


# Crypto monnaies et crypto actifs : Principaux concepts et Règlement MiCA

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Blockchain

Virtual assets

DLT

Bitcoin

Hacking

Crypto-assets

Crypto currencies

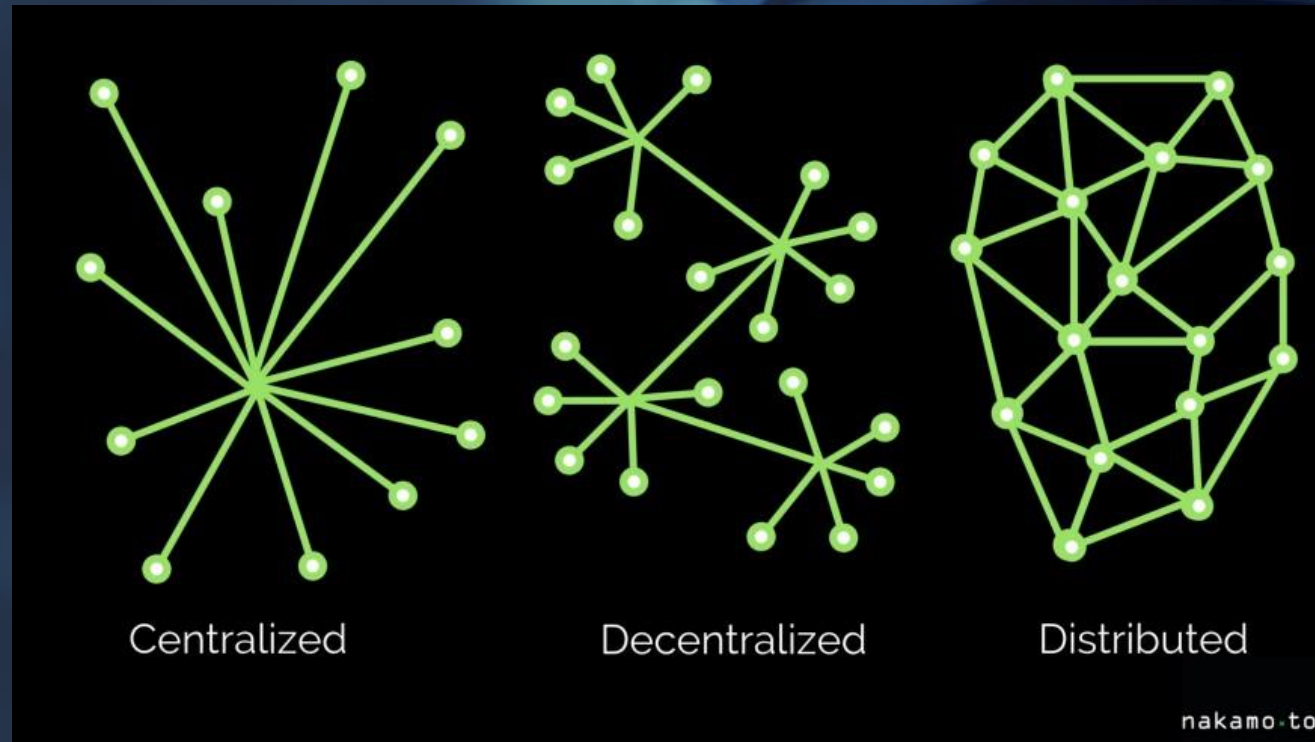
Stablecoins

Pseudonymity

Ponzi Schemes

NFT

# What is/was DLT ?



(De)Centralisation refers to the concept of CONTROL, while distribution refers to physical LOCATION  
Reminder: DeFi refers to « Decentralised », therefore « DeFi » and « DLT » in the same phrase either mean something peculiar or ... nothing!

# Blockchain

## DLT

Blockchain is only a type of DLT that is Distributed but also Decentralised

Not all DLTs are Blockchain

Not all Crypto-assets rely on a Blockchain

# Crypto is not money

While it can be used occasionally as money, it cannot replace fiat money in a capitalistic system. The control of humans by humans requires the “flexibility” that crypto algorithms do not have.

## Crypto is a decentralisation of assets but not of fiat money

Crypto provides means for monetary functions along with a plethora of new technologies stemming from a single concept: it cannot be controlled or manipulated because there is no trusted third party in transactions.

# What is MiCA ?

A great opportunity for the professionals of the financial sector

## It is not an ordinary regulation

Acknowledges an advantage to the heavily regulated professionals of the financial sector

# Authorisation regime

For technology CA service providers

# Notification regime

For the large majority of Professionals of the financial sector that wish to provide CA services

# Current regime:

CSSF guidance on virtual assets (note the underlined)

Barred from investing in virtual assets (directly or indirectly): UCITS, UCI addressing to non-professional customers, Pension Funds

AIF addressing to professional investors may invest in virtual assets provided that the AIFM obtains authorisation and has adequate internal control functions

Credit institutions cannot open bank accounts (e.g. current accounts) in virtual assets; cannot take deposits in virtual currencies and cannot facilitate or execute the settlement of payments in virtual currencies



# Crypto Assets Service Provider

## INVESTMENT FIRMS

Ancillary service of Safekeeping and administration of financial instruments for the account of clients

Portfolio management

Operation of an MTF & Operation of an OTF

Dealing on own account (Art. 1(34) of the Law of 30 May 2018)

Execution of orders on behalf of clients (Art. 1(22) of the Law of 30 May 2018)

Placing of financial instruments with & without a firm commitment basis

Reception and transmission of orders in relation to one or more financial instruments

Investment advice (Art. 1-6h of the Law of 5 April 1993)

## MICA TRANSLATION

Custody and administration of crypto-assets on behalf of third parties

Providing portfolio management on crypto-assets

Operation of a trading platform for crypto-assets

Exchange of crypto-assets for funds or for other crypto-assets

Execution of orders for crypto-assets on behalf of third parties

Placing of crypto-assets

Reception and transmission of orders for crypto-assets on behalf of third parties

Providing advice on crypto-assets

# Crypto Assets Service Provider

## MANAGEMENT COMPANY OF A UCITS OR AN AIFM

Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision

Non-core service of reception and transmission of orders in relation to financial instruments

Non-core service of investment advice

## MICA TRANSLATION

Providing portfolio management on crypto-assets

Reception and transmission of orders for crypto-assets on behalf of third parties

Providing advice on crypto-assets

# Crypto Assets Service Provider

## CENTRAL SECURITIES DEPOSITORY

Providing, maintaining or operating securities accounts in relation to the 'settlement service'

## MICA TRANSLATION

Custody and administration of crypto-assets on behalf of third parties

# Crypto Assets Service Provider

## ELECTRONIC MONEY INSTITUTION

May only provide the crypto-asset services of:

- “custody and administration of crypto-assets on behalf of third parties”; and
- “providing transfer services for crypto-assets on behalf of third parties”

# Crypto Assets Service Provider

## CENTRAL SECURITIES DEPOSITORY (CSD)

Providing, maintaining or operating securities accounts in relation to the 'settlement service'

# Crypto Assets Service Provider

## CREDIT INSTITUTIONS

May provide all crypto-assets services listed by MiCA ([ARTICLE 3-1\(9\) MICA](#)).

Custody and administration of CA on behalf of third parties

Operation of a trading platform for CA

Exchange of crypto-assets for funds

Exchange among crypto-assets

Execution of orders for crypto-assets on behalf of third parties

Placing of crypto-assets

Transfer services for CA on behalf of third parties

Reception/transmission of orders for CA on behalf of third parties

Advice on crypto-assets

Portfolio management on crypto-assets

# Reverse Solicitation

## EXCLUSION FROM AUTHORISATION REGIME

However under ESMA Supervision

No authorisation required

However does not apply to promotion and advertising

Regardless of contractual clauses

Without prejudice to intragroup relationships

ESMA will issue guidelines

# Definitions

## Assets vs. Currencies

*Tip: do not refer to currencies unless you are perfectly aware of the differences*

### Crypto Assets (MiCA)

#### Virtual Assets (FATF)

Virtual Currencies (Lux AML/CFT Law art 1(20a +b)+ EU Dir. 2015/849 art 3(18))

Crypto Currencies (undefined as a legal term)



# Definitions

## CA vs. VA

Not the same concepts, not the same instruments, not the same objectives... however similar !

### Crypto-asset (MiCA)

Digital representation of a value or a right which may be transferred and stored electronically, using DLT or similar technology (Art. 31. (2) MiCA)

### Virtual asset (FATF)

Digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.

Virtual assets do not include digital representations of fiat currencies, securities and other financial asset that are already covered elsewhere in the FATF Recommendations. (FATF recommendations, definitions)

# Which services ?

## CASP vs. VASP

### Crypto Asset Service Provider (MiCA)

- Custody and administration of CA on behalf of third parties
- Operation of a trading platform for CA
- Exchange of crypto-assets for funds
- Exchange among crypto-assets
- Execution of orders for crypto-assets on behalf of third parties
- Placing of crypto-assets
- Transfer services for CA on behalf of third parties
- Reception/transmission of orders for CA on behalf of third parties
- Advice on crypto-assets
- Portfolio management on crypto-assets

### Virtual Asset Service Provider (FATF)

- Exchange between VA and fiat currencies
- Exchange between one or more forms of VA
- Transfer of Virtual assets
- Safekeeping or administration of Virtual assets
- Participation in and provision of financial services related to an issuer's offer or sale of a Virtual asset

# Crypto-assets that MiCA covers?

Three exclusive categories:

## Electronic money tokens (EMT)

Purports to maintain a stable value by referencing to the value of **one official currency** (*translation: Fiat collateralised or algorithmic stablecoins pegged to one single currency*)

MiCA's latest version also includes, in an unorthodox manner, the "electronic money" that was expressly excluded in the previous versions. As a result, the "electronic money" now seems to have a confusing trailing "token" regardless whether actual tokens are or not involved.

## Asset-referenced tokens (ART)

Not an EMT, that purports to maintain a stable value by referencing to **any other value or right or a combination thereof including one or more official currencies.** (*translation:*

*All other stablecoins, algorithmic, collateralised or backed, including through fiat or crypto*)

## Other tokens

Not ART, Not EMT... but other CA... that may(!) include utility tokens...

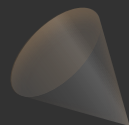
*Despite its absence of definition, it is the most important category, covering all crypto-assets including sometimes those that may be excluded...*

*"Utility tokens" are only intended to provide access to a good or a service supplied by the issuer of that token*

# Crypto-assets that MiCA does not cover

Exceptions from “other CA”

Financial instruments, deposits, funds, securitisation positions, reinsurance and retrocession contracts, pension products, occupational pension schemes, individual pension products, pan-European Personal Pension Product, Social security schemes, CA that are technically impossible to transfer (soulbound tokens), CA that are unique and not fungible (NFT), Free CA, CA that are automatically created as a reward, “utility tokens” which represents the purchase of an existing good or service, CA when the holder has only the right to use them in exchange for goods and services... all the above with exceptions and their exceptions to exceptions !



# Offerors & Issuers

The non-definitions of MiCA

## Offerors

An 'offeror' of crypto-assets is any natural or legal person, or other undertaking, or the issuer, which offers crypto-assets to the public (article 3-1(7a) MiCA).

## Issuers

An 'issuer of crypto-assets' means the (...) person (...) who issues the crypto-assets (article 3-1(6) MiCA).

Offering to the public is defined as a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the CAs to be offered, so as to enable potential holders to decide whether to purchase those CAs. (article 3-1(6) MiCA).

# Offerors & Issuers



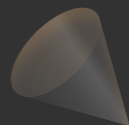
The non-definitions of MiCA

## Issuers

An ‘issuer of crypto-assets’ means the (...) person (...) who issues the crypto-assets (article 3-1(6) MiCA).

Not a definition but : ‘issuers of crypto-assets’ are entities which **have control over the creation of CA** (Recital (11) MiCA).

How a CA that relies on a Blockchain (which is of the type “*not an EMT and not an ART*”) would find such an “issuer” is a mystery ...? Does writing code or generating a first block confers “*control over the creation of CA*” ?



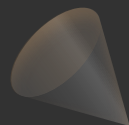
# Could MiCA have prevented the FTX debacle ?

Speculations corner

The deputy director general of the European Commission's financial stability unit, declares :

*“no companies providing crypto assets in the EU would have been allowed to be organized, [or] perhaps it's better to say, disorganized, in the way FTX reportedly was.”*

However, the above assumes that FTX was located in the EU, and/or that no reverse solicitation ever existed.  
The reality may prove otherwise...



# Thank You !

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