
Guiding principles on how to approach the final phase of the MiCA trilogue

This list of key principles is meant to support policy-makers in their sanity check of the Markets in Crypto Assets (MiCA) Regulation, during the second political trilogue on 18th May and beyond.

MiCA Covers Financial Crypto-assets

1. MiCA should govern crypto-assets that are financial in nature; crypto-assets with other functions and features should default first to existing regulation of asset of like kind.

Consumer Protection

In approaching every article, the key underlying questions should always be:

2. Does this provision drive innovation outside of Europe?
3. Will this reduce the choices for EU consumers and push them to rely on non-EU players?
4. Does it ensure legal certainty for financial innovation to originate in Europe?
5. Does it allow for the safe development of innovative software which embeds EU values?
6. A good regulatory approach should never lead to grey-zoning consumer activities at EU level.

DeFi

7. DeFi activities should be acknowledged and clearly exempted from MiCA. (The reasonable next steps are an in-depth analysis by the European Commission and a potential public consultation to prepare the next regulatory steps for the sector.)
8. Equally, decentralised stablecoins, including algorithmic stablecoins, should be exempted from the scope, as the MiCA framework for asset referenced tokens is not appropriately designed for these and, therefore, there should be a separate regulatory framework that is tailored to address the distinct structure and risks presented by these crypto-assets.
9. Freedom of peer-to-peer transactions should continue to be maintained, directly on blockchains, through personal wallets and other software.

NFTs

10. NFT activities should not be included in the scope of MiCA. The only reasonable inclusion could be subjecting NFTs issuers to the White Paper requirements outlined in Title II. The reasoning for this is as follows:
 - a) The risk of rushing the inclusion of NFTs in the scope of MiCA is far higher than the potential upside such an inclusion could result in.
 - b) It must be clear that platforms that offer self-issued NFTs must not be included, as this would for example capture NFTs issued by artists, photographers, musicians and other content creators, as well as event organisers, professional services, art galleries, video gaming platforms, etc.
 - c) Equally, there is the risk that platforms such as Ebay, Etsy, Willhaben, Allegro, Facile.it, etc. would be captured by the CASP definition as soon as they allow users to trade digital assets, including NFTs.

- d) Further, trading platforms for NFTs that do not provide custody of the assets should not be a CASP.
- e) If Europe nevertheless decides to regulate the “trading only” platforms for NFTs, it should not include platforms that do not custody the assets. The main risk to consumers (whether creators, sellers or buyers) is from a platform that loses assets it is holding on behalf of a consumer.
- f) The ideal scenario would be an impact assessment with a follow-up consultation to create a bespoke regime for NFTs in parallel to the MiCA review.

Stablecoins

- 11. MiCA needs to enable European companies to compete in the currently USD-denominated market by creating an innovation-friendly environment through regulation.
- 12. The key question always should be “does the regulatory approach foster the creation of stablecoins denominated in Euro, to complement a Digital Euro issued by the ECB?”

Staking

- 13. MiCA should not prevent the staking of any crypto asset.

AML Provisions

- 14. MiCA should not mix up its focus with AML provisions that are covered in the AML package

Sustainability

- 15. As several other EU initiatives aimed at greening the financial sector, MiCA should focus on positive incentives rather than negative provisions. The EU’s regulatory approach should facilitate investments into sustainable crypto assets projects.

Timeline

- 16. It is key to find the balance between a timely implementation and legal certainty. Therefore, MiCA should enter into force 12 months after its adoption.

Link with TFR

- 17. Last but not least, it should be considered to create the category of ‘significant CASPs’ in MiCA to allow for the distinction and different timelines to implement the TFR and protect SMEs from being overwhelmed by the implementation costs of the Regulation.