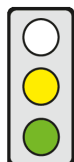


KEY ISSUES

Objective of the Regulation: The Commission wants to create a legal framework for crypto assets, including stablecoins.

Affected parties: Issuers of stablecoins, providers of crypto-asset services, investors and consumers.



Pro: (1) Uniform EU rules on the issuance of stablecoins increase legal certainty, confront the implications and risks that significant stablecoin projects can pose for investors, financial stability and the monetary order, may foster markets for stablecoins and are appropriate insofar as stablecoin projects are often used in many countries at the same time and can have cross-border implications.

(2) It is appropriate for issuers of non-significant stablecoins to be supervised by national authorities and issuers of significant stablecoins largely by the EBA.

Cons: The power granted to national regulators to reject ART applications for approval because of "a serious threat to financial stability, monetary policy transmission or monetary sovereignty" gives them too much leeway to block undesired stablecoin projects.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2020) 593 of 24 September 2020 for a **Regulation on Markets in Crypto-assets (MiCA)**

Brief Summary

► Background and objectives

- Crypto-assets are digital representations of value or rights that can be transferred and stored electronically in encrypted form, in particular, using the distributed ledger technology (DLT) [p. 1, Art. 3 (1) Nos. (1) and (2)].
- Crypto-assets refer, in particular, to [Recital 3, Art. 3 (1) Nos. (3)-(5)]:
 - Crypto currencies that serve as a means of payment, exchange or store of value. Examples are Bitcoin and Ethereum (cepPolicyBrief to follow);
 - Stablecoins, which differ from crypto currencies in that they have an issuer and are often backed by assets to stabilise their value. Examples are Tether and Diem (formerly: Libra) (this cepPolicyBrief);
 - Utility-tokens that provide digital access to products or services and are only accepted by the issuer, e.g. grant access to computing power or act as vouchers. Examples are FunFair and Sia (cepPolicyBrief to follow);
 - Security-like tokens (investment tokens) that are considered financial instruments within the meaning of the MiFID II Directive [2014/65/EU] and use DLT. Examples are iZero and Stellar.
- With this Regulation, the Commission wants to create a legal framework for all those crypto assets that are not securities-like tokens and therefore do not qualify as financial instruments within the meaning of the MiFID II Directive. So far, they are subject to national law or are completely unregulated.
- The Commission wants to create legal certainty in the markets for crypto-assets, promote innovation, ensure consumer and investor protection and market integrity, and preserve financial stability [p. 3].

► Types of stablecoins

- The Regulation distinguishes between two types of stablecoins [Art. 3 (1) points (3) and (4)]:
 - Asset-referenced tokens (ART) that are backed by several official currencies, by commodities (e.g. gold or oil) or by one or more crypto-assets (e.g. Bitcoin),
 - E-money tokens (EMT) that are backed only by one official currency (e.g. the euro).
- The Regulation distinguishes between significant and non-significant ART and EMT. Significant ART and EMT exceed at least three of six thresholds, such as on market capitalisation and the reserve of assets. The Regulation sets general lower limits for the thresholds. The Commission sets the thresholds in concrete terms by means of delegated acts. [Art. 39 (1) and (6), Art. 50 (1)]
- EMTs are also "e-money" within the meaning of the E-Money Directive [2009/110/EC]. Therefore, in addition to the requirements of this Regulation, their issuers must also comply with certain requirements of the E-Money Directive. [Art. 43 (1) (c)]

► Approval of the issuance of stablecoins and obligation to prepare a whitepaper

- Only legal entities established in the EU may issue ART in the EU [Art. 15 (1)].
- Non-banks wishing to issue an ART require an authorisation from the competent authority. The application must include in particular [Art. 15 (1) and (2), Art. 16, Art. 17]:
 - information on the business model and detailed descriptions of the internal control mechanisms, and
 - a "whitepaper" describing, among other things, the features, functions and risks of the stablecoin, reserve of assets and redemption rights.
 Approval may be refused if the issuer's business model could pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty [Art. 19 (2)].
- Banks that want to issue an ART do not need approval for this. They only need to prepare a whitepaper, which must be approved by the competent authority. [Art. 15 (4), Art. 17]
- EMTs can only be issued by banks or electronic money institutions [Art. 43 (1)]. For the issuance of an EMT no separate approval is required. Issuers only need to notify their whitepaper to the competent authority, which does not need to be approved. [Art. 15, 19 and 43]
- ART or EMT may be issued throughout the EU [Art. 15 (5); Art. 3 EMD].
- If the average outstanding amount of an ART or EMT over 12 months is less than 5 million euro – in the case of EMTs, Member States may also set a lower threshold – or, if the ART or EMT is addressed exclusively to qualified investors, issuers of [Art. 15(3), Art. 43(2)]
 - ART do not require an authorisation for its issuance,
 - EMT do not require a license as banks or e-money institutions.
 However, issuers must prepare a whitepaper, notify it to their competent authority and comply with the other provisions of the Regulation [Art. 15 (3), Art. 43 (2)].

► **Reserve of assets**

- Issuers of ART must hold a reserve of assets - including cash or short-term government bonds - at all times to stabilise the value of their ART and ensure their "effective and prudent management". Any creation or destruction of ART must be accompanied by a corresponding increase or decrease in the reserve of assets. [Art. 32 (1) and (3)]
- They must describe their strategy for stabilising their ART and, among other things, provide information on the assets to which their ART reference, the composition of the reserve of assets and the risks – e.g. credit risks – associated with the composition of the reserve of assets [Art. 32 (4)].
- Issuers of ART and issuers of significant EMT must establish policies and procedures for the custody of the reserve of assets in order to prevent the loss of reserve assets and to preserve the value of the ART or EMT. The reserve of assets must, inter alia, be segregated from the assets of the issuer [Recital 38, Art. 33 (1), (3) and (4), Art. 52]; for issuers of non-significant EMT, the less stringent rules of the E-Money Directive apply [Art. 7 EMD].
- Issuers of ART and issuers of significant EMT that invest part of the reserve of assets may only do so in highly liquid financial instruments. They receive all profits and bear all losses from the investments. [Art. 34, Art. 52] Issuers of non-significant EMTs must either invest in safe, liquid assets with low risk or deposit funds with a bank [Art. 7 EMD]. Any investment by an EMT issuer must be in assets denominated in the same currency as referenced by the EMT [Art. 49].

► **Rights of the holders of stablecoins**

- ART holders may request issuers to redeem their ART if its market value deviates "significantly" from the value of the reserve of assets [Art. 35 (4)]. Otherwise, issuers are free to grant a redemption right to some or all ART holders [Art. 35 (2) and (3)]. Issuers must determine in advance to whom and to what extent they will grant these rights [Art. 35 (1) and (2)]. In the event that issuers cease their business activities, are wound up or have their authorisation withdrawn, ART holders are entitled to the proceeds from the reserve of assets [Art. 35 (4)].
- EMT holders may always and at any time request the issuer to redeem their EMT at par [Art. 44 (2)–(5)].

► **Obligations for ART and EMT issuers**

- ART and EMT issuers must comply with requirements for their marketing communications and must publish their whitepapers on their websites [Art. 24, 25, 46 and 48].
- They must have a minimum amount of own funds [Art. 31; Art. 4 and 5 EMD].
- They may not grant interest or other benefits to the holders of their tokens related to the length of time they hold the tokens [Art. 36, Art. 49].
- Issuers of ARTs and significant EMTs must have a plan in place to ensure orderly wind-down without causing "undue economic harm" to token holders or the stability of the markets of the reserve asset [Art. 42, Art. 52].

► **Obligations for ART issuers**

- ART issuers must act "honestly, fairly and professionally" and in the best interests of the ART holders [Art. 23].
- They must provide information at least monthly on the number of ART in circulation, on the value and composition of the reserve of assets, and on any events that (may) have a significant impact on the value of the ART or the reserve assets [Art. 26].

- ART issuers must develop policies and procedures to avoid, identify, manage and disclose conflicts of interest [Art. 28].
- They must establish numerous governance rules, e.g. they must have a clear organisational structure, develop procedures for dealing with the reserve of assets and ensure the "continued and regular performance of their services" [Art. 30].

► Significant stablecoins

- The European Banking Authority (EBA) decides whether a stablecoin is to be classified as significant. If it does so, it assumes full authorisation and supervisory responsibility from the competent authority of the home Member State in the case of ART and partial supervisory responsibility in the case of EMT. [Art. 39 (2-5), Art. 50 (2-5), Art. 98].
- The EBA establishes colleges of supervisors for significant stablecoins, in which in particular the EU Securities and Markets Authority (ESMA), the ECB, national authorities, national central banks and, where applicable, authorities from third countries are represented. They issue, among other things, non-binding opinions on the supervisory decisions of the EBA. [Art. 99-102]
- For issuers of significant stablecoins, stricter requirements apply to the amount of own funds, remuneration policy and liquidity management [Art. 41 and Art. 52].

Statement on Subsidiarity by the Commission

National rules for crypto-assets hamper the cross-border provision of crypto services and pose risks to consumer and investor protection, market integrity and competition.

Policy context

The Commission and Council stated in December 2019 that "no global stablecoin arrangement should begin operation in the European Union until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed". In September 2020, the finance ministers of Germany, France, Italy, Spain and the Netherlands reiterated this. There are concerns that stablecoins could affect financial stability, monetary policy transmission and monetary sovereignty.

Legislative procedure

24 September 2020	Adoption by EU Commission
Open	Adoption by European Parliament and Council, publication in Official Journal, entry into force

Options for Influencing the Political Process

Directorates General:	DG Financial Stability, Financial Services and Capital Markets Union
Committees of the European Parliament:	Economic and Monetary Affairs (responsible), Rapporteur: Stephan Berger (EPP, D)
Federal German Ministries:	Finance (lead)
Committees of the German Bundestag:	Finance (lead)
Decision-making Mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population).

Formalities

Competence:	Art. 114 TFEU (Internal Market)
Type of Legislative Competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Uniform EU rules on the issuance of stablecoins are appropriate for four reasons: First, they **increase legal certainty** for investors, issuers of stablecoins and providers of related services. Currently, it is often unclear whether and which legal provisions apply to stablecoins. Moreover, existing laws are often incompatible with the innovative nature of stablecoins. Second, they **confront the implications and risks that significant stablecoin projects can pose for investors, financial stability and the monetary order**. For example, successful stablecoin projects could encourage investors to replace bank deposits with stablecoins. This could lead to liquidity shortages for banks and limit their ability to lend. Third, uniform EU rules **may foster markets for stablecoins**, as there is currently often a lack of trust among established market players. Adequate rules for issuance **and** a coherent supervisory approach could act like a seal of approval and create the necessary trust. Fourth, EU rules **are appropriate insofar as stablecoin projects are**

often used in many countries at the same time and can have cross-border implications, for example when they reference to various fiat currencies.

It is not appropriate that banks wishing to issue an ART do not need explicit authorisation to do so. This gives them an inappropriate competitive advantage over other issuers, including other financial institutions. Although banks are already highly regulated, it is by no means certain that every single bank has the necessary know-how to deal with the risks of ART appropriately.

The power granted to national regulators to reject ART applications for approval from non-banks because of "a serious threat to financial stability, monetary policy transmission or monetary sovereignty" is too vague. It **gives them too much leeway to block undesired stablecoin projects**, which ultimately prevents innovation. Moreover, any serious threat from an ART project that is not classified as significant – for whose approval the national regulator and not the EBA is responsible - can ultimately be ruled out. Only the EBA - in cooperation with the ECB or the national central banks of the non-euro Member States – should be authorised to refuse approval on these grounds, and only for significant stablecoins.

More guidance to make it easier for the supervisory authorities to distinguish between different crypto-assets, including stablecoins, is required. This is the only way to ensure a coherent approach that prevents forum shopping. The guidance should clarify at what point stablecoins have the necessary stability to be classified as a stablecoin and not as any other crypto asset. Issuers could otherwise simply claim that their stablecoin is "stable" and restrict redemption by stablecoin holders. Lack of clarity on this weakens investor protection.

Whitepapers are central to reducing information asymmetries between issuers and investors. Like investments in securities, where issuers have to publish a prospectus, whitepapers promote market efficiency and investor confidence. The latter also applies to the various obligations for ART issuers, for example, to address conflicts of interest. It is unclear, however, why these basic requirements do not apply, or apply only to a limited extent, to EMT issuers. There is a need for adjustment here.

Restrictions on the investment of the reserve of assets by stablecoin issuers, and requirements for the custody of such assets, can increase the stability of stablecoins. Similar requirements also apply to the investment fund business, which has structural similarities to stablecoin projects. Equivalent treatment is therefore appropriate.

It is appropriate for issuers of non-significant stablecoins to be supervised by national authorities and issuers of significant stablecoins largely by the EBA, as smaller stablecoin projects usually have less cross-border impact and the threat to financial stability and monetary policy is less pronounced.

The supervision of significant stablecoins is a major challenge. On the one hand, regulators in both the EU and third countries have a legitimate interest in acting in the interest of their respective jurisdictions. For this reason, they will reserve the right to act as they see fit. On the other hand, contradictory supervisory action by different supervisory authorities should be avoided. For this, a global coordination of supervisory measures is imperative. It is therefore appropriate that the EBA's colleges of supervisors also include supervisory authorities from third countries. If third countries proceed analogously, this will be an important step towards a consistent, global supervisory approach.

Legal assessment

Competence

The regulation is rightly based on the internal market competence (Art. 114 TFEU).

Subsidiarity and Proportionality with Respect to Member States

Unproblematic.

Summary of the Assessment

Uniform EU rules on the issuance of stablecoins increase legal certainty, confront the implications and risks that significant stablecoin projects can pose for investors, financial stability and the monetary order, may foster markets for stablecoins, and are appropriate insofar as stablecoin projects are often used in many countries at the same time and can have cross-border implications. The power granted to national regulators to reject ART applications for approval because of "a serious threat to financial stability, monetary policy transmission or monetary sovereignty" gives them too much leeway to block undesired stablecoin projects. It is appropriate for issuers of non-significant stablecoins to be supervised by national authorities and issuers of significant stablecoins largely by the EBA.