

## EUROPEAN CRYPTO-ASSET MARKETS' FRAMEWORK: PROPOSALS FROM THE FRENCH, THE AUSTRIAN AND THE ITALIAN FINANCIAL MARKETS AUTHORITIES

### ***Executive summary***

The entry into application of the MiCA regulation marks a major step forward for the regulation of crypto-assets in Europe. However, the AMF, the FMA and the Consob note that its application remains fragmented and that certain provisions do not adequately prevent risks that are specific to the sector, thereby threatening the competitiveness of European players and investor protection. In view of these limitations, the AMF, the FMA and the Consob are proposing a number of adjustments to ensure consistent and effective application of the regulation and strengthen investor protection to match the standards established for traditional investment products.

### **Centralized supervision of major crypto-asset service providers in Europe**

The AMF, the FMA and the Consob call for direct ESMA supervision of significant crypto-asset service providers. Currently, the regime proposed by MiCA is based only on a reporting obligation by national authorities to ESMA, limiting the effectiveness and scope of supervision. The three authorities advocate for a transfer of powers to ESMA, following the example of the Single Supervisory Mechanism or of the regime applicable to issuers of stablecoins of significant importance, which are supervised by the EBA. This measure would avoid fragmentation as well as opportunistic choices between jurisdictions, ensure a uniform application of the rules, and reduce supervision costs, by enhancing efficiency.

### **Stricter rules for global platforms and their activities outside the European Union**

The AMF, the FMA and the Consob propose a more stringent supervision of platforms operating outside the EU that may be used by service providers to provide services to European investors. They suggest that any intermediary executing orders on crypto-assets on behalf of European clients should be obliged to do so on a platform that complies with MiCA or equivalent regulations. The assessment of this equivalence could be entrusted to the European Commission, with the support of ESMA. More generally, the mentioned authorities propose that the delegation by a crypto-asset service provider of core functions to a third-country entity should be subject to clear criteria, in particular the existence of legislation "equivalent" to MiCA in the third-country jurisdiction of that entity, in line with what provided for under other EU legislations on the provision of financial services. Alternatively, the third country intragroup service provider should be permitted to subject itself under full extraterritorial supervision of the crypto-asset service provider's home authority or of ESMA.

### **Better supervision of service providers in the face of cyberthreats**

The AMF, the FMA and the Consob stress the importance for CASPs to perform an independent cyber-security audit prior to the granting of the authorisation, and of renewing this periodically. This audit would cover, among others, protection of assets, resilience to cyber-attacks, and incident management. This measure would guarantee greater security for crypto-asset markets and reinforce investor confidence.

### **The creation of a one-stop shop for token offerings**

The AMF, the FMA and the Consob propose to review the discipline to better specify what authorities should do before an offer starts in one or more countries, while also considering centralization of the filing and management of token offerings (excluding stablecoins) with ESMA, instead of the current approach, whereby national authorities only act as relays. This approach would simplify the process for issuers, ensure uniform application of the rules, and avoid market fragmentation.

These proposals aim to guarantee the effective supervision of crypto-assets in Europe, strengthen the competitiveness of European players, and provide better protection to investors.

## Why rediscuss the MiCA regulation now?

The entry into application of the European MiCA regulation<sup>1</sup> on December 30, 2024 represents a significant step forward for the regulation of crypto-assets in Europe and the protection of European investors active in these markets. However, the application of this regulation is far from resolving all the difficulties raised by this otherwise rapidly evolving market:

- Despite ESMA's efforts, the first few months of implementation of the regulation have demonstrated significant differences in implementation between jurisdictions and significant coordination costs;
- They also revealed major weaknesses in the text, notably in its approval and supervision mechanisms. The Commission has considered, for example, that the text did not make it possible to require cyber security certification at the authorisation stage;
- The International Organization of Securities Commissions (IOSCO)<sup>2</sup> and the Financial Stability Board (FSB)<sup>3</sup> have produced recommendations for the regulation of crypto-assets, notably with regards to the internal organization of the largest service providers, whose choices of location risk weakening the scope of European regulation.

Taking this into account, the AMF, the FMA and the Consob would suggest ways of improving MiCA to take account of the identified weaknesses. This paper is without prejudice to proposals on other subjects that also merit review, in particular regarding improving investor protection and the information provided to investors under MiCA. The cited authorities especially emphasise that the increasing hybridisation of crypto and traditional financial assets calls for more consistent investor protection across financial services, including, without limitation, by requiring all providers of crypto-asset services to collect clients' information to assess their ability to understand the crypto-assets products they wish to trade.

### Priority 1: European supervision of major crypto-asset service providers

Crypto-asset markets are cross-border by nature, and are dominated today by a few global players: 90% of crypto-asset trading is concentrated on the ten largest platforms, with commercial activity carried out directly via the internet and mobile applications<sup>4</sup>. The first few months of application of MiCA have revealed that these major crypto-asset platforms are seeking to take advantage of the European passport to deploy their activities in Europe from a single member state, which is legitimate in itself, but risks fuelling regulatory and supervisory competition. The experience of MiCA's first few months in application also shows that supervisory convergence between national authorities quickly reaches its limits, and is not sufficient to guarantee uniform application of standards within the EU. Lastly, it can generate substantial costs for regulators and players alike.

The MiCA regulation already lays the foundations for harmonized supervision of pan-European crypto-asset service providers (CASP)<sup>5</sup>. However, its approach remains confined, limiting itself to an a posteriori reporting regime to national authorities for the sole benefit of ESMA's Board of Supervisors which does not allow for effective, proactive supervision of players. Conversely, the regimes for issuers of asset-referenced tokens (ART) of significant importance and for issuers of electronic money tokens (EMT) of significant importance already confer direct supervisory powers on the European Banking Authority (EBA), ensuring effective control of the risks borne by these assets. The system for significant CASP should draw inspiration from this, as well as from the Single Supervisory Mechanism, and be based on a genuine transfer of powers to ESMA, combining authorization and centralized supervision at the European level.

**The AMF, the FMA and the Consob therefore support the introduction of a mechanism for the direct supervision of significant CASP by ESMA, to avoid fragmentation in the supervision of crypto-asset markets.** This mechanism, already proposed by ESMA as part of its work on the attractiveness of European capital markets<sup>6</sup>, and by the European

<sup>1</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets

<sup>2</sup> Especially, recommendation 2 of the IOSCO report: [Policy Recommendations for Crypto and Digital Asset Markets](#)

<sup>3</sup> Especially, recommendation 9 of the FSB report: [High-level Recommendations for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets](#)

<sup>4</sup> ESMA report on Trends, Risks and Vulnerabilities published on April 10, 2024: [ESMA TRV Risk Analysis, Crypto assets: Market structures and EU relevance](#)

<sup>5</sup> Title V, Chapter 5 of MiCA Regulation

<sup>6</sup> ESMA position paper: [Building more effective and attractive capital markets in the EU](#)

Commission in its strategy for a Savings and Investment Union of March 19, 2025<sup>7</sup>, would grant ESMA powers of approval, supervision and direct sanction over these players. This direct supervision by ESMA of large CASPs could be implemented without prejudice to granting ESMA additional supervisory powers on any non-significant player under EU supervision, on a case-by-case basis, according to specific risks presented and via a legally sound process.

Direct European supervision would ensure consistent application of the rules, more effective oversight of crypto-asset markets, and enhanced protection for European investors. It could also reduce supervision costs for players, and be consistent with the allocation of supervisory powers granted to the European Anti-Money Laundering Authority (AMLA), which could be exercised as of 2028 with respect to certain CASPs or their groups<sup>8</sup>. Lastly, the introduction of centralized European supervision would ensure streamlined adoption of standards aimed at clarifying the texts adopted by the co-legislators, with the aim of ensuring convergent supervisory practices and warding off the risk of regulatory arbitrage between Member States.

## Priority 2: Tighter rules for global platforms

The recent international work mentioned above has highlighted that international providers of multiple services on crypto-assets present significant risks to investors and to the stability of crypto-asset markets, in particular due to potential conflicts of interest inherent to their structure, in which numerous intra-group transactions make opaque the conditions under which such services are provided. In its opinion addressed to the Commission on the technical standards applicable to CASP with regard to the management of conflicts of interest<sup>9</sup>, ESMA reiterated the capital importance of maintaining alignment between the level of requirements in MiCA and international standards.

**The AMF, the FMA and the Consob therefore call on the European co-legislators to strengthen the MiCA requirements applying to these conglomerates, in order to limit the risks they pose to markets and investors.** In particular, with regard to crypto-asset platforms, the three authorities note that certain major platforms make use of models whereby entities legally situated in third countries access customers located in the EU through brokers authorized in Europe as CASPs that simply route orders, without the exchange platform itself being located in the Union. Such models complicate the supervision of these players by national authorities, insofar as the key decisions and operations linked to trading activities on the platform's order book take place outside of the EU, and order flows can be difficult to trace, as authorities do not have access to data relating to the resulting transactions. Investors wishing to place orders on these platforms may also not benefit from the protections offered by MiCA, including the prohibition on the platform to carry out matched principal trading without the customer's consent, protections around the resilience of its systems to cyber-security risks, protections around the detection and prevention of market abuse, and the transparency provided on prices and volumes of crypto-assets traded. These particularities have also been highlighted in the work of ESMA on the application of MiCA<sup>10</sup> and finally led to the adoption of Q&A No 2579 on shared order book<sup>11</sup>.

More generally, the AMF, the FMA and the Consob note that the activity of third-country platforms and brokers operating with EU customers under the concept of reverse solicitation is intrinsically problematic for the effectiveness of MiCA and should be limited as far as possible.

**The AMF, the FMA and the Consob therefore propose that the European regulation should make it mandatory for any European intermediary executing orders on crypto-assets on behalf of investors to execute these orders on the order book of a platform subject to MiCA, or to equivalent regulation.** The compliance of a platform with equivalent regulation should be assessed by the European Commission, taking into account international standards.

More generally, MiCA should make the delegation of essential functions by a CASP to a third-country entity the subject of pre-existing criteria, notably the existence of legislation "equivalent" to MiCA in the third-country jurisdiction of that entity, and the establishment of a cooperation agreement with the supervisory authority of that jurisdiction in order to

<sup>7</sup> Commission's communication: [A strategy to foster citizens' wealth and economic competitiveness in the EU](#)

<sup>8</sup> If they have significant cross-border activity and have inherent and residual risk profiles that are among the highest of the entities assessed as part of the selection procedure starting in 2027.

<sup>9</sup> ESMA opinion of 24 January 2025: [Opinion on regulatory technical standards specifying certain requirements in relation to conflicts of interest for crypto-asset service providers under the Markets in Crypto-Assets Regulation \(MiCA\)](#)

<sup>10</sup> ESMA opinion of 31 July 2024: [Opinion to support the convergent application of MiCA](#)

<sup>11</sup> [ESMA Q&A 2579](#)

**prevent any circumvention of the regulation.** Alternatively, MiCA could permit the third country intragroup service provider to subject itself under full extra-territorial supervision of the CASP's home NCA or of ESMA.

### Priority 3: Better supervision of service providers facing cyberthreats

Operating in a fully digitalized system, CASPs are highly vulnerable to cyber-attacks. The European Regulation DORA (Digital Operational Resilience Act)<sup>12</sup> marks an important step forward in imposing high standards of digital resilience on CASPs. However, its full implementation remains crucial to strengthening the protection of crypto-asset markets against cyber threats.

The first months of application have shown that compliance with the cyber-security requirements imposed by the texts is a major challenge for the players involved, as well as for the national authorities, who must check that these requirements are met before granting CASP approval. In this respect, it seems more essential than ever to give the authorities the means to effectively supervise the cyber-security protection mechanisms put in place by providers that are subject to MiCA, in order to guarantee the security of their assets, investor confidence and, ultimately, the credibility of the crypto-asset sector.

**To this end, MiCA should require all candidates for CASP status to undergo a cyber security audit by independent and competent providers, before being granted authorisation,** in order to assess the CASP candidate's compliance with state-of-the-art cyber security requirements, as well as their ability to prevent and react effectively to cyber-attacks. This audit<sup>13</sup>, that would be a fundamental measure to guarantee the effectiveness and operational control of cyber risk, should be renewed at regular intervals to take account of changes in practices and of any new risks that may emerge, as well as it should extend to entities already authorised as CASPs whenever the new rules will have been introduced. The regime should focus in particular on measures to ensure the safekeeping of crypto-assets and to counter the risks inherent to the sector (notably any compromise of wallets holding crypto-assets, data leaks, denial-of-service attacks, identity theft, and the inability to investigate in the event of an incident or fraudulent activity). The independence and competence of the service providers in charge of carrying out such an audit should be defined in a harmonized Europe-wide certification scheme for cyber security auditors, resulting from the application of European Regulation 2019/881 on cybersecurity certification for information and communication technologies.

### Priority 4: Creating a one-stop shop for token offerings

The current system for token offerings requires issuers or offerors to notify their offers to the national authorities, which must then transmit this information to ESMA, within stringent deadlines and without clear indications (in the MiCAR text) whether scrutiny of the information provided is requested from the receiving authority before the offer starts in its own jurisdiction.

In addition, the AMF, the FMA and the Consob note that crypto-asset offerings are generally pan-European: they make heavy use of the passporting mechanism and almost systematically target most member states. Maintaining a fragmented system, where each national authority receives similar passport filings or notifications, generates risks of inconsistent document processing, complexity for issuers or offerors, and unnecessary administrative costs for authorities. Therefore, on condition that the material discipline is reviewed to better specify what **level of scrutiny should be performed** before an offer starts in one or more countries, further reflections could be conducted on the opportunity **to create a one-stop shop at the European level**, under the responsibility of ESMA, beyond the centralized management of the "white paper" register<sup>14</sup>. This new system could offer a streamlined procedure and provide consistent application of the rules.

<sup>12</sup> Regulation (EU) 2022/2554 of 14 December 2022 on digital operational resilience

<sup>13</sup> Law No. 2019-486 of 22 May 2019 (PACTE law) on the growth and transformation of businesses allowed in France the AMF to require such audit.

<sup>14</sup> Article 109 of MiCA