or trading with crypto-assets), insurance of deposits of investors, execution of contractual conditions etc.

A frequent topic is also the conflict of interests, defined in art. 19 MiCA, as it was possible to misuse such status before in relation to price quotes (for example in connection with so-

called slippage after certain market news were published, so the broker kept such client within a market-making structure, making a counterparty to him, and extending spread for bid and ask price quotes, resulting usually in automatic closure of position due to insufficient margin).

Another specific obligation is related to the transparency of structure and proper distribution of roles and responsibilities. Responsibilities need to be set for each position, thus making it clear which position is taking control of respective area. In relation to this distribution of roles and responsibilities, the entire management system, monitoring and risk management along with control mechanisms must be transparent towards national supervisory body.

5. Crypto-asset service providers

Services of crypto-asset service providers ("CASP") I defined at art. 3 MiCA, where these services include the following:

(a) the custody and administration of crypto-assets on behalf of third parties;
(b) the operation of a trading platform for crypto-assets;
(c) the exchange of crypto-assets for fiat currency that is legal tender;
(d) the exchange of crypto-assets for other crypto-assets;
(e) the execution of orders for crypto-assets on behalf of third parties;
(f) placing of crypto-assets;
(g) the reception and transmission of orders for crypto-assets on behalf of third parties;
(h) providing advice on crypto-assets.

In relation to the service providers above, the question of keeping of client funds arises. Each of them, if accepting client funds, shall keep them on a segregated account, therefore, keeping operational funds of the company for its purposes on a different account at credit institution as the client funds, as also art. 33 p. 4 MiCA states. The only allowed institutions for this activity are central bank or credit institutions.

As we can see, portion of these **information obligations** are towards (1) the **clients** alone (related to price quotes, exchange rates, fees), based on a general paragraph, requiring proper and transparent provision of information to clients, communicated in appropriate way [MiCA, art. 59], and another one (2) in relation to the **supervisory body** (transparent and effective procedure for a prompt, fair and consistent handling of complaints (art. 64), prevention of conflict of interests (art. 65) etc.) besides reporting.

An important section is related to potential **outsourcing** activities. As we can often see the structures of different licensed institutions, providing services with the support of extensive outsourcing of human resources even when it comes to more qualified and managing roles, lawmakers did not neglect this area and dedicated art. 66 to outsourcing. If a CASP takes advantage of services of an outsourcing company, any reliance on third party needs to be under control for the purpose of avoidance of any additional operational risk. Still, the licensed entity remains fully responsible for any outsourcing activities provided, incl. their quality. Therefore, the principle of prohibition of delegation of responsibility in outsourcing applies in full and may not affect the relationship between a CASP and its clients.

So, what if a crypto-asset is admitted to trading on a crypto exchange and the issuer fails in any of his responsibilities? This s included into the mandatory due diligence check of crypto-asset issuers under art. 68. The operator of a trading platform for crypto-assets shall always be sure which category it belongs to (so this is a portional substitution of previous tests of crypto-assets, called e.g. Howey test, resemblance test etc.) while ensuring also its liquidity, access to trading of such crypto-asset and should consider the experience and reputation of the issuer. From experiences, we can see that numerous issuers used to issue tokens with minimum popularity and the liquidity could not be ensured in any satisfactory way.

What is naturally needed to mention, is the standard obligation of CASPs to observe the EU **anti-money launder legislation**, including the needed due diligence of clients and monitoring obligations in relation to their transactions. This means also the necessary Know Your Customer documentation and additional checks in different cases. It's hard to predict what will be the actual AML regulation at the time of MiCA adoption, however, we may expect the tendency to rather tighten the rules for due diligence and ongoing monitoring.

6. Market abuse

Despite the existence of Market Abuse Regulation No. 596/2014 ("MAR"), lawmakers decided to define specific prohibited abusive activities in the regulation too, more specifically in art. 76. This may be considered as specification of the same area twice, speaking in particular about art. 8 of the MAR on insider dealing (comp. to art. 78 of MiCA), unlawful disclosure of inside information (art. 10 of MAR comp. to art. 77 of MiCA) or market manipulation (art. 12 of MAR comp. to art. 80 of MiCA) [MAR, art. 8, art. 10 and

art. 12]. Albeit the MAR should have been covering non-crypto-asset instruments, in fact, I believe the MAR represents a sufficient coverage for this area of instruments as well.

In fact, the resulting principles of the MAR and MiFIR (for market abuse area and for the reporting, respectively) shall apply to these instruments as well and from the legislative point of view it would not make sense to cover the same subject, just for small group of instruments, in a specific act if this issue may be covered by a general reporting act (MiFIR regulation) for price quotes and reporting of trades, as well any market abuse practices, regulated by the MAR regulation.

7. Potential implementation of MiCA and its relation to the existing system of capital markets and payments industry

As we can see from the above, MiCA has provided a general coverage for the regulation of crypto-assets and related licensed or approved activities that could not be regulated under the existing legislation of the EU.

Despite the fact that the EU was firstly significantly reluctant to the crypto-assets of any kind, playing its role down by unsignificant market, last years proved the difference. Nevertheless, some countries had the tendency to pay increased attention to this market niche, including Malta, Estonia, minor regulatory approaches in Gibraltar or United Kingdom etc., and we can see also certain representatives of the highest EU bodies, as e.g. Valdis Dombrovskis, deputy of the European Commission. He saw the future in finance as digital and during the lockdown, he mentioned that “we could see how people had access to financial services thanks to digital technologies like online banking and fintech solutions.” [Digital Finance Package: Commission sets out new ambitious approach to encourage responsible innovation to benefit individual customers and businesses].

Based on this, we see the intention to find a proper implementation of actual regulation into the existing system, but due to a different use of crypto-assets, it’s a delicate question of additional obligations, applicable to payments or capital markets area. On one hand, it’s necessary to cover the trading system with crypto-assets, comprising of transparency principles, best execution and full information obligations towards the clients, including pre- and post-trade reporting, while for the payments industry, the main issue will be related to the conversion of fiat currency to crypto-asset and back to ensure proper transfer of funds of respective clients while ensuring as well a proper due diligence based on the problematic anonymous nature of certain crypto-assets that might be even excluded under this new regulation.

However, as the regulation proposal is only the first draft, despite the fact that that it's relatively extensive and we can consider it as comprehensive, covering numerous important areas, there are still certain points **missing**.

First important aspect I see, is related to both industries, and it's the issue of CASPs **providing services** from the EU and **from third countries**. By now, there's no specific categorization for this purpose in MiCA, albeit it's expectable that, in particular due to tax reasons or licensing requirements, there will subjects providing crypto-asset services within the EU from third countries. This can be already seen in both, capital markets area as well as in payments. Nevertheless, it should be stated that the advantage of passporting within the EU has been preserved in the proposal.

Second problematic area was already mentioned above. It's the **pre-** and **post-trade transparency** in relation to price quotes or executed trades. These are issues related more specifically to capital markets, however the issue of source of exchange rates (the national supervisory body may review) is applicable to the payments industry too.

The most significant points for clarification are:

1. **price quotes** to be transparent before the trade execution (so the customer is informed thereabout properly) as well as after the execution (the rule of max. 15 minutes of publishing under MiFIR, art. 13);
2. **principle of best execution** (meaning that the customer or investor has the right for his trade to be executed for the best possible price, thus avoiding any kind of market abuse);
3. **reporting obligations** to be set exactly, so it's clear which data is about to be provided on real-time basis (e.g. crypto-exchange could be expected to do so or trading platform providers with market making license) with the specification of volume, price and trading venue;
4. **liquidity** should be always ensured to certain extent, potentially the **depth of market** and so on.

The importance of pre- and post-trade transparency is related highly to the protection of customers that may always rely on the price quotes provided to them under sufficient liquidity and in case of any kind of market abuse, even suspicion, they have the option to submit a complaint to respective supervisory body.

Third, and very important area as well, will be the proper specification of **client onboarding** obligations that will make the necessary due diligence measures clear. In this case, theirs is a qualitative difference between onboarding procedure for the payments industry and for

capital markets. When it comes to payments industry, main focus will be on the analysis of client's documentation provided (proof of identity, proof of residence, potentially source of funds) from the perspective of anti-money laundering or terrorism financing, paying attention to the origin of funds of the transfer and their legality.

On the other hand, in case of capital markets, naturally this area will be covered too (as in payment institutions), however, it's expectable that for the purpose of protecting retail customers, additional focus will be on their experiences with such activity, in particular trading with instruments close to crypto-assets or that could belong to this category.

What was completely missing in the proposal, was the legal form of tied agent or any analogy thereof. It's questionable how will be the passporting options for companies under the MiCA regulated in the future as the presence in other jurisdictions needs to be covered adequately. Actual model of capital markets' companies allowing to be present in another jurisdiction through tied agent or investment intermediary may be expected to be needed also for the entities set up under the future MiCA regulation, otherwise it could raise questions about competitive way of passporting compared to the entities providing capital markets' services under the existing MiFID II system.

8. Conclusion

Actual insufficient coverage of crypto-assets within the European Union has created an unnecessary legal vacuum as well as space for unwanted activities within the crypto industry. Based on this, the entire industry has become problematic and numerous entities, providing services in adequate way and having justifiable business intentions, are discriminated due to the problematic differentiation from various fraudulent service providers, investment schemes as well as thanks to the anonymous nature of certain crypto-assets. It has become a hard task for many entities to open account just for their basic activities, thus making it hard for even starting any kind of operations in the industry and blocking the development and competitive activities.

The aim of this article was focused on general overview and explanation of this new proposal where we paid attention in particular to specific definitions of new instruments that have not been regulated in the European Union by now. As we could see, lawmakers succeeded in the definition of gaps of the existing regulation where even after the application of different tests for instruments, it was impossible or very hardly identifiable into which category respective crypto-assets belong.

Nevertheless, through the analysis applied within the article, it may be stated that the hypothesis was confirmed as the system proposed within the MiCA regulation could fit into the actual regulation of capital markets (e.g. crypto-exchanges, asset management) as well as to the payments industry (in particular payment providers using crypto-assets as the payment instrument) easily.

Moreover, the actual proposal has even used certain models from existing one that is an important aspect for its implementation into the existing system, e.g. minimum capital requirements level of €350,000, requirements for management, outsourcing companies, compliance, internal procedures etc. Based on this, it's possible to expect success from this approach as the models use the same basis.

However, we could still see some missing aspects that need to be improved to achieve full implementation, albeit some being of minor importance compared to the already regulated ones. We may expect the main area of interest from the supervisory point of view to be the compliance based on the above-mentioned anonymous nature of multiple crypto-assets. This tends to be also the main reason for the banks to avoid cooperation with crypto-asset service providers as the clients of merchants may put their AML/CFT rules into jeopardy with their activities. Thus, the main existential factor for these providers is often preventively inaccessible, making also the development of industry slower. With the regulation in place and after meeting all the necessary mandatory requirements, banks could be open to these service providers more thanks to a reputable license under the EU legislation and supervision of local authority.

Another main area that I see as incredibly important, but also problematic in some aspects, is the ensured reporting of trades for capital markets, where the price quotes need to be transparent to customers as well as to the national supervisory authority. Thus, principles in the MiFIR and MAR could be met, avoiding reputational problems of the industry and helping the customers to support any of their potential complaints to supervisory authorities. By now, it used to be a problematic area and open space for market abuse (providing incorrect price quotes).

In general, we see that there is still space for improvement and the actual proposal needs additional specifications and coverage of missing areas, however, taking into account that it's the first proposal of a completely missing area, the quality of the regulation is high, considering that even the models from other jurisdictions are missing or remain very inadequate, having only few comprehensively prepared regulations that it could be compared to. Within the EU it's only Maltese one, and it represents more or less just an

improved copy of purely capital markets legislation, not paying attention to the payments industry and entities regulated there. From the other countries, we can see some models in Japan, United States etc. that are still covering these industries only partially, therefore, the importance of adoption of MiCA in its improved version is more than important to regulate the industry as well as to become a model for other countries how to approach crypto-assets adequately and support the development of this industry to its fully compliant system.

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Regulation 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (EUR-Lex, L 168/12, as amended).

Payment Services Act 2019 (Singapore Statutes, No. 2 of 2019, as amended).

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Other Official Documents

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