UNIVERSIDADE CATÓLICA PORTUGUESA

The Regulatory Impact of Digital Currencies on EU based businesses

The Freedom to Provide Services under MiCA

David Kagan

Master's in Law

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Agradecimentos

Aos meus Pais, e Gatos,

Aos Mosqueteiros,

A Vénus,

A Hermes.

“In all chaos there is a cosmos, in all disorder a secret order.”

- Carl Jung

“I can see the sun, but even if I cannot see the sun, I know that it exists. And to know that the sun is there - that is living.”

- Fyodor Dostoevsky

Abstract

The Markets in Crypto-Assets Regulation is the European Union's most ambitious attempt to create a single harmonized legal framework for digital currencies. Redacted in a technological neutral language, this Regulations aims to resolve legal ambiguity, improve consumer protection, and guarantee financial stability for retail consumers, and, consequentially, guarantee a stable Internal Market.

This dissertation examines the regulatory impact of the Markets in Crypto-Assets Regulation on EU based businesses, focusing on market access, competition, proportionality and the ability to offer services freely under EU law. This study evaluates whether it simplifies cross-border transactions or creates regulatory barriers for businesses within its interpretation and application.

<u>Keywords</u>: Markets in Crypto-Assets Regulation, EU Financial Regulation; Digital Currencies; Legal Harmonization; Internal Market; Proportionality Principle; Freedom to Provide Services; Freedom to Conduct Business; Regulatory Barriers.

Resumo

O Regulamento Mercados de Criptoativos é a tentativa mais ambiciosa da União Europeia de criar um quadro jurídico único e harmonizado para as moedas digitais. Redigido numa linguagem tecnologicamente neutra, este Regulamento visa resolver a ambiguidade jurídica, melhorar a proteção dos consumidores retalhistas e, consequentemente, garantir um Mercado Interno estável.

A presente dissertação analisa o impacto regulamentar do Regulamento Mercados de Criptoativos nas empresas sediadas na UE, concentrando-se no acesso ao mercado, na concorrência, na proporcionalidade e na capacidade de oferecer serviços livremente ao abrigo da legislação da UE. Este estudo avalia se o regulamento simplifica as transações transfronteiriças ou cria barreiras regulamentares para as empresas no âmbito da sua interpretação.

Palavras-chave: Regulamento Mercados de Criptoativos, Regulamento Financeiro da UE, Moedas Digitais, Harmonização Jurídica; Mercado Interno; Princípio da Proporcionalidade; Liberdade de Prestação de Serviços; Liberdade de Empresa; Barreiras Regulamentares.

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Advertency

Due to the progressive implementation timeline of the Markets in Crypto-Assets Regulation, the thorough investigation and analysis of the legal writings of the Regulation was concluded on December 30, 2024 – date when the Regulation entered into full force. The nature of this Regulation as a developing regulatory framework during the investigation stage meant that certain practical implications and interpretive challenges would only emerge through subsequent application and judicial review.

Consequentially, this dissertation should be understood as fundamentally prospective in nature, adopting a critical stance that attempts to anticipate potential implementation problems rather than documenting established case law application.

Acronyms and Abbreviations

AML	Anti-Money Laundering
AMLD	Anti-Money Laundering Directive
ARTs	Asset-Referenced Tokens
CASPs	Crypto-Asset Service Providers
CDD	Customer Due Diligence
CFR	Charter of Fundamental Rights of the European Union
CFT	Counter-Terrorist Financing
CJEU	Court of Justice of the European Union
DeFi	Decentralized Finance
DLT	Distributed Ledger Technology
DORA	Digital Operational Resilience Act
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EMD	Electronic Money Directive
EMI	Electronic Money Institutions
EMT	Electronic Money Token
ESMA	European Securities and Markets Authority
EU	European Union
KYC	Know Your Customer
MiCA	Markets in Crypto-Assets Regulation
MiFID	Markets in Financial Instruments Directive
NCA	National Competent Authorities
NFT	Non-Fungible Token
SEA	Single European Act
SME	Small and Medium-sized Enterprises
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union.

Introduction

The Invisible Hand

Digital currency regulations in the European Union are at a turning point.

As Adam Smith's "invisible hand"[1] theory claims, markets work best when allowed to self-regulate, yet history has demonstrated that unregulated financial innovation can result in instability[2]. This dissertation sets out to navigate the shift from a disjointed digital finance landscape[3] to a regulated ecosystem under the Markets in Crypto-Assets Regulation (MiCA), much like the Greek mythological Charon's boat. With this analysis, we investigate whether MiCA protects business liberties or places undue limitations on digital currency companies doing business in the EU.

One must recall that the EU Internal Market is predominantly established within the founding roots of the Community – "The Union shall establish an internal market".[4] As so, the Internal Market is characterized by an area of allegorical freedom, in other words, without internal borders in which four main principles dominate the landscape: free movement of goods, persons, services and capital, all ensured in accordance within the writings of the TFEU. In so, the EU intends goods to move freely within the Union and services to be provided across Members States and attained by its people, freely.

Founded on four freedoms[5], one main underlining within the whole EU Internal Market ecosystem is that national measures that restrict the exercise of these freedoms

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[1] The phrase was used in *The Theory of Moral Sentiments*, which economist Adam Smith wrote in 1759, and again in *The Wealth of Nations* in 1776. According to the theory known as the "invisible hand," people behave in their own best interests, but in the end, their actions help markets and the economy as a whole. To put it another way, society is led toward the best decisions by an unseen hand rather than by a more obvious set of criteria.

[2] LONGWORTH David (2020) - *The Era of Digital Financial Innovation: Lessons from Economic History on Regulation*" Research. Toronto: C.D. Howe Institute

[3] "[…] the spread of new technologies […] affects the diffusion of financial innovation at large […]." from MARSZK, A., & LECHMAN, E. (2021) – *Reshaping financial systems: The role of ICT in the diffusion of financial innovations – Recent evidence from European countries. Technological Forecasting and Social Change*, 167, 120683 *ex vi* SHARPE, W. F. (1991) – *Capital asset prices with and without negative holdings*. The Journal of Finance, 46(2), 489–509.

[4] Article 3 paragraph 3 of the TEU.

[5] Enshrined by the Single European Act of 1986, "[t]he SEA introduced own major legislative innovations for the single market project. They are now found in Articles 26 and 114 TFEU", cfr. CRAIG, P., & DE BÚRCA, G. (2020) – *EU law: Text, cases, and materials*. Oxford University Press, p. 614; " 1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties. 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties. 3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.", cfr. Article 26 of the TFEU.

must not discriminate, in so far as, they must pursue a legitimate aim, are proportional to the objective at hand, and withstand the proportionality requirements that are appropriate to achieve a legitimate aim, and necessary to achieve said aim.

Since the boom of the world wide web era[6], the global landscape in which digital assets and physical assets coexist have become more and more customary than a distanced fantasy tale. As days pass, payments with physical money are being gradually set aside from traditional payment method, and the COVID-19 pandemic had a severe impact on that. [7]The nowadays rise of digital currency has brought a shift into financial systems, altering views on currency, stability, trust, and safety. This rapid expansion has been the result of the exposure to regulatory gaps, which have proven non-existent to withstand the *bull run* of the technological innovation of digital currency[8].

Plato's Theory of Two Worlds rests on the utopian world, embodying the idea of the changeless flawless ideal forms, and the non-perfect material reality that has stains of imperfection, leading to the disfigurement of reality. Such a dualism can give us a framework to understand how the EU legal norms are concretely carried out and by what means they are executed in the context of the Regulation. To be more precise, the way MiCA operates at a more theoretical level could be deemed as an ode the Greek philosopher of the diverse reflection to the application of the law.

One of the crucial aspects of this dissertation is to define the scope of the margin of appreciation that MiCA functions within the context of legal certainty and right to conduct business. These two values, embodying the "perfect world". As primary law obligations, they constraint the exercise of legislative power by EU institutions and have a gruesome impact on the law and order of MiCA. The legal right of freedom to conduct business which is granted by Article 16 of the Charter of Fundamental Rights of the European Union is embedded with the economic agents to pursue their activities with sufficient protection under the law. On the other hand, Legal certainty, a general doctrine

[6] This term refers to the period following the invention of the World-Wide Era by Tim Berners-Lee in 1989, which is deemed as the revolution of global communication, commerce, and information sharing. The adoption of the internet in the 1990s and the early 2000s must be seen, in my opinion, as the foundation of the digital economy: the rise of e-commerce platforms, and, crucially, the invention of the electronic payment system like PayPal (founded in 1998) facilitated the gradual shift from physical-based transactions to digital finance.

[7] TASKINSOY, J. (December 12, 2020) – *A Move Towards a Cashless Society Accelerates with the Novel Coronavirus Induced Global Lockdown*

[8] On the 31st of October of 2009, Satoshi Nakamoto released a whitepaper describing what would be a "A purely peer-to-peer version of electronic cash would allow online payments to be sent directly from one party to another without going through a financial institution". The following year,2009, Nakamoto had created the Bitcoin, first fully decentralized cryptocurrency that does not require any authority.

of EU law, implies that the markets must work within a stable legal system, and that this system must be transparent and coherent.

Being in its nature a Regulation, MiCA acts with direct effect and its provisions are therefore immediately applicable in all the Member States without needing national transposition. On the other hand, MiCA is a framework identifying the main aspects of regulation which entitles the Member States to have the final say in the enforcement procedure through their NCAs. This leads to a dual reality: while MiCA gives a harmonized set of rules, the practical enforcement may differ from one country to another, as the national supervisory strategies might lead to different interpretations and applications.

This dissertation will focus on how Member States, while carrying out the implementation of MiCA, may impact the Freedom to Provide Services of EU based businesses. However, it is also necessary to consider that the free of Movement of Capital may also be at play, as crypto-assets inherently involve financial transactions and may interact with broader EU financial regulations and third-country businesses.

To be able to assess if MiCA has reached its goals and whether it has potential restrictions, one must be aware of both the theoretical background of EU legal theory and its implementation. In light with Plato's Theory of Two: MiCA reflects the standardized regulatory design model specifying market stability, consumer protection, and legal transparency in comparison with Member States implementation measures.

The construction of a Regulation

The European Commission observed, under the FinTech Action Plan in 2018, that "[t]technological innovations has led to a new type of financial assets such as crypto-assets", consequentially "[t]heir use also presents risks, as has been witnessed by strong volatility of crypto-assets, fraud and operational weaknesses and vulnerabilities at crypto-asset exchanges"[9]. Jointly, in the ESMA Annual Report of 2019, in a dedicated subchapter for financial innovation and product risk analysis, ESMA had pointed out that it had "identified a number of concerns in the current financial regulatory framework regarding crypto-assets".[10] These bodies had come to an understanding that the majority of crypto-assets fall outside of the scope of already in force EU financial services legislation, such

[9] Communication From the Commission to The European Parliament, The Council, The European Central Bank, The European Economic and Social Committee and The Committee of The Regions Fintech Action Plan: For A More Competitive and Innovative European Financial Sector - Com/2018/0109 Final
[10] European Securities and Markets Authority. (2020). Annual report 2019 (ESMA20-95-1264).

as those that are defined as financial instruments[11] under Directive 2014/65/EU and those that do not.

On the 24th of September 2020, the European Commission brought to light a legislative proposal due to the increasing presence of digital finance in the European Economic landscape. The goal of this legislative proposal, which comes as a digital finance package, is to create "[…] stimulating environment for innovative businesses while mitigating the risks for investors and consumers […]"[12]. Well, this would mean that this legislative innovation would be accreted as a safe-net for the European Union's economic landscape, in the face of the elevated lack of legislative backbone for the highly present digital finance.

The said package contained a financial strategy for the digital new-world, on the one hand, a proposal for the Markets in Crypto-Assets Regulation[13], on the other, a proposal for the Digital Operational Resilience Act[14], not excluding a proposal for a pilot regulation for market infrastructures which are based on Distributed Ledger Technologies[15].[16]

Formally adopted as Regulation (EU) 2023/1114, the MiCA Regulation is the EU's most extensive attempt to regulate crypto-assets, guaranteeing market integrity, consumer safety, and financial stability while promoting technological innovation. To stop market manipulation and fraudulent schemes, it lays out precise guidelines for crypto-asset issuers and service providers, imposing stringent compliance standards. Stronger consumer protection measures are ensured by MiCA, which holds Crypto-Asset Service Providers (CASPs) accountable for investors' crypto-asset losses.

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[11] It must be pointed out that the term "financial instrument" remains unclear in relation to crypto-assets, mainly due to different transpositions into domestic legislation – consequentially, creates an unlevel field and opens space for regulatory arbitrage, raising uncertainty when interpretating the scope of MiCA; more in VONDRÁČKOVÁ, A., & HOBZA, M. (2024) – *MiCA regulation under scrutiny*. The Lawyer Quarterly, 14(1), 91–100.

[12] Council of the European Union. (2021, November 24). Digital finance package: Council reaches agreement on MiCA and DORA

[13] Council of the European Union. (2020). Proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets, and amending Directive (EU) 2019/1937 (ST-11053-2020-INIT).

[14] Council of the European Union. (2020). Proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets, and amending Directive (EU) 2019/1937 (ST-11053-2020-INIT).

[15] An innovative technology that enables operations and use of distributed ledgers, which are a means of information repository that keep records of transactions and that is shared across and synchronised between different distributed ledger technology network – as we can read by the combination of paragraphs 1 and 2 of Article 3 of the MiCA.

[16] Federal Financial Supervisory Authority (BaFin) Markets in Crypto-Assets Regulation (MiCAR). Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)

Despite being formally accepted in 2023, MiCA has only been applied within the EU landscape since December 30th, 2024.[17] In so far as, CASP need to accede for an authorization from domestic NCAs to conduct their activity.[18]

By striking a balance between the requirement for market stability and the encouragement of innovation and competition in the digital economy, MiCA represents a dramatic change in the European financial landscape as part of the EU's larger regulatory policy. The recitals of MiCA curate this scenario, precisely, by opening the Regulation’s recital with the first sentence as “[I]t is important to ensure that Union legislative acts on financial services are fit for the digital age and contribute to a future-proof economy that works for people, including by enabling the use of innovative technologies.”.[19]

The Freedom to Provide Services and EU Digital Currency Businesses

The Legal Backbone of the Freedom to Provide Services

The Treaty on the Functioning of the European Union (TFEU) guarantees four fundamental freedoms, and for the purposes of this dissertation we should underline the right to provide services. It is under the writings of Article 56 of the TFEU that the EU legislator gives us the reasoning for the said principle, since “[…] restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.”.[20] In other words, this principle underlines that business

[17]“Although most EU States have legal regimes applicable to crypto based on anti-money laundering directives, and so no legal vacuum occurs, the lack of national implementing rules may generate distortions in the market, by limiting the access of companies and businesses to an EU financial license (that can be passported to other EU Member States)” from PIRES, M. L. (2025, January 28) – *Implementation of MiCA in Portugal*. DLA Piper Insights.

[18] The Bank of Portugal, on the 3rd of January of 2025, has made a statement on the application of the European Regulation on the Crypto-Asset Market (MiCA) where it has pointed out that in the absence of being designated as an NCA for authorization proceedings it is not entitled to receive and appreciate any request for authorization on behalf of CASPs. This would mean that, as PIRES, M. L. (2025, January 28) – *Implementation of MiCA in Portugal.* DLA Piper Insights, points out in his writings, that until an implementational law is drafted where it would define the duration of the transitional period under MiCA and the NCAs responsible for the supervision of MiCA, in domestic grounds, any entity that has not been registered with the Bank of Portugal, and that have been exercising their activities, will have to wait for further legal notice.

[19] MICA 1st paragraph recital

[20] Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 3: Services - Article 56 (ex-Article 49 TEC)

established in one Member State, must be allowed to offer its services in another, without unnecessary barriers. However, it cannot be disregarded that there are, of course, certain restrictions that may be justified if they are non-discriminatory (neither directly nor indirectly discriminatory), based on legitimate public interest[21] objectives and proportionate[22], and necessary[23].

In the context of financial services, this principle has been critical in enabling cross-border banking, investment, and payment services within the EU. The introduction of frameworks such as MiFID II[24], in matters related to investment firms, and PSD2[25], for payment service providers, has further developed the freedom to provide services, by establishing a groundwork of harmonization of systems that allow cross-border financial activity. As digital currency is growing in popularity and is starting to be used on daily basis as classical, traditional, banking, the direct application of Article 56 of the TFEU on CASPs presents legal issues pertaining to legal clarity, regulatory framework, and market access.[26]

Application to Digital Currency Businesses and CASPs

Within the nature of digital currency businesses and CASPs, which operate in a digital environment, the freedom to provide services as established under Article 56 of the TFEU is highly beneficial as it guarantees the possibility to offer services in other EU Member States, having a prior establishment in the bearing Member State.

[21] Fidium Finanz AG (Case C-452/04)

[22] BODIROGA VUKOBRAT, N., & HORAK, H. (22 March 2013) – *Freedom to provide services in European and Croatian law*.

[23] Some authors consider this as a "criterion of causality", in BOURGOIGNIE, T., – *Consumer Law and the European community: Issues and prospects*, in: BOURGOIGNIE, T. TRUBEK, D. (1987) – *Consumer Law, Common Law, Common markets and Federalism in Europe and United States*, Vol. 3, Walter de Gruyter, Berlin-New York.

[24] The Markets in Financial Instruments Directive (MiFID) is a European regulation that enhances market transparency by standardizing the regulatory disclosures that companies doing business in the financial markets of the European Union are required to make.

[25] PSD2's primary goals are (i) to help create a more efficient and integrated European payments market; (ii) to introduce new players to further level the playing field for payment service providers; (iii) to make payments safer and more secure; and (iv) to improve protection for European businesses and consumers. Differently, PSD2 improves payment transaction security and consumer data protection while fostering innovation and competition in retail payments. From European Central Bank, (March 2018) – *The revised Payment Services Directive (PSD2)*.

[26] While national interpretation and application is at play, "[t]he impact of regulatory uncertainty on […] users is significant, highlighting the need for clear and balanced regulatory frameworks that promote innovation while ensuring regulatory compliance and consumer protection" from IKEGWU, C., UZOUGBO, N. S., & ADEWUSI, A. O. (2024). *Regulatory frameworks for decentralized finance (DeFi): Challenges and opportunities*. GSC Advanced Research and Reviews, 19(2), 116–129

Under the MiCA Regulation, in Article 3, paragraph 15, we read explicitly what the European Parliament and Council consider being a “crypto-asset service provider”: by which it is deemed to be a “legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services in accordance with Article 59”; and it is in the next paragraph[27] that we can finally understand what it is intended to be deemed as a “crypto-asset service”, typified as:

- providing custody and administration of crypto-assets on behalf of clients;
- operation of a trading platform for crypto-assets;
- exchange of crypto-assets for funds;
- exchange of crypto-assets for other crypto-assets;
- execution of orders for crypto-assets on behalf of clients;
- placing of crypto-assets;
- reception and transmission of orders for crypto-assets on behalf of clients;
- providing advice on crypto-assets;
- providing portfolio management on crypto-assets;
- providing transfer services for crypto-assets on behalf of clients;

In the following paragraphs of the same Article, the MiCA Regulations dives in depth and typifies each of the previous services and activities.

Precisely by the conjugation of both paragraph 15 and 16 from Article 3 of the MiCA Regulation we should be able to establish a solid ground of agreement that, by being legal persons, or, in other terms, by undertaking providing crypto-asset services on a professional basis there is a retribution nature in this activity, this would then tie the knot and confirm the implication that CASPs provide services commercially, it would then be eligible for protection under Article 56 TFEU. It is the ruling of the Court of Justice of the European Union (CJEU) that under Article 56 TFEU the term "service" always has been interpreted to consist of any economic activity rendered for payment, temporarily and without the provider being situated in the recipient's Member State. In Bond van Adverteerders v. Netherlands (C-352/85), the CJEU distinguished between completely non-commercial activities and found that a service occurs when a(n) activity/service is performed in exchange for financial consideration. In conformity, the Court emphasized in the case of Alpine Investments (C-384/93) that financial services,

[27] MiCA Article 3 paragraph 16.

those that are offered remotely, for example, the investment and brokerage operations, are fully covered by Article 56 TFEU, even if they are online or international in nature. Under MiCA, CASPs are directly subject to these principles since they are involved in commercial actives. Their operations correspond clearly to the CJEU's service-related regulations, as MiCA explicitly designates the service providers as professional organizations offering services in return for remuneration (Article 3(15) and (16) of MiCA). Therefore, restrictions imposed on CASPs' market access—whether through licensing hurdles, regulatory fragmentation, or inconsistent enforcement by National Competent Authorities (NCAs)—must be assessed against the proportionality test developed in Gebhard (C-55/94), ensuring they are necessary, appropriate, and do not unduly restrict fundamental freedoms. This reinforces the argument that MiCA, while harmonizing the regulatory landscape, must not create barriers that distort competition or limit the freedom to provide services within the EU Internal Market.[28]

MiCA and the Impact on EU-Based Businesses: Market Access, Licensing, and Compliance Burdens

What Are Crypto-Assets Under MiCA

The first specific legislative framework created by the European Union to provide a precise definition and regulatory categorisation for crypto-assets and the services that go along with them is the Markets in Crypto-Assets (MiCA) Regulation. Fundamentally, MiCA offers a thorough and technology-neutral definition of crypto-assets, guaranteeing that the law can continue to be adjusted to the swift rate of technological advancement in the field of digital assets. A crypto-asset is "a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology," according to Article 3(1)(5) of the MiCA.

[28] CRAIG, P., & DE BÚRCA, G. (2020) – *EU law: Text, cases, and materials*. Oxford University Press. P. 842, "In that sense any national rules, whether discriminatory or not, which may impede inter-state trade and mobility by affecting tee access of […] services from one national market to another is in principle caught by EU law and must be justified by the regulating state.".

In order to cover a broad range of digital assets, including those that might develop in the future, this definition is purposefully vague and adaptable. MiCA strives to stop regulatory arbitrage, in which companies create assets to get around the law, by avoiding categories that are too exact. The EU's awareness of the dynamic and inventive character of the crypto-asset ecosystem—which is marked by ongoing technological breakthroughs and the introduction of new asset types—is reflected in this approach.

To maintain the regulation's applicability and efficacy in the face of swift technical advancement, MiCA purposefully chose to define crypto-assets using language that is neutral to technology. Legally distinguishing crypto-assets, for the sake of interpretation of MiCA, which fall under financial instruments and other could make sense in a formal and conceptual point of view[29]. However, there seems to be no material benefit with doing so. A cornerstone of MiCA is its use of the principle of technological neutrality[30], with its application, it ensures that the Regulation remains applicable regardless of the underlying technology used in crypto-assets, thus, avoiding restrictive application as technologies evolve. By emphasising the purpose and significance of crypto-assets instead of their particular technical features, MiCA reduces the chance of becoming obsolete as new technologies are developed. [31] The principle of technological neutrality when it comes to Regulations is a common ground – dating back to the early days of Internet itself.[32] In the financial ecosystem, the concept was charged to complement the meaning of interoperability rules which would ultimately aim to harmonise the playing field.[33] Thus, with MiCA's broad definition of crypto-assets as "a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology", it pre-emptively brings possible new forms of crypto-assets within its scope of application - it underscores the digital representation of value

[29] ROLO, A.G. (2023). – *Out of Scope, Out of Mind, and Don't Say Decentralisation: Brief Remarks on the New MiCA Regulation*. European Law Blog, May.
[30] Under Recital 9 we can read: "Union legislative acts on financial services should be guided by the principles of 'same activities, same risks, same rules' and of technology neutrality. Therefore, crypto-assets that fall under existing Union legislative acts on financial services should remain regulated under the existing regulatory framework, regardless of the technology used for their issuance or their transfer, rather than this Regulation."
[31] TOMCZAK, T., (July 2022) – *Crypto-assets and crypto-assets' subcategories under MiCA Regulation*, Capital Markets Law Journal, Volume 17, Issue 3, July 2022, Pages 365–382.
[32] MATHIS, B. (2023) – *Should Crypto-Asset Regulation Be Technology-Neutral?* In Blockchain and Private International Law, Brill.
[33] LUCANTONI, P. (2019) – *Strumenti digitali e finanza*. In F. Maimeri & M. Mancini (Eds.), Quaderni di Ricerca Giuridica: della Consulenza Legale, Le nuove frontiere dei servizi bancari e di pagamento fra PSD 2, criptovalute e rivoluzione digitale (Vol. 87, pp. 291–313). Banca d'Italia.

and the use of distributed ledger technology or similar technology. [34] Nevertheless, implementing the principal of technological neutrality reveals a "cognitive bias", when it comes to established legal framework used as basis for amendments, the newer framework would be hooked toward previous ("legacy") technologies than neutral.[35]

Additionally, this strategy reduces the possibility of regulatory fragmentation in the internal market of the EU. Businesses might create crypto-assets that are not covered by MiCA's legal definition if it were overly precise, which would reduce the regulation's efficacy. To avoid being categorised as a crypto-asset under MiCA, a CASP might, for example, design a token that runs on a non-distributed ledger system. MiCA eliminates these gaps and guarantees fair competition for all market players by embracing a broad and technology-neutral definition.

Although MiCA offers a broad definition of crypto-assets, it also distinguishes between several kinds of crypto-assets, each of which is governed by distinct regulations. The distinct functionalities and risks connected to various kinds of digital assets are reflected in this classification. Under MiCA, there are three primary categories:

- Asset-Referenced Tokens (ARTs)[36], according to Article 3(1)(6), ARTs are crypto-assets that reference another value or right, such fiat money or a basket of assets, to maintain a constant worth. Under Title III of MiCA, ARTs are subject to strict regulatory restrictions, such as capital requirements, governance standards, and transparency duties.
- Electronic Money Tokens (EMTs)[37] are crypto-assets that serve as a payment method and constitute a claim on the issuer. According to the E-Money Directive (2009/110/EC), EMTs are essentially digital representations of electronic money. Like ARTs, EMTs must adhere to stringent regulations under Title II of MiCA, which include capital adequacy, authorization, and fund safekeeping.
- Other Crypto-Assets: Utility tokens and other digital assets that do not fit the definitions of EMTs or ARTs are included in this category. A blockchain

[34] ROLO, A.G. (2023) –*Out of Scope, Out of Mind, and Don't Say Decentralisation: Brief Remarks on the New MiCA Regulation.* European Law Blog, May.
[35] ROLO, A.G. (2023) –*Out of Scope, Out of Mind, and Don't Say Decentralisation: Brief Remarks on the New MiCA Regulation.* European Law Blog, May.
[36] "[…] means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies" – MiCA, Article 3 (1)(6)
[37] "[…] means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency" – MiCA, Article 3 (1)(7)

ecosystem's utility tokens, for instance, are usually used to get access to products or services. These assets are exempt from stricter regulations under MiCA if they aren't used as payment or investment instruments. Utility token issuers are still subject to the fundamental disclosure and transparency requirements outlined in Title IV of the MiCA.

Authorization and Licensing Under MiCA (Article 59.º)

The MiCA's authorization and licensing system, which creates a uniform framework for CASPs to undergo business in the EU, is one of its most significant features. Market integrity is improved and, in an attempt, regulatory arbitrage between Member States is avoided via MiCA's formal approval process, which guarantees that CASPs adhere to stringent standards for financial stability, governance, and consumer protection.

Before providing services in the EU, CASPs are required by Article 59 of MiCA to seek license from NCA. By replacing earlier disjointed national frameworks, this licensing procedure establishes a single regulatory standard that is applicable in every Member State. While still being adapted to the particular risks and business models of the crypto-asset sector, MiCA's authorization mechanism reflects current financial services laws like PSD2[38] and MiFID II[39].

The submission of an application, financial assessment, governance evaluations, and continuing compliance requirements are some of the crucial steps in the authorization process. Through MiCA's passporting mechanism, this framework offers cross-border market access and legal clarity, but it also imposes heavy regulatory requirements, especially on smaller businesses looking to enter the crypto-asset industry. The legal underpinnings, procedural specifications, and consequences of the MiCA authorization process for companies doing business in the EU are all examined in this section. Only eligible and financially stable organizations are permitted to offer crypto-asset services according to MiCA's licensing system. Several crucial processes make up the authorization procedure, which guarantees that applicants fulfil the operational, financial, and legal requirements outlined in MiCA.

To obtain authorization, CASPs need to submit a thorough application to their home Member State's NCA. The application must contain[40] a thorough business strategy that

[38] Directive 2015/2366
[39] Directive 2014/65/EU
[40] Article 18 MiCA

describes the types of services the CASP plans to provide, details about the company's governance structure, such as the names, credentials, and performance histories of important executives, and an explanation of internal risk controls, such as frameworks for operational risk management, cybersecurity, and anti-fraud.

Following submission of the application, the NCA thoroughly reviews it to determine whether the CASP satisfies the required governance and competency standards. This procedure consists of an appropriate test for senior management that makes sure firm directors have the necessary knowledge, moral character, and financial know-how, an evaluation of the company's financial viability to make sure it can fulfil its operational and regulatory obligations, and, finally, a risk evaluation that looks at how well the CASP guards against illegal financial activity, cybersecurity breaches, and market abuse.

MiCA sets minimum capital requirements for CASPs that vary according to the type of services they provide to maintain financial stability: 125.000€ for services related to custody, 150.000€ for trading platforms, and 50.000€ for portfolio management and advisory services. By ensuring that CASPs have enough reserves to maintain operations and reduce the danger of insolvency or client asset loss, these rules act as financial safeguards.[41]

Additionally, CASPs must implement strong and robust KYC and AML[42] policies, in accordance with the EU's AMLD. This contains carrying out user identity verification and CDD, tracking questionable transactions and disclosing any financial crimes, making certain that rules pertaining to CTF are followed[43]. Failure to comply may result in financial penalties, regulatory punishments, or the revocation of the permission following noncompliance with these duties[44].

Finally, to conclude the procedure of authorization and licensing, within three months of obtaining all necessary documentation, NCAs are obligated by Article 63 to consider and decide regarding CASP authorization applications. This period is intended to give conforming businesses regulatory stability and expedite market entrance. If an application is denied, the NCA is required to give a detailed reason so that the applicant can correct any errors and submit a new application. The need that NCAs give a concise and well-

[41] In compliance with Article 67 n.1 line (a) MiCA, "Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following: the amount of permanent minimum capital requirements indicated in Annex IV, depending on the type of the crypto-asset services provided".
[42] Article 20 MiCA
[43] Article 8, 13 AMLD
[44] Article 111 MiCA

reasoned explanation when an application is denied is a crucial component of Article 63 MiCA. This provision fulfils several crucial purposes; by encouraging Regulatory Transparency, it enables MiCA to avoid inconsistent and ambiguous decision-making that can erode market confidence by mandating that NCAs specify the precise grounds for rejection. By providing for corrective action, by rejecting applicants, CASPs are offered a methodical chance to fix any errors in their application and submit it again for approval.

It is, nevertheless, important to align the regulatory processes with fundamental principles of EU administrative law, concretely those of Due Process and Legal Certainty.

Firstly, the principle of Due Process, combined with the Right to Good Administration, crystalised in Article 41 of the Charter of Fundamental Rights of the European Union, guarantees that any subject to administrative decision-making within the EU is entitled to an impartial treatment, transparency, and has the right to be heard before a decision is made. In the context of appreciation of MiCA, these safeguards are particularly relevant when it comes to the authorization process of CASPs, as delimited by Article 59.[45] Uninterrupted Due Process in administrative decision-making is a fundamental right that has always got the support of the CJEU. Such as, in the case Technische Universität München (C-269/90), the Court preferred to highlight the importance of allowing affected parties to present their views before an imposition of an administrative action that is limiting. Correspondingly, the CJEU agreed with the above-mentioned, as in Dokter (Case C-28/05), it pointed that along with the requirement to give the reasoning is the heart of the matter as only in such a manner one can be sure that the given answers are open to discussion. This norm benefits that the CASPs have options to seek justice in case their authorization application is incorrectly rejected, and they are directly applicable to MiCA's framework.

Secondly, Legal Certainty plays a crucial role in the implementation and enforcement of MiCA – it requires that regulatory measures be clear, foreseeable, and applied concisely. A just application of this principle within the EU Law ecosystem and the integration of MiCA will ensure that EU based businesses interested in accessing to the

[45] Before a final decision is made on a CASPs authorization application, the provider should be entitled to an opportunity to present arguments and evidence supporting its compliance with the Regulation – guaranteeing that NCAs do not arbitrarily deny applications without consideration; CASPs should also have the right to access the documentation and records used in the decision-making process enabling them to understand the reasoning behind the decision –transparency as a key component to the Due Process. Ultimately, considering the authorization procedure, with Due Process, NCAs should provide justification for any rejected application, ensuring regulatory accountability, allowing CASPs to challenge the decision, or adapt to ascertain the right approval.

framework of MiCA can reasonably anticipate the regulatory environment in which they must operate. When the CJEU took the decision of Belgium v. Commission (Case C-110/03), it declared the laws in question to be "clear and precise," to give the people who are made subject to them the chance to predict the consequences of their acts.

When it comes to MiCA's structured authorization processes (e.g. Article 59 and 63), it reflects the environment of ascertaining Legal Certainty in its application – CASPs must meet predefined requirements to obtain their respective license, MiCA introduces a predictable timeline of three months, after receiving all necessary documentation to analyse CASPs application, and the whole nature of MiCA's harmonized framework introduces a consistent enforcement mechanism with its respective criteria, ensuring that all Member States comply, reducing any regulatory divergence.

Article 56 of TFEU guarantees the freedom to provide services, which must be taken into consideration when analysing the licensing requirements for CASPs. Businesses founded in one Member State are guaranteed the freedom to operate throughout the EU without encountering unwarranted national obstacles according to this concept. The freedom to offer services is not unrestricted, though; limitations could be put in place if doing so serves a justifiable public purpose, such financial stability or consumer protection. MiCA's authorization procedure reflects this, requiring CASPs to fulfil regulatory requirements prior to being permitted to conduct business throughout the EU Single Market.

The idea of proportionality, which was established by the CJEU in judgments like Gebhard (C-55/94), must also be adhered to by MiCA's authorization regime. According to this principle, any limitations on the ability to offer services must be appropriate and required to meet the goals of the regulations. This means that, in the context of MiCA, CASP license standards should be reasonable and adapted to the risks associated with various crypto-asset service types. Whether MiCA's strict capital, governance, and compliance requirements are excessive for smaller businesses and could impede innovation in the crypto-asset sector is still up for debate.

The MiCA's authorization procedure supports the EU's overarching goal of financial market harmonization, which has been a pillar of EU financial regulation for many years. This goal is to establish a single financial services market, guarantee uniform regulations among Member States, lessen fragmentation, and promote international trade[46]. The guidelines set forth in previous EU regulatory frameworks, including the MiFID II, the PSD2, and the EMD, are expanded upon by MiCA's authorization system for CASPs. MiCA seeks to guarantee a fair playing field for all market participants and eliminate regulatory arbitrage, in which companies take advantage of variations in national legislation to evade compliance duties, by creating a uniform licensing structure for CASPs.

Significant structural parallels exist between the MiCA authorization procedure for CASPs, and the licensing standards set forth in the following EU directives for investment firms, payment service providers, and e-money issuers:

When it comes to MiFID II, trading, portfolio management, and investment advising services are among the services that are regulated. MiCA employs a similar strategy to guarantee that investor protections are maintained in the digital asset market by forcing CASPs to go through an authorization process prior to providing financial services connected to cryptocurrencies. Both legal frameworks enforce capital needs, governance guidelines, and risk management responsibilities to reduce market manipulation and financial dangers[47].

Similarly, PSD2 encourages innovation in the payments industry and sets licensing standards for PSPs. It presents the idea of "passporting,"[48] which enables PSPs with authorization in one EU member state to conduct business throughout the EU. MiCA takes a similar tack, allowing approved CASPs to offer services across the EU under a single license, which lessens regulatory fragmentation and promotes international trade.[49]

Finally, the EMD sets authorization standards for EMIs and regulates the issuing of electronic currency. Since MiCA and EMD handle EMTs similarly, EMT issuers must

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[46] LETTA, E. (2024) – *Much more than a market: Speed, security, solidarity* – Empowering the Single Market to deliver a sustainable future and prosperity for all EU citizens (Report presented to the European Council on April 18, 2024). European Council.

[47] In order to safeguard investors and maintain market openness, MiFID II governs investment services and activities. It creates a uniform framework for investment firms that includes duties related to transparency, conduct of business regulations, and authorization requirements. MiCA uses the principles of MiFID by mandating that CASPs acquire authorization, put strong governance frameworks in place, and follow consumer protection and transparency guidelines.

[48] European Parliament (2017), *Understanding equivalence and the single passport in financial services Third-country access to the single market.*

[49] By standardizing payment service laws, PSD2s made it possible for businesses that accept digital payments to function throughout the EU under a single authorization system.
MiCA uses a similar approach, eliminating the requirement for separate licenses in several Member States by enabling CASPs to get an EU-wide license through a passporting mechanism.
Consumer protection, including standards for security and fraud prevention, is emphasized heavily in both legislations.

adhere to the same authorization and security standards. This guarantees uniformity in the EU's regulation of digital payment methods.[50]

Businesses situated in the EU are significantly impacted by the MiCA licensing process, especially in terms of operational difficulties, market access, and compliance expenses. The costs of complying with MiCA's authorization requirements can be expensive, especially for start-ups and smaller businesses. These expenses include creating thorough authorization applications, deploying cutting-edge IT systems, and employing compliance officers. Smaller CASPs may find it difficult to enter the market due to the strict authorization procedures, which could impede innovation and competition. Nonetheless, the harmonized framework also suffers market access and legal clarity, allowing approved CASPs to confidently operate throughout the EU. CASPs are required to continue adhering to MiCA's regulations, which include updating their risk management and internal control systems and reporting to the NCA on a regular basis. Operational difficulties may result from this, especially for smaller businesses with less resources.

Passporting: A Benefit or a Burden?

A key tenet of the EU Single Market is passporting, which permits companies that are approved in one Member State to offer services throughout the EU without needing further national authorizations. This mechanism, which facilitates cross-border market access while guaranteeing regulatory harmonization, has long been a part of EU financial law, particularly under frameworks like PSD2 (for payment services) and MiFID II (for investment services). Although passporting under MiCA has many benefits, including easing market expansion, lowering administrative costs, and fostering competition, it also brings with it serious regulatory difficulties, especially regarding supervisory divergence, continuous compliance, and NCA collaboration. Whether passporting under MiCA is a chance for market expansion or a new regulatory burden for companies, this chapter examines the legislative framework, procedural requirements, and practical ramifications of the practice.

CASPs are required by Article 59 MiCA to get authorization from the NCA in their native Member State prior to being able to take advantage of passporting. This procedure

[50] EMD sets authorization standards for EMIs and regulates the issuing of electronic currency. Since MiCA and EMD handle EMTs similarly, EMT issuers must adhere to the same authorization and security standards. This guarantees uniformity in the EU's regulation of digital payment methods.

entails proving adherence to regulations pertaining to consumer protection, AML/KYC, financial stability, and governance. Following authorization, the CASP receives a license that is accepted in every EU member state, doing away with the need for further local permits. Article 60 MiCA requires the CASP to explicitly notify its home NCA of its intention to supply services in another Member State after authorization. The CASP can subsequently operate in those jurisdictions without going through extra licensing processes when the home NCA notifies the NCAs of the host Member States. Article 63 MiCA sets a three-month deadline for finishing the notification procedure, beginning on the day the CASP submits the necessary information, to guarantee efficiency and regulatory certainty. Before granting passporting rights during this time, the home NCA must confirm that the CASP satisfies all MiCA regulatory requirements. The home NCA must give a thorough explanation if it denies passporting so that the CASP can correct any errors and submit a new application for approval.

When combined, these clauses guarantee that passporting is an extension of the stringent permission procedure rather than an automatic right. Ensuring that only compliant, well-regulated CASPs can operate throughout the EU, the law aims to strike a balance between market integration and robust supervisory controls by tying passporting to MiCA's licensing structure.

When Crypto-Asset Service Providers want to extend their services throughout the European Union, passing under MiCA presents both opportunities and obstacles.

Among the main benefits are market expansion and scalability, which enable CASPs to offer services in several jurisdictions without having to deal with time-consuming and expensive national licensing processes. For instance, a CASP with German authorization can start providing services in France, Italy, and other Member States right away without needing further permissions. Legal clarity and regulatory consistency are other important advantages since MiCA's standardized licensing structure levels the playing field for CASPs by reducing regulatory fragmentation. By reducing the ambiguity brought on by contradictory national legislation, businesses benefit from clear, predictable compliance duties. Additionally, businesses save time and money by not having to apply for several licenses in different jurisdictions, which results in cost savings and operational efficiency. The simplification of compliance procedures enables CASPs to distribute resources more efficiently among Member States.

The concept of mutual trust is pivotal to ensure the smooth operation of crypto-asset services in all EU member states when it comes to MiCA passporting. The premise that each Member State's regulatory and supervisory structures are sufficiently strong and coordinate to ensure the proper functioning of the internal market is supported by this fundamental principle. It removes the need for numerous approvals and eases administrative overhead by enabling the recognition and acceptance of authorizations provided by a single Member State across the Union. [51]

Despite MiCA's intention to reduce regulatory fragmentation, when it comes to practical implementation of its procedures, interpretational discrepancies may arise among NCAs. A key issue arises from pre-existing national licensing requirements, which in some jurisdictions, impose additional compliance obligations beyond what is imposed by MiCA.

Fidium Finanz AG (C-452/04), which made it clear that financial service providers should not be subjected to disproportionate national restrictions that prevent them from offering cross-border services, is one of the landmark decisions of the CJEU. It reaffirmed this fundamental freedom, which guarantees that businesses established in one Member State can provide services across the EU without undue restrictions. However, because NCAs still have supervisory authority over CASPs operating inside their jurisdictions, passporting under MiCA does not ensure complete market access. This could lead to uneven regulatory compliance and real-world barriers to service delivery. According to Gebhard (C-55/94)[52], which established that limitations on the freedom to provide services must be suitable, essential, and proportionate to the regulatory purpose pursued, this raises serious concerns regarding proportionality.

Reverse Solicitation (Article 61.º): Barrier to Global Business Expansion?

Under Article 61 MiCA, reverse solicitation offers both legal protections and obstacles to international corporate growth. Although its main objective is to stop unregulated third-country CASPs from aggressively pursuing EU clients, its stringent implementation results in legal ambiguity, compliance difficulties, and restrictions on

[51] BOHÁČEK, Lukáš, Mutual trust in EU law : trust 'in what' and 'between whom'?, European journal of legal studies, 2022, Vol. 14, No. 1, pp. 103-140 *ex vi* M. Bernatt, 'The double helix of rule of law and EU competition law: An appraisal', European Law Journal, 2022,

[52] Following its prior case law, the ECJ ruled that national measures that could impede or deter the exercise of fundamental freedoms protected by the Treaty must meet four requirements: they must be implemented without discrimination; they must be supported by imperative requirements in the public interest; they must be appropriate for ensuring the achievement of the goal they seek; and they must not exceed what is required to achieve it.

market access. MiCA does not provide a route for third-country CASPs to operate within the EU unless they receive full license, in contrast to MiFID II, which has an equivalency framework[53].

Reverse solicitation promotes international business opportunities by allowing third-country companies to service EU clients without being bound by the strict regulatory requirements of MiCA.[54]

Reverse solicitation is not a new regulatory instrument; it is already in place for investment firms under MiFID II[55] (Directive 2014/65/EU). However, because of the perceived risks connected with crypto-assets, such as fraud, money laundering, and volatility, MiCA applies this principle more strictly to CASPs. Because MiCA lacks an equivalency framework, unlike MiFID II, even highly regulated third-country businesses are forced to rely on the extremely restrictive reverse solicitation regulation or seek full MiCA permission.

According to Article 61 MiCA, a third-country CASP is only permitted to offer services to an EU client if the client makes the request completely on their own initiative, without the CASP having to solicit, promote, or advertise beforehand. This implies that businesses located outside of the EU are prohibited from using any kind of client acquisition technique, such as: direct solicitation includes personal approach, targeted emails, and cold calling; indirect marketing, including ad efforts aimed at EU consumers, and involvement based on referrals, such as affiliate marketing initiatives that drive customers to businesses in third countries.

The reverse solicitation restriction imposed by MiCA creates regulatory uncertainty because different National Competent Authorities (NCAs) may interpret "own exclusive initiative"[56] differently. While some NCAs may permit certain passive marketing strategies, such using publicly accessible online information, others may strictly enforce the regulation and demand unambiguous proof that the customer had never been exposed to CASP marketing. The efficacy of MiCA's consumer protection provisions may be

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[53] Article 30 (4) *ex vi* Article 30 (2) MiFID II

[54] However, we could interpret that this circumstance could create regulatory gap that could jeopardize market integrity and consumer safety by enabling third-country companies to circumvent EU regulations.

[55] Article 42 MiFID II.

[56] “A literal reading of the term, “own exclusive initiative” suggests that the client must, exclusively and without any extraneous influence, take the step to be served a specific service.” From SKORPEN, K. F. (2023) – *The Principle of Reverse Solicitation Under the Markets in Crypto Assets Regulation (MiCA)*. EU Law Working Papers No. 80, Stanford-Vienna Transatlantic Technology Law Forum.

compromised by this lack of standardization, which causes legal ambiguity for both EU clients and third-country businesses[57].

The lack of an equivalent framework in MiCA is a significant difference between it and MiFID II[58]. Investment firms from third countries can access the EU market without using reverse solicitation through Article 42 MiFID II, which permits the European Commission to acknowledge that a third country's regulatory system is comparable to EU requirements. This method guarantees that investor protection and transparency regulations are respected while offering third-country businesses a structured route to operate within the EU. However, because MiCA does not introduce any kind of equivalency recognition, even businesses from highly regulated countries like the US, UK, or Switzerland are forced to either rely on reverse solicitation, which severely restricts their ability to operate in the EU, or seek full MiCA authorization, which comes with high compliance costs – "the freedoms of movement of services and establishment always imply movement of capital, and movement of persons implies movement of movable assets, leading to the convergence of the fundamental freedoms and parallel jurisdiction.".[59] This strong stance stands in stark contrast to the guidelines set down in CJEU case law, especially Gebhard (C-55/94), which maintained that limitations on service delivery must be reasonable, required, and non-discriminatory. In the Gebhard case, the court decided that national policies limiting market access could not be more extensive than what was required to accomplish the desired regulatory goal. MiCA's general prohibition on third-country CASPs, which does not distinguish between jurisdictions with and without regulations, may be argued to go beyond the proportionality criterion. Similarly, the CJEU decided in Fidium Finanz AG (C-452/04) that third-country financial service providers rely on free movement of capital (Article 63 TFEU) rather than the right to offer services under Article 56 TFEU. Because EU-based CASPs have passporting privileges while third-country firms face substantial market

[57] "For third-country CASPs to exempt themselves from the MiCA authorisation requirements while still serving clients based in the EU, the crypto-asset service or activity must be provided at the client's "*own exclusive initiative*"." From SKORPEN, K. F. (2023) – *The Principle of Reverse Solicitation Under the Markets in Crypto Assets Regulation (MiCA)*. EU Law Working Papers No. 80, Stanford-Vienna Transatlantic Technology Law Forum.

[58] MiCA bears similarities with MiFID II, however, since the later has existed for over a decade, MiCA's reverse solicitation clause has yet to be seen in practice. From SKORPEN, K. F. (2023) – *The Principle of Reverse Solicitation Under the Markets in Crypto Assets Regulation (MiCA)*. EU Law Working Papers No. 80, Stanford-Vienna Transatlantic Technology Law Forum.

[59] DOURADO, A. P. (2017) – *The EU free movement of capital and third countries: Recent developments*. INTERTAX, *45*(3), p.192 – 204.

entrance barriers, this discrepancy creates an unfair playing field even while it gives EU regulators considerable power to impose limitations on third-country enterprises.

Third-country CASPs looking to enter the EU market face several real-world obstacles due to MiCA's reverse solicitation framework: First, there are significant barriers to client acquisition. Without complete MiCA authorization, organic business growth in the EU is practically difficult for third-country CASPs since they are unable to actively contact potential EU clients. Second, regulatory uncertainty: NCAs may interpret the law differently due to the absence of established jurisprudence on reverse solicitation, which leaves businesses with legal ambiguity. Lastly, competitive disadvantage: non-EU CASPs are less competitive due to operational and legal ambiguity, whereas EU-based CASPs gain from passporting.

Although the goal of Article 61 MiCA is to shield EU investors from unregulated third-country companies, its extensive limitations and absence of equivalency provisions may unintentionally limit market access and competition for respectable non-EU companies.

The Dogma of These Principles in Light of MiCA

Doctrinal Foundations of the Freedom to Provide Services

A fundamental component of EU law, the freedom to provide services is essential for promoting market integration, competitiveness, and economic expansion.

Considering this, the EU's first all-encompassing regulatory framework for crypto-assets is the Markets in Crypto-Assets Regulation. MiCA's broad regulatory requirements raise worries about possible limitations on the freedom to provide services, even as it seeks to improve consumer protection, foster financial stability, and harmonize regulations among member nations. This chapter investigates the conceptual underpinnings of this freedom, looks at the historical legal protections provided by CJEU case law, and assesses how MiCA relates to or deviates from these accepted ideas.

Removing obstacles to cross-border trade promotes economic efficiency, competition, and innovation, which is the foundation of the EU single market. The freedom to provide services guarantees that companies can function without being subjected to disproportionate or discriminatory national regulations, which might result in: efficient use of resources, which would promote competition among service providers to operate across the EU, reduces prices and enhances consumer quality. Furthermore, cross-border scalability allows businesses—particularly start-ups and SMEs—to expand beyond their home market, which fosters economic growth. In the end, Member States may adopt national laws that limit competition and divide the single market in order to stop protectionism, which would be impossible without this fundamental freedom.

As far as a doctrinal analysis on the freedom to provide services may go, within the grounds of MiCA, the Principle of Mutual Recognition[60] would come in play for the MiCA's passporting mechanism which supports this idea by allowing CASPs to conduct business throughout the EU after obtaining a license in a single member state. But possible disparities in national regulatory enforcement might jeopardize this system and essentially put cross-border service delivery back in jeopardy. Additionally, the Principle of Proportionality[61][62] would act to examine MiCA's licensing and compliance requirements, even though they are intended to safeguard consumers and maintain market integrity. MiCA can be interpreted as a constraint on the ability to offer services that is out of proportion to the dangers it aims to prevent if compliance costs disproportionately affect smaller CASPs.

However, MiCA does not inherently, by itself, restrict the Freedom to Provide Services. Rather, it is the way how Member States implement and enforce MiCA's provisions that can create barrier to cross-border service provision.[63] Divergence within NCA's on the grounds of interpretation of MiCA's licensing, compliance and complementary measures could result in a fragmented regulatory landscape – contradicting the *prima facie* goal of the Regulation. MiCA also touches on freedom to conduct business, which is enshrined by Article 16 of the European Union's Charter of Fundamental Rights and is directly linked to EU law. While the freedom to conduct business will bind the EU itself, as opposed to freedom to provide services, which is more

[60] According to this principle, which was established in the seminal case of Cassis de Dijon (C-120/78), a product or service that is legally offered in one Member State ought to be allowed throughout the EU unless there is a compelling public interest that warrants a restriction.

[61] Any limitations on fundamental freedoms must be appropriate, necessary, and proportionate to accomplishing a justifiable goal, according to Article 5(4) TEU.

[62] According to the Gebhard (C-55/94) case, restrictions must: Serve a legitimate public interest (such as financial stability or consumer protection); be necessary to accomplish that goal (i.e., there must be no less restrictive alternative); and be proportionate, meaning that the restriction is not excessive in relation to its intended goal.

[63] Member State's interpretation of the Regulation can be, as habitually we know, faulty, leading to unnecessary impediments that affect the internal market – "Member States may encounter difficulties of interpretation and choice of procedural options. They may […] interpret a regulation in a way that does not comply with the Community measure in question." From Commission of the European Communities. (2007, September 5). *A Europe of results – Applying community law* (COM (2007) 502 final). Brussels.

directly binding to Member State interference, MiCA's obligations must be reasonable and be aimed at its regulatory objectives.

According to Article 56 TFEU, limitations on the Freedom to Provide Services may be supported by compelling public interest arguments, such as safeguarding consumers, preventing financial crime, and maintaining the stability of financial markets, so long as they are required, appropriate, and uniformly implemented throughout all Member States. To ensure a high standard of market conduct, security, and regulatory oversight, MiCA establishes licensing, compliance, and governance requirements for CASPs operating within the Union. However, these requirements also impose substantial administrative and financial obligations that may hinder SMEs' ability to enter the market. The effectiveness of the single regulatory framework may be undermined and the free movement of services within the Union may be impeded by regulatory divergence in how NCAs interpret and enforce the provisions of the MiCA, which could result in fragmentation and legal uncertainty.

Consequentially, beyond the standardized requirements outlined by MiCA, additional national legislative actions could potentially reintroduce market fragmentation and establish *de facto* hurdles to cross-border service delivery. To prevent regulatory protectionism and guarantee that service providers authorized in one Member State may operate freely throughout the Union without encountering discriminatory or excessive regulatory barriers, national authorities must coordinate enforcement practices in accordance with MiCA's goals.

Although MiCA lays out a very comprehensive framework for CASPs, it also includes some legal concepts that have either not been entirely worked through or simply added in the margin in other EU legal documents and might make Member States interpret the law differently. MiFID II, AMLD, EMD2, all share identical but generic principles that are echoed by phrases like "robust governance" (Article 34 MiCA), "threat to financial stability"[64] (Recital 5 MiCA), and "adequate internal control mechanisms" (Article 34 *in fine* MiCA). Even though they are also included under MiCA, these principles are still open to national discretion and thus how precisely they are used can differ depending on the option of interpretation NCAs choose to implement. This legal vagueness gives Member States some flexibility in applying different obligations to CASPs, which could jeopardize MiCA's harmonization goal. Fuzzy, vague legal concepts grant discretion to

[64] Gerard Dowling and Others v. Minister for Finance (Case C-41/15)

the regulators, reinforcing protectionism and introducing silent barriers to the marketplace. Strict interpretations by more restrictive jurisdictions would deter market participation, undermining MiCA's passporting scheme as well as fostering dual-speed regulation favouring CASPs in less restrictive Member States. In the context of this thesis, this problem clearly runs contrary to MiCA's goal of harmonizing the legal framework, and consequentially, ascertaining a freedom to provide services amongst EU-based businesses. The absence of explicit legal definitions opens space for differing national interpretations, which could result in further compliance requirements that undermine recognition across countries. MiCA's success in framing a single regulatory regime hinge on Member States' alignment of their enforcement strategies. For market cohesion, legal certainty, and competitiveness in the EU crypto market, regulatory coordination between ESMA and EBA will be critical.

Legal Certainty and Business Stability Under MiCA

To bridge regulatory discrepancies that existed prior to MiCA, when various Member States applied disparate national regulations to crypto-assets, causing market fragmentation and complicating compliance for multinational corporations[65], are one of MiCA's main goals. By creating a single licensing system for CASPs, MiCA guarantees that a company that has been approved in one EU member state can operate throughout the Union without requiring repeated approvals—a process known as passporting. It is anticipated that this uniformity will ease administrative strains, cut down on compliance expenses, and encourage international competition. To achieve legal certainty under MiCA, however, requires not only that MiCA's provisions are clear, but also that National NCAs and EU supervisory bodies—specifically, the EBA and the ESMA — interpret and guaranty a consistent harmony of its application.

Even with the standardized structure of MiCA, there is still a chance of legal ambiguity if Member States' enforcement varies. Regarding AML/KYC requirements, consumer protection measures, and the categorization of crypto-assets, in particular, the rule gives NCAs considerable freedom in monitoring and enforcing compliance. Businesses operating in different jurisdictions may experience varying regulatory results if the provisions of the MiCA are interpreted and applied inconsistently. Undermining

[65] “The inability of policy-makers to keep up with technology could prevent the benefits of innovation from materializing and expose users to risks.” From World Economic Forum. (2021). Regulatory and policy gaps: Innovation and the future of finance.

MiCA's goal of levelling the playing field, this fragmentation may result in regulatory arbitrage, where businesses deliberately locate their operations in countries with laxer enforcement policies.

Whether MiCA's compliance requirements are precise and foreseeable for companies is a crucial question in guaranteeing legal certainty. Article 16 requires that issuers of crypto-assets give investors a comprehensive white paper outlining the token's features, ownership rights, and possible hazards. Similarly, before receiving authorization, CASPs need to fulfil certain governance, operational, and prudential requirements. Although these requirements establish a uniform regulatory foundation, how well they reduce uncertainty hinges on how consistently NCAs interpret and implement these regulations.

Another obstacle to preserving legal clarity is the AML and consumer protection provisions of MiCA. By mandating increased due diligence, transaction monitoring, and reporting requirements for CASPs, the legislation incorporates elements of the AMLD, but it defers other areas of enforcement to national authorities. Businesses may have disparate regulatory expectations in various Member States because to the historical variation in AML enforcement within the EU, which raises questions about their compliance responsibilities and risk exposure.

The absence of jurisprudential guidance about the courts' interpretation of MiCA adds to the legal ambiguity[66]. It may be difficult for businesses to predict how courts and regulators will implement the new regulatory concepts introduced by MiCA, including the classification of ARTs and EMTs, liability for deceptive crypto-asset white papers[67], and cross-border passporting regulations.

Businesses may still face regulatory uncertainty due to inconsistent national enforcement, a lack of established case law, and gaps in supervisory coordination, even though MiCA is anticipated to reduce legal uncertainty by replacing the fragmented regulatory landscape with a single EU-wide framework. ESMA and the EBA must take

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[66] We must recall that prior to MiCA the EU legal ecosystem lacked conformity on how to approach "crypto-assets", for example the statement of BINDSEIL, U., & SCHAAF, J. (2022, November 30) – *Bitcoin's last stand*. The ECB Blog. European Central Bank. "[…] legislation on crypto-assets has sometimes been slow to ratify in recent years - and implementation often lags behind […], the different jurisdictions are not proceeding at the same pace and with the same ambition."

[67] See COBOS, MT.O. (2025) – *Crypto-Asset White Papers and Marketing Communications Post the MiCA Regulation*. In: PASTOR SEMPERE, C. (eds) Governance and Control of Data and Digital Economy in the European Single Market. Law, Governance and Technology Series, vol 71. Springer, Cham. "[…] persons obliged to develop a white paper are liable for any omissions or deception or if the information is not complete, impartial, or clear […] [i]n addition, a sanctioning regime is provided for when the white paper does not contain the required information (Art. 94.1 i) or has not been notified, where there is an obligation to do so (Art. 94.1 u)."

the initiative to issue legally binding technical standards and interpretive guidelines to reduce these risks and guarantee consistent enforcement among Member States. In the end, how well EU institutions coordinate enforcement actions, guarantee proportionality in regulatory obligations, and modify the framework in response to new market developments will determine if MiCA is successful in delivering legal certainty. To guarantee that MiCA provides both market stability and a predictable regulatory environment, encouraging innovation while upholding robust consumer and investor protections, a well-calibrated legal strategy will be crucial.

If EU institutions can successfully coordinate enforcement actions, guarantee proportionality in regulatory demands, and fit the framework to new market developments, then it will determine if MiCA is able to succeed in delivering legal certainty. To guarantee that MiCA provides both market stability and a predictable regulatory framework, but also, it promotes innovation, and has robust consumer and investor protections[68], a finely calibrated legal strategy will be essential. Legal certainty, being one of the general principles of EU law, requires rules to be clear, precise, and predictable so that individuals and businesses are aware of their rights and obligations (Itelcar, Case C-282/12)[69]. Although EU law allows reference to indeterminate legal concepts, such flexibility must not compromise predictability or grant excessive discretion to authorities (SIAT, Case C-318/10,)[70]. Applying this to MiCA, certain provisions rely on broad and undefined concepts, i.e., "robust governance arrangements" (Article 59), "serious threat to financial stability" (Article 67), or "adequate risk management" (Article 63). The lack of explicit definitions of these concepts provides discretion to NCAs and could lead to regulatory fragmentation instead of the harmonization MiCA seeks.

[68] AKDAG, K. (2023) – *Regulatory Press Brief: Navigating the Impact of the Recent MiCA Release on EU Crypto-Asset Regulation: Synergies & Disparities in Current EU Laws*.

[69] The case of Itelcar (C-282/12) emphasized that EU law is supposed to be clear and predictable in a way that allows authorities not to burden businesses with unforeseen obligations. The CJEU established that tax rules cannot be retroactive or worded in such a way that makes economic operators uncertain. This principle must also be adhered to in MiCA, where ambiguous concepts like "robust governance" (Article 59) or "serious risk to financial stability" (Article 67) can lead to varying national interpretation, making conformity uncertain for CASPs operating across the EU.

[70] The SIAT case (C-318/10) reinforced the requirement of measures being proportionate and not so vague as to leave business operators in the dark about the potential effects of regulation. The CJEU concluded that indefinite tax measures should not provide administrations with excessive room for manoeuvre. Similarly in MiCA, indefinite terms for authorization and compliance could similarly give NCAs too much room to manoeuvre and thus lead to inconsistencies in enforcement as well as uncertainty of law for CASPs seeking to operate under harmonized EU terms.

Supervision of ("Significant") Crypto-Assets: EBA and ESMA's Role

Title VII of MiCA provides us with a framework of powers intrusted to EBA and ESMA.[71]

The European Union's commitment to creating a standardized and risk-based framework for the supervision of digital financial instruments is reflected in the regulatory control of crypto-assets under the MiCA. The differentiation between standard and substantial crypto-assets, especially regarding EMTs and ARTs, is one of the most important features of MiCA's legal framework. This distinction is crucial because it determines the degree of regulation that such instruments must adhere to; major EMTs and ARTs, for example, need closer regulatory scrutiny because of their possible effects on financial stability and the overall economy. To maintain compliance, avoid systemic risks, and protect the integrity of financial markets, the EBA and the ESMA each take on different but complementary supervisory responsibilities under MiCA[72].

Under Articles 43 and 56, MiCA outlines the standards for judging whether an ART or EMT qualifies as "significant". If an EMT or ART satisfies three or more of the following criteria, it may be considered significant: a high number of active users, a large market capitalization and transaction volume, extensive interconnection with traditional financial systems, extensive cross-border activity across multiple Member States, and a level of stability or financial use that may have an impact on EU monetary policy[73].

Due to the increased supervisory requirements brought about by this categorization, issuers are subject to stricter requirements for capital buffers, liquidity, and risk management. Significant EMTs and ARTs are directly supervised by the EBA, which makes sure issuers adhere to prudential guidelines that reduce financial risks. The EBA oversees the authorization procedure, continuing oversight, and compliance enforcement in collaboration with NCAs[74]. Increased regulatory requirements on issuers include maintaining adequate reserve assets to ensure redemption at par value, robust stress testing protocols, and appropriate liquidity management frameworks. By implementing

[71] Consider for the next two chapters - based upon extraction of the readings of Title VII of MiCA in conjunction with PALAZNIK, E. (2023, November 15) – *What are EBA's and ESMA's roles within MiCA?*
[72] PALAZNIK, E. (2023, November 15) – What are EBA's and ESMA's roles within MiCA?
[73] Articles 43(1), 44, 56(1) and 57 of MiCA
[74] Extracted from an overviewed analysis of Title VII in MiCA, we can notice in more details that EBA's function overpass: investigations, inspections, revision, etc.

these rules, the EBA hopes to prevent circumstances where big stablecoins might endanger monetary stability or systemic risks in the event of market disruptions.

The EBA is responsible for more than just financial supervision. Strict adherence to AML and CFT legislation is necessary because EMTs and ARTs raise concerns about financial crime owing to their ability to facilitate large-scale cross-border transactions. Issuers of major EMTs and ARTs are guaranteed to be fully compliant with EU-wide AML rules, including the most recent provisions under the AMLD, due to the EBA. This includes implementing KYC protocols, enforcing due diligence duties, and requiring transaction monitoring. To prevent major tokens from interfering with fiat-based financial institutions or upsetting payment infrastructures, the EBA also works closely with the ECB when stablecoin issuance and circulation pose possible repercussions for EU monetary policy.

To maintain market integrity and investor protection, ESMA is essential, even though the EBA mainly concentrates on the prudential supervision and financial stability risks of major EMTs and ARTs. Protecting consumer interests, prohibiting abusive market practices, monitoring market conduct, and guaranteeing adherence to transparency requirements are all part of ESMA's duty under MiCA. The disclosure of full information, including governance structures[75], operational risks, asset reserves, and redemption mechanisms, is mandatory for issuers of substantial EMTs and ARTs. To guarantee that investors are provided with accurate and non-misleading information, ESMA enforces these disclosure requirements. Furthermore, ESMA oversees the trading of important tokens and keeps an eye out for cases of fraud, insider trading, and market manipulation. ESMA works to keep major EMTs and ARTs from turning into tools of financial malfeasance by enforcing strict reporting guidelines and carrying out continuous oversight.

In the supervision of major crypto-assets, the interaction between the EBA and ESMA exemplifies the EU's two-pronged approach to regulatory control. By emphasizing prudential soundness and systemic risks, the EBA protects financial stability, while ESMA makes sure that investor protection and market behaviour norms are respected. The purpose of this dual-regulatory framework is to preserve the integrity of the financial system by guaranteeing that major EMTs and ARTs function within a safe, open, and responsible regulatory environment. The heavy regulatory restrictions placed on major

[75] For instance, consider Article 93 (3) MiCA: “ESMA shall publish on its website a list of the competent authorities […]”.

cryptocurrency companies, however, raise questions about possible market distortion and innovation hurdles. Significant operational and financial resources are required to comply with EBA and ESMA laws, which may disproportionately impact smaller businesses and newcomers to the market. Increased regulatory scrutiny, complicated reporting requirements, and strict capital buffers for major token issuers may discourage new entrants that lack the institutional capacity to satisfy these regulatory demands, so limiting innovation.

Do MiCA's Oversight Mechanisms Ensure Market Stability or Restrict Business Freedom?

Disparities in enforcement and regulatory fragmentation among Member States present a further problem. The National Competent Authorities' supervision of non-significant EMTs and ARTs raises the possibility of uneven application of regulatory requirements, despite MiCA's goal of establishing a unified regulatory framework. Regulatory arbitrage opportunities may arise from different jurisdictions' interpretations of the MiCA's rules, wherein businesses strategically locate their activities in Member States with more benevolent supervisory frameworks. The EBA and ESMA must closely cooperate with NCAs to guarantee consistent enforcement and regulatory convergence throughout the Union to reduce such risks. Furthermore, MiCA's architecture needs to continue to be flexible in response to changing market dynamics, advances in technology, and new threats. Because the cryptocurrency market is changing so quickly, ESMA and the EBA must constantly evaluate whether the current regulatory measures are still appropriate or need to be adjusted to handle new issues.

To achieve financial stability and regulatory clarity in the European crypto industry, it is imperative that major crypto-assets be supervised under MiCA. The European Union seeks to reduce risks that could destabilize the financial system while also making sure that investors are sufficiently safeguarded from fraudulent activities and market misuse by putting issuers of large-scale EMTs and ARTs under increased scrutiny. To prevent undue regulatory restrictions that hinder competition and discourage market participation, the strict requirements imposed on major cryptocurrency companies must be properly calibrated.

To address these issues, MiCA requires the EBA, ESMA, and NCAs to work together more closely to guarantee supervisory convergence and regulatory uniformity. It is specifically the responsibility of ESMA to standardize enforcement procedures through the issuance of regulatory technical standards, guidelines, and recommendations. The ability of EU authorities to track and resolve regulatory disparities in real time, as well as the dedication of Member States to applying MiCA's rules consistently, will determine how effective these measures are. Divergent national approaches could undermine the intended harmonization of MiCA in the absence of a clear framework for centralized control, so jeopardizing legal clarity for market participants.

The question of whether big crypto companies are disproportionately regulated under MiCA is another important one. Due to their systemic significance and possible impact on financial stability, issuers of major EMTs and ARTs are subject to greater compliance duties under the regulatory framework. However, there is a growing preoccupation that the increased regulatory requirements on major enterprises may create barriers to competition, discouraging new entrants and consolidating market dominance in the hands of established players, even when additional scrutiny is justified on prudential grounds. The European digital asset market may see less innovation if smaller businesses and start-ups are unable to compete successfully due to strict capital requirements, liquidity limitations, and governance standards.

A fine balance between market competitiveness and financial soundness is also presented by the regulatory environment for major cryptocurrency companies. Issuers of EMTs and ARTs are guaranteed to keep adequate reserves, put in place strong risk management systems, and adhere to AML requirements according to the EBA's prudential oversight. However, businesses, especially those without the operational and financial capabilities of major multinational organizations, may be overburdened by the compliance expenses of regular reporting, stress testing, and regulatory audits. This regulatory imbalance prompts questions about whether MiCA's oversight structure unfairly benefits big businesses at the expense of smaller ones, resulting in a concentration of market power and fewer options for consumers.

As the executive body responsible for implementing MiCA, the European Commission must ensure that regulatory oversight does not evolve to excessive market control. At the core of this balance lies the principle of proportionality, a fundamental cornerstone of EU law that requires regulatory measures to be appropriate, necessary and do not excessively restrict their relation with their objectives. [76][77] When it comes to the freedom to conduct a business under Article 16 of the CFR – "if the economic activity is allowed by the relevant laws, then any restriction on that activity will amount to alien control. So, if the EU or the member states, or any other body, seeks to prevent […] [market players] from conducting their business, where that [market player] conduct is in accordance with Union law and national laws and practices, then that could amount to alien control over that person."[78]

To reconcile the theoretical framework with the gruesome realities discussed earlier in this dissertation, the challenge of applying MiCA effectively lies in its fundamental limitations. While MiCA does not pose a direct challenge to the internal market, its implementation must respect the limitations of the Union's legislative power. It must balance regulation with EU inherent fundamental rights, *in casu* freedom to conduct business – only after addressing these concerns would the impact on the freedom to provide services become apparent. While MiCA's objectives – harmonised framework, legal stability, market integrity and consumer protection – are indisputably legitimate, the means through which these goals are pursued must be carefully calibrated to avoid disproportionate interference with economic freedoms.

A primary concern lies in the potential for MiCA's capital, liquidity, and governance requirements to impose excessive compliance costs on small and medium-sized businesses. The CJEU has ruled in the past that regulatory regimes which create unjustified barriers to market entry may violate Article 16 CFR – as per example in Nold (C – 4/73). Given the fact that MiCA's provisions are primarily designed with systematic entities in mind – CASPS – their uniform application risks hindering smaller market

[76] In Gebhard (C-55/94) that economic activity limits must not exceed what is required to accomplish their goal. This criterion is especially important for determining whether MiCA's compliance responsibilities are reasonable in their application and breadth. Similarly, in Fidium Finanz AG (C-452/04), the Court emphasized that limits on third-country financial enterprises should be commensurate with their risk exposure, ensuring that financial rules do not excessively restrict market access. According to these principles, MiCA's oversight bodies should make sure that the compliance standards for cryptocurrency companies match their true risk profiles to avoid an unduly strict regulatory framework that can impede economic development and innovation.

[77] SAUTER, W. (2013) – *Proportionality in EU law: A balancing act?* TILEC Discussion Paper No. 2013-003.

[78] GILL-PEDRO, E. (2017) – *Freedom to conduct business in EU law: Freedom from interference or freedom from domination?* European Journal of Legal Studies, 9(2), 103–134. Published online April 6, 2017.

participants, thereby distorting competition and, consequentially, consolidating market power among established players. [79]

Furthermore, another challenge may originate from the potential divergent interpretation and enforcement of MiCA's framework across Member States. NCAs may adopt stricter supplementary measures – in likes of "gold-plating" – which could lead to regulatory arbitrage as market participants would be forced to relocate to jurisdictions with more lenient supervisory practices – which would consequentially completely revoke the main goal of a harmonized EU legal ecosystem considering Crypto-Asset Markets. As previously deliberated by the European Court of Human Rights in Centro Europa 7 S.R.L. and Di Stefano V. Italy (n. º 38433/09), where arbitrary licensing regimes were found to infringe upon fundamental market freedoms. [80]

Likewise, MiCA's capacity to adjust to changing market conditions and technology breakthroughs will determine how effective it is in the long run. Rapid innovation is a hallmark of the crypto-asset sector, as new technologies like algorithmic stablecoins, non-fungible tokens NFTs, and DeFi are constantly changing the game. MiCA's supervisory framework runs the risk of becoming outdated or overly restrictive if it is very severe, which would push crypto innovation beyond the EU to countries with less stringent regulations. The EBA and ESMA must set up regular evaluations of MiCA's efficacy, taking stakeholder input into account and determining whether the current regulations are still appropriate to prevent similar results – furthermore, periodic reviews and adaptive rulemaking are essential to maintaining proportionality in fast evolving sectors.

Europe's competitiveness in the global digital asset market will depend on a flexible regulatory framework that changes in tandem with market trends.

Conclusion

The categorisation of crypto-asset services under EU law is one of the main legal issues in evaluating MiCA's effect on service delivery. Articles 56 and 57 of the TFEU

[79] ZETZSCHE, D. A., ANNUNZIATA, F., ARNER, D. W., & BUCKLEY, R. P. (2020, November 5) – *The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy*. European Banking Institute Working Paper Series, No. 2020/77; University of Luxembourg Law Working Paper Series, No. 2020-018; University of Hong Kong Faculty of Law Research Paper, No. 2020/059

[80] Although the judicial body was the ECHR, and the base of pretence was a violation of freedom of expression, we can transpose the decision to this dissertation when it comes to the fact that the Court had held that the domestic government had breached legitimate expectations and prevented it from pursuing economic activities.

forbid national policies that unjustifiably limit market access and guarantee the ability to provide services across Member States. The introduction of new regulatory categories for crypto-asset services by MiCA, however, raises interpretive concerns regarding their legal standing in comparison to more conventional financial services. The lack of established CJEU case law on crypto-asset services leaves their exact legal classification up for interpretation, despite MiCA's efforts to bring them into compliance with current EU financial legislation. This ambiguity may result in disparate enforcement strategies across NCAs, which could obstruct the smooth delivery of services among Member States.

Before MiCA, national approaches to CASPs were dispersed due to the lack of a uniform regulatory framework. Some jurisdictions placed little to no restrictions on crypto companies, which led to opportunities for regulatory arbitrage, in which companies strategically positioned themselves in areas with less stringent rules while still offering services throughout the EU. Because of the legal ambiguity caused by this regulatory difference, CASPs found it challenging to grow their businesses without juggling several regulatory frameworks.

Through the introduction of a single EU-wide licensing framework, MiCA seeks to end these inequalities by guaranteeing that CASPs authorised in one Member State can passport their services throughout the EU without needing further approvals. By lowering regulatory complexity and compliance costs, this harmonised framework greatly increases the freedom to provide services for businesses looking to conduct business internationally. MiCA also improves consumer protection by harmonising regulatory standards across countries, guaranteeing that companies function according to a single set of regulations regardless of where they are based. Additionally, there may be variations in enforcement due to MiCA's dual supervisory structure, which places NCAs in charge of conventional CASPs while EBA and ESMA regulate major market participants. Different interpretations of MiCA's provisions by Member States could undermine the goals of regulatory harmonisation by reintroducing some of the regulatory fragmentation that the framework aimed to eradicate.

The principle of proportionality, a fundamental pillar of EU law that stipulates that regulatory measures must not impose limits beyond what is necessary to achieve their objectives, must be considered when assessing whether MiCA protects or restricts the freedom to supply services. In decisions involving market access and the free flow of services, such as Gebhard (C-55/94) and Fidium Finanz AG (C-452/04), the CJEU has repeatedly upheld this principle. There is a solid legal foundation for arguing that MiCA's compliance requirements can amount to disproportionate limitations on service delivery if they go beyond what is required to mitigate hazards that have been identified.

Finally, by removing national regulatory fragmentation and establishing a consistent authorisation regime, MiCA improves the freedom to supply services within the EU. However, how consistently its provisions are applied and if compliance requirements are still commensurate with the risks posed by various CASPs will determine how effective it is at facilitating market access.

MiCA can support a safe, competitive, and innovative cryptocurrency market if regulatory bodies implement it in a flexible and risk-based manner. On the other hand, MiCA runs the risk of undercutting its own goals, limiting competition, and pushing businesses to less restrictive jurisdictions outside the EU if regulatory burdens become out of control. Whether MiCA ultimately serves as an unanticipated barrier to market participation or as an enabler of cross-border service offering will depend on how well supervision and enforcement are calibrated.

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