



2020/0265(COD)

25.2.2021

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive (EU) 2019/1937 (COM(2020)0593 – C9-0306/2020 – 2020/0265(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Stefan Berger

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive (EU) 2019/1937 (COM(2020)0593 – C9-0306/2020 – 2020/0265(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0593),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0306/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinion of the European Central Bank of ...,¹
 - having regard to the opinion of the European Economic and Social Committee of ...,²
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 29

Text proposed by the Commission

Amendment

(29) A competent authority should refuse authorisation where the prospective

(29) A competent authority should **be obliged to** refuse authorisation where the

¹ OJ C, 0.0.0000, p. 0. / Not yet published in the Official Journal.

² OJ C, 0.0.0000, p. 0. / Not yet published in the Official Journal.

issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens *is* referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with *a non-binding* opinion on the prospective issuer's application. Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements.

prospective issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. The competent authority should *be obliged to* consult the EBA and ESMA and, where the asset-referenced tokens *are* referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with *an* opinion on the prospective issuer's application. *Opinions should be non-binding with the exception of those of the ECB and the Member States' central banks on monetary policy enforcement and ensuring the secure handling of payments.* Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements.

Or. de

Amendment 2

Proposal for a regulation

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

1. 'distributed ledger technology' or 'DLT' means a type of technology that *support* the *distributed recording of*

Amendment

1. 'distributed ledger technology' or 'DLT' means a type of technology that *relates to the protocols and supporting*

encrypted data;

infrastructure enabling computers in different locations to propose and validate transactions and create unalterable data records in a synchronised way over a network;

Or. de

Justification

The definition of DLT does not match the general interpretation of DLT. Existing crypto-assets on the basis of DLT such as Ethereum are not included in the definition in MiCA as they are not encrypted. If MiCA is limited to DLT, at the very least a definition of DLT should be used which better illustrates the general interpretation of DLT. In particular, encryption should not be mentioned in the definition.

Amendment 3

Proposal for a regulation

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

4. ‘electronic money token’ or ‘e-money token’ means a type of crypto-asset the main purpose of which is to be used as a means of **exchange** and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;

Amendment

4. ‘electronic money token’ or ‘e-money token’ means a type of crypto-asset the main purpose of which is to be used as a means of **payment** and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;

Or. de

Justification

EMTs are described as means of payment in the recitals. This definition should be used consistently in the text.

Amendment 4

Proposal for a regulation

Article 3 – paragraph 1 – point 5

Text proposed by the Commission

5. ‘utility token’ means a type of crypto-asset which is intended to provide digital access to a good or service,

Amendment

5. ‘utility token’ means a type of **fungible** crypto-asset which is intended to provide digital access to a good or service,

available on DLT, and is only accepted by the issuer of that token;

available on DLT, and is only accepted by the issuer of that token;

Or. de

Justification

Necessary distinction from assets which use DLT as the technology but do not carry transferable content. The applicability of this Regulation must not depend as a matter of principle, and automatically, on the carrier technology used. The purpose of the token, not the underlying technology, must be the focus of the approach when determining the classification.

Amendment 5

Proposal for a regulation Article 5 – paragraph 9

Text proposed by the Commission

(9) The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ***a language customary in the sphere of international finance.***

Amendment

(9) The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ***English.***

Or. de

Justification

The white paper should be drawn up in an official language of the EU or in English. Documents drawn up in non-EU languages should be inadmissible for the purposes of this Regulation.

Amendment 6

Proposal for a regulation Article 18 – paragraph 4

Text proposed by the Commission

(4) The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue ***a non-binding*** opinion on the application and transmit their ***non-binding*** opinions to the

Amendment

(4) The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months of receiving the draft decision and the application file, issue ***an*** opinion on the application and transmit their opinions to the competent authority concerned.

competent authority concerned. That competent authority shall duly consider those **non-binding** opinions and the observations and comments of the applicant issuer.

Opinions should be non-binding with the exception of those of the ECB and the Member States' central banks on monetary policy enforcement and ensuring the secure handling of payments. The competent authority shall duly consider those opinions and the observations and comments of the applicant issuer. ***If the ECB delivers a negative opinion because of monetary policy considerations, the competent authority should refuse the application for authorisation and inform the applicant issuer of the decision.***

Or. de

Justification

Asset-referenced tokens can achieve market volumes which might have an impact on monetary security in the euro area. This should be taken into account by involving the ECB accordingly in the form of mandatory positive certification.

Amendment 7

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

(1) Competent authorities shall, within one month **after having received** the **non-binding** opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer **and**, and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

Amendment

(1) Competent authorities shall, within one month **of receiving** the opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

Or. de

Amendment 8

Proposal for a regulation Article 31 – paragraph 1 – subparagraph 1

Text proposed by the Commission

(1) Issuers of asset-referenced tokens shall, at all times, have in place own funds equal to an amount of at least the **higher** of the following:

- (a) EUR 350 000;
- (b) 2 % of the average amount of the reserve assets referred to in Article 32.

Amendment

(1) Issuers of asset-referenced tokens shall, at all times, have in place own funds equal to an amount of at least the **highest** of the following:

- (a) EUR 350 000;
- (b) 2% of the average amount of the reserve assets referred to in Article 32.

(ba) a quarter of the fixed overheads of the preceding year, which shall be reviewed annually and calculated in accordance with Article 60(6) of this Regulation.

Or. de

Justification

The basis for calculating the own funds requirements for ART issuers should be comparable to that used for other market actors, to ensure a level playing field. This is not the case for the rate of 2% (or 3% for significant ARTs) given in the proposal for a regulation. The rules on capital requirements for investment firms, which are subject to the CRR, should therefore also apply to ART issuers: in general, 25% of the fixed overheads of the preceding year (Article 97 CRR).

Amendment 9

**Proposal for a regulation
Article 37 – paragraph 2**

Text proposed by the Commission

(2) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an issuer of asset-referenced tokens (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below **10 %**, 20 %, 30 % or 50 % or so that the issuer of asset-

Amendment

(2) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an issuer of asset-referenced tokens (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the issuer of asset-

referenced tokens would cease to be that person's subsidiary.

referenced tokens would cease to be that person's subsidiary.

Or. de

Justification

The 10% threshold for the acquisition of an issuer of asset-referenced tokens seems too low. The purchase of ART-issuers follows the rules set out in MiFID II and EMD2. However, PSD2 (Article 6(1)), EMD (Article 3(3)) and MiFID II (Article 11(1)) give a qualifying holding of no lower than 20%. MiCA should not be different.

Amendment 10

Proposal for a regulation

Article 43 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The decision on whether to authorise e-money tokens should fall to the ECB. The ECB should refuse such authorisation if it cannot exclude a threat to financial stability or monetary sovereignty in the euro area because of the business model, anticipated market volume or other detrimental circumstances of the proposed e-money token. The ECB should adopt its decision within three months of receiving the complete application for authorisation and inform the applicant issuer of that decision within five working days of its adoption.

Or. de

Justification

E-money tokens can achieve market volumes which might have an impact on monetary security in the euro area. This should be taken into account by giving the ECB the appropriate decision-making power.

Amendment 11

Proposal for a regulation

Article 61 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

(9a) Crypto-asset service providers that are obliged entities as set out in Directive (EU) 2015/849 shall be provided, under this Directive, with effective procedures to prevent, detect and investigate money laundering and terrorist financing.

Or. de

Justification

AML and ATF must be a key concern when dealing with crypto-assets. The added value of crypto for users stems from their cross-border and digital use as a means of payment and exchange. This is another reason why a level playing field between established payment service providers and new market participants must be ensured according to the principle of 'the same rules for the same risks'.

Amendment 12

Proposal for a regulation

Article 61 – paragraph 9 b (new)

Text proposed by the Commission

Amendment

(9b) Crypto-asset service providers which transfer crypto-assets for payment purposes must have internal control mechanisms and effective procedures for full traceability of all crypto-asset transfers within the EEA and of transfers of crypto-assets from the EEA to other regions and from other regions to the EEA, in accordance with the provisions of Regulation (EU) 2015/847.

Or. de

Justification

AML and ATF must be a key concern when dealing with crypto-assets. The added value of crypto for users stems from their cross-border and digital use as a means of payment and exchange. This is another reason why a level playing field between established payment service providers and new market participants must be ensured according to the principle of 'the same rules for the same risks'.

Amendment 13

Proposal for a regulation Article 66 a (new)

Text proposed by the Commission

Amendment

Article 66a

Orderly wind-down of providers

Crypto-asset service providers shall have in place a plan that is appropriate to support an orderly wind-down of their activities under applicable national law. That plan shall demonstrate the ability of the crypto-asset service provider to carry out an orderly wind-down without causing undue economic harm to its clients.

Or. de

Justification

Issuers of asset-referenced tokens should draw up an appropriate plan for an orderly wind-down (see Article 42). This should also be required of crypto-asset service providers, because of the risk factor.

Amendment 14

Proposal for a regulation Article 74 – paragraph 2

Text proposed by the Commission

Amendment

(2) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a crypto-asset service provider (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below **10 %**, 20 %, 30 % or 50 % or so that the crypto-asset service provider would cease to be that

(2) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a crypto-asset service provider (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the crypto-asset service provider would cease to be that person’s

person's subsidiary.

subsidiary.

Or. de

Justification

The purchase of crypto-asset service providers follows the rules set out in MiFID II and EMD2. Qualifying holdings start at 10% in MiCA. However, PSD2 (Article 6(1)), EMD (Article 3(3)) and MiFID II (Article 11(1)) give a qualifying holding of no lower than 20%. MiCA should not be different.