Summary of the proposed amendments to MiCA by Members of the European Parliament (MEPs)

The MiCA Regulation: State of play

As expected, the Markets in Crypto-assets Regulation (MiCA) attracted the interest of many Members of the European Parliament (MEPs). As a result, the initial 15 amendments of the Rapporteur were followed by 1,160 amendments tabled by Members from all Political Families reflecting diverse views from liberal to cautious to completely reactionary.

MiCA was introduced by the European Commission as part of the Digital Finance Package to enhance the potential of digital finance in the EU by enabling innovation and mitigating risks. The Regulation aims to structure the market of crypto-assets that are not qualified as securities. The proposed Regulation:

1. provides definitions
2. specifies obligations around whitepapers;
3. determines requirements on issuers of asset-referenced-tokens (ARTs) and their supervision;
4. determines requirements on issuers of e-money tokens and their supervision;
5. determines requirements on "significant" asset-referenced-tokens and e-money tokens;
6. specifies authorisation, supervision, and operating conditions for Crypto-asset Service Providers (CASPs);
7. sets provisions for the prevention of market abuse involving crypto-assets; and
8. specifies the regulatory responsibilities of the ESAs.

The European Parliament is expected to agree on the text by the Autumn. After that, it will join the Council and the European Commission in the trialogue negotiations that will complete the final text of the MiCA Regulation.

The following is our reflection on the first reading of the amendments introduced by the MEPs. These amendments are subject to inter-party negotiation and compromise. Therefore, they do not reflect the final text but are indicators of the framework of the final compromises. This text describes this framework, as it appears in the amendments at this moment.

MEPs overall response to MiCA is diverse. Emphasis was placed on market integrity matters, the systemic impact of crypto on payments and monetary policy, the supervisory role of the ESAs, AML/CFT considerations, environmental considerations, and issues related to taxation.

Definitions and scope

MEPs propose:

1. MEPs extend the scope of MiCA to include both issuance and offering of crypto-assets.
2. NFTs: MEPs propose the exclusion of tokens that are unique and not fungible with other crypto-assets, which are not fractionable and transferable directly to other holders without the issuer's permission, are accepted only by the issuer, including merchant's loyalty schemes, represent IP rights, guarantees, certificate authenticity of a unique physical asset, or any other right not linked to the ones that financial instruments bear, and are not accepted to trading at a crypto-asset exchange.
3. Hybrid tokens: MEPs exclude from the scope of MiCA "hybrid tokens", which combine elements of financial instruments as defined in the Regulation, with elements of crypto-assets, thereby creating a hybrid 'financial crypto-asset'.
4. MEPs ask ESMA to introduce technical standards and criteria under which crypto-assets can be considered in substance as equivalent to similar financial assets.
5. Many MEPs object to the initial recommendation of the EC to exclude licensed Investment Firms from the scope of MiCA.
6. DAOs: MEPs define 'decentralized autonomous organisation' as a rules-based organisational system that is not controlled by any central authority; the decentralized autonomous organisation's rules are entirely routed in its algorithm
7. Various definitions of tokens, Crypto-assets, ARTs, e-money tokens, utility tokens were introduced: interestingly, a further introduction of payment and investment ARTs were introduced.
8. Definitions of issuer and offeror of crypto-assets were introduced as well.
9. Special attention is given to the environmental impact of consensus mechanisms, with many amendments tabled by the S&D and the Greens in an effort to distinguish (and define) between environmentally sustainable and unsustainable consensus mechanisms.

Offers of crypto-assets and white papers

1. MEPs specify that crypto-assets (other than e-money or ARTs) can be offered by legal entities or natural persons only if they are EU residents and are subject to the rights and obligations of the Union. Some MEPs require prior authorisation of the issuing entity; others don't.
2. Some MEPs accept the issuance of crypto-assets from DAOs.
3. MEPs tabled amendments asking issuers of tokens to have in place measures that prevent their misuse (e.g., money laundering).
4. It is also recommended that token issuers are not subsidiaries of an entity established in a high risk third country or jurisdiction with a 0% corporate tax rate or with no taxes on corporate profits.

5. There is some diversity about the applicability of this Regulation when the tokens are offered to a limited number of persons. Some MEPs ask that this provision is deleted. Some ask that the number is kept to 150 people, some that it is extended to 500.
6. Regarding the total consideration of an offer to the public over a period of 12 months, the threshold proposed by MEPs varies from 1,000,000 to 8,000,000 EUR.
7. Many MEPs remove the restriction proposed by the Commission that offers to the public must be solely addressed to qualified investors.
8. White papers: Regarding white papers, MEPs suggested that they should include a clear statement that:
    a. the crypto-assets may lose their value in part or in full;
    b. the crypto-assets may not always be transferable;
    c. the crypto-assets may not be liquid;
    d. where the offer to the public concerns utility tokens, that such utility tokens may not be exchangeable against the good or service promised in the crypto-asset white paper, especially in case of failure or discontinuation of the project;
    e. where applicable, public protection schemes protecting the value of crypto assets and public compensation schemes do not exist, and crypto-assets are not covered by public investor compensation or deposit guarantee schemes.

    Other MEPs suggest the crypto-asset white paper shall specify a minimum amount necessary to carry out the offer to the public of crypto-assets ('soft cap'). Where subscriptions fail to reach the soft cap by the end of the subscription period, the offer to the public of crypto-assets shall lapse and all funds collected shall be returned to the investors. The soft cap shall be set at an amount no less than EUR 100 000. This system shall offer sufficient guarantees ensuring its reliability, operability and efficiency. The issuer of crypto-assets, other than asset-referenced tokens ore-money tokens, shall put in place a procedure to record all incoming subscriptions received during the offer, in order to be able to calculate at any time the consolidated proceeds from the offer, taking into account all funds and crypto-assets raised, and monitor whether the soft cap is reached. The issuer ensures that the funds and crypto-asset collected via the offering cannot be transferred to the recipient of the funds and digital assets or used by said recipient if the minimum amount necessary to complete the issue (soft cap), as defined by the token issuer in the information document is not reached. A hard cap should also be indicated. The whitepaper should also include a detailed description of the issuer, including a summary of key financial information regarding the issuer, a detailed description of the issuer's project, and a presentation of the main participants involved in the project's design and development.
9. The white paper should be written either on an official language of the EU or in English.
10. For some MEPs the monitoring of the whitepaper should be in the hands of national competent authorities and for others in the hands of ESMA.
11. Regarding marketing and communications, MEPs have diverse views, with some advocating against any publication of a white paper unless it is approved by ESMA. Others do not ask for an ex ante approval by competent authorities. In case of modification of the white paper the relevant authority should approve this modification

12. Many MEPs stress that issuers should not issue tokens based on a "proof of work" consensus mechanism.
13. MEPs also suggest that when an offering is cancelled, issuers should return the funds in 14 to 20 days.

Asset-referenced Tokens (ARTs)

1. Issuers of ARTs should be legal entities that are not subsidiaries of entities established in high-risk third countries with deficiencies in their AML regime, or in third countries with 0% corporate tax or in the list of non-cooperative jurisdictions for tax purposes.
2. Some MEPs suggest that the provisions of the authorisation should not apply where over a period of 12 months the average outstanding amount of ARTs does not exceed 1,000,000 EUR (the original proposal of the EC was 5,000,000 EUR).
3. Suggest that authorisation is granted by ESMA and not NCAs or the EBA.
4. Issuer must have in place internal control mechanisms compliant with the AMLD.
5. MEPs require sustainability indicators as well as validation that the proof of stake is the selected consensus mechanism. These indicators should be included in the ART white paper.
6. If an issuer has already offered an ART, then he must re-submit the information required by this Regulation.
7. The ART white paper should be in an official language of the EU or in English.
8. The NCA (for some MEPs) or ESMA (for others) should assess the issuer's application within 20 days. The Competent Authority should ask ECB for an opinion that can be binding (for some MEPs) or non-binding (for others) regarding the dangers that this ART imposes to the smooth operation of the payment system or the transmission mechanism.
9. The authorisation can be withdrawn if the issuer does not have in place effective measures to prevent ML/TF, when the issuer poses significant threat to financial stability, market integrity, or the consumer protection, and when the ECB or a Central Bank issue a negative opinion.
10. Requirements applicable to Payment ARTs: 1. Issuers of Payment asset referenced tokens (Payment ART) are subject to the rules and requirements set out in Title IV of this Regulation unless provided otherwise in this article. 2. Payment ART shall not be deemed to be 'electronic money' as defined in Article 2(2) of Directive2009/110/EC. 3. Each unit of Payment ART created shall be pledged at par value with an official currency unit of an EU member state. 4. Issuers of Payment ART shall issue Payment ART at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366. 5. Holders of Payment ARTs are entitled to claim redemption at any moment and at par value, of the monetary value of the Payment ART held, either in cash or by credit transfer. 6. Issuers of Payment ART shall prominently state the conditions of redemption in the crypto-asset white paper as referred to in Article 46. 7. Where the issuer of a Payment ART token does not fulfil legitimate redemption requests from holders of Payment ART within 30 days, the holder is entitled to claim redemption to any following third party entities that has been in contractual arrangements with

issuers of Payment ART: (a) entities ensuring the safeguarding of funds received by issuers of Payment ART in exchange Payment ART in accordance with Article 7 of Directive 2009/110/EC; (b) any natural or legal persons in charge of distributing e-money tokens on behalf of issuers of e-money tokens.

11. Some MEPs require the disclosure by the issuer of any conflict of interest for holders that own more than 5% or the ARTs (original EC proposal was 20%).
12. Regarding the own-fund requirements, MEPs ask for higher thresholds (5% instead of 2%).
13. MEPs call issuers of ARTs to conduct stress-tests on a regular basis (e.g., interest rate shock scenarios or operational risk stress tests).
14. Reserve of Assets: MEPs proposed the aggregate value of reserve assets shall always be at least equal to the aggregate face value of the claims on the issuer from holders of asset-referenced tokens in circulation. For the purpose of calculating the aggregate face value of token holders' claims, and for any valuation of the reserve assets under paragraph 5 of this Article, Article 30(11), point (c) of Article 35(2), Article 41 and Article 42, the face value of claims, and the value of funds and other reserve assets, including other crypto-assets, shall be expressed in the same official currency. The reserve shall be insulated in accordance with national law in the interest of the holders of the ART against the claims of other creditors on the issuer, in particular in the event of insolvency. The reserve shall be composed and managed so as to cover at all times the risks associated to the claims on the issuer from holders of the asset-referred token.
15. Audit: Issuers of ARTs should mandate independent audits every six months: The result of the audit shall be notified to the competent authority without delay, at the latest within six weeks of the reference date of the valuation. The result of the audit shall be published within two weeks of the date of notification to the competent authority. The competent authority may instruct the issuer to delay the publication in the event that: (a) the issuer has been required to implement recovery arrangement or measures in accordance with this Regulation, (b) the issuer has been required to implement an orderly wind-down of its activities in accordance with this Regulation, (c) it is deemed necessary to protect the economic interests of holders of the asset-referenced token, and (d) it is deemed necessary to avoid a significant adverse effect on the financial system of the home Member State or another Member State.
16. Liquidity and concentration requirements: MEPs call for liquidity requirements establishing which percentage of the reserve assets should be comprised of weekly maturing assets, reverse repurchase agreements which are able to be terminated by giving five working days' prior notice, or cash which is able to be withdrawn by giving five working days' prior notice. Also call for concentration requirements to prevent the issuer from investing more than a certain percentage of assets issued by a single body
17. Permanent right of redemption for the ART holders: MEPs call for the holders of ARTs shall be provided with a permanent right of redemption on the issuer of such ARTs. Any ART that does not provide all holders with a permanent redemption right shall be prohibited. Upon request by the holder of ARTs, the respective issuers shall redeem, at any moment and at market value, the monetary value of the ARTs held to the holders of ARTs, either in cash or by credit transfer. Where the issuer of an ART does not fulfil legitimate redemption requests from holders of ART within 30 days.

Significant Asset-referenced Tokens (SARTs)

1. MEPs ask ESMA to be the responsible supervisory authority (EBA was the original in the EC's proposal) to ensure that the supervision is not fragmented
2. Thresholds: Regarding the thresholds of the criteria that qualifies SARTs, MEPs propose, inter alia, a range of values spanning from 1,000,000,000 EUR to 1,200,000,000 EUR, and 550,000 to 5,000,000 transactions per day.
3. Suggest reserve assets of 10,000,000,000 EUR (original proposal of the EC was 1,000,000,000 EUR)
4. Stress-testing: issuers of SARTs shall conduct, on a regular basis, stress testing that shall take into account severe but plausible financial (such as interest rate shocks) stress scenarios and non-financial (such as operational risk) stress scenarios. Where an issuer of SARTs offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner. Based on the outcome of such stress tests, the EBA, where relevant, may impose additional own funds requirements on top of the 3% requirement. Moreover, issuers of SARTs shall also conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements.

E-Money Tokens and Significant E-Money Tokens

1. Similar to ARTs, issuers of e-Money tokens should be legal entities that are not subsidiaries of entities established in high-risk third countries with deficiencies in their AML regime, or in third countries with 0% corporate tax or in the list of non-cooperative jurisdictions for tax purposes.
2. MEPs establish similar requirements to ARTs requirements regarding sustainability indicators and the environmental impact of the consensus mechanism.
3. MEPs propose that an e-money token offered to the public in the Union or admitted to trading on a trading platform of crypto-assets may reference a fiat currency of legal tender other than a currency of the Union.
4. Redemption: Holders of e-money tokens are entitled to claim redemption at any moment and at par value, of the monetary value of the e-money tokens held, either in cash or by credit transfer. The redemption may not necessarily be subject to a fee but a fee can be imposed under certain conditions.
5. Significant e-money tokens: EBA after consultation with ECB and the relevant Central Banks of the Member States whose currency is the EURO can classify e-money tokens as "significant" ones. Also, the EBA, after consultation with the ECB and the relevant Central Banks of Member States whose currency is not the euro, shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification.

Crypto-asset Service Providers (CASPs)

1. Authorisation: MEPs asked that CASPs have a registered office in a Member State of the Union and do not have a parent undertaking, or a subsidiary, that is established in: a third country which is listed as a high-risk third country having strategic deficiencies in its regime on AML/CFT, in accordance with Article 9 of Directive (EU)2015/849, a third country which is listed in Annex I *or Annex II* of the EU list of non-cooperative jurisdictions for tax purposes, or a third country jurisdictions with a 0 % corporate tax rate or with no taxes on companies' profits. Also, MEPs ask that a CASP, which has been authorised in accordance with Article 55, shall have its head office in the same Member State as its registered office and shall carry out at least part of its crypto-asset service business there.
2. MEPs also ask that CASPs provide only services linked to crypto-assets which are not generated by a proof of work mechanism.
3. The role of ESMA: ESMA shall require significant CASPs that intend to provide crypto-asset services, to obtain authorisation before commencing the provision of crypto-asset services. ESMA shall ensure the supervision of the significant CASP in close cooperation with the competent authority of the home Member State. ESMA shall develop draft regulatory technical standards to determine the criteria to be taken account when assessing the significance of a CASP.
4. Passporting: The authorisation as a crypto-asset service provider shall be valid for the entire Union and shall allow crypto-asset service providers to provide throughout the Union the crypto-asset services for which they have been authorised, either through the right of establishment, including through a branch, or through the freedom to provide services. Crypto-asset service providers that provide crypto-asset services on a cross-border basis shall not be required to have a physical presence in the territory of a host Member State. The original proposal of the EC that CASPs could only provide services the Member State where it resides has been lifted.
5. Regarding application and authorisation, MEPs introduce a wide range of amendments to the original text of the Commission, most importantly related to AML/CFT provisions, market integrity provisions when the CASP is an exchange platform (including description of the methodology for determining the price of crypto-assets).
6. Withdrawal of Authorisation: MEPs ask competent authorities to withdraw the authorisation of the CASPs when they fail to comply with AML provisions.
7. Provision of crypto-asset services at the exclusive initiative of the client: 1. Whereas clients established or situated in the Union initiate at their own exclusive initiative the provision of a crypto-asset service [or activity] by a third-country firm, the requirement for authorisation under Article 53 shall not apply to the provision of that service [or activity] by the third country firm to that person including a relationship specifically relating to the provision of that service or activity. Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, regardless of the means of communication used for solicitation, promotion or advertising in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client. 2. An

initiative by a client as referred to in paragraph 1 shall not entitle the third-country firm to market new categories of crypto-asset services.

8. Obligations of CASPs: MEPs ask that CASPs are required to warn clients of risks associated with purchasing crypto-assets, in particular the significant price volatility of crypto-assets, combined with the inherent difficulties of valuing crypto-assets reliably. They should further warn clients explicitly that by investing in these types of products, they should be prepared to lose all their money.
9. Prudential, Insurance, disclosure requirements: A set of prudential requirements were introduced by MEPs to apply to the CASPs including a disclosure of the CASP's insurance policy and conflict of interest disclosure requirements.
10. Governance: MEPs ask CASPs to establish, implement, and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities. Moreover, CASPs shall establish, implement, and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the CASP.
11. Prohibition of anonymisation: CASPs shall not provide services related in any way, shape, or form to crypto-assets with an inbuilt anonymisation function that limits the traceability of transactions. In particular, they shall not facilitate the purchase or trading of such crypto-assets and shall not offer custody services for such crypto-assets.
12. Traceability: CASPs transferring crypto-assets for payment purposes shall have internal control mechanisms and effective procedures in place for the full traceability of all transfers of funds within the EEA, as well as those sent from within the EEA to another region and vice versa as defined in the EU Funds Transfer Regulation ((EU) 847/2015).
13. Sustainability: CASPs shall not provide services related in any way, shape, or form to crypto-assets that do not meet the environmental sustainability criteria in accordance with Article 3a. In particular, they shall not facilitate the purchase or trading of such crypto-assets and shall not offer custody services for such crypto-assets.
14. Custody: CASPs shall, by the end of the business day following the day the funds (other than e-money tokens) have been received, place such clients' funds, with a central bank, where available, or a credit institution. CASPs shall take all necessary steps to ensure that clients' funds (other than e-money tokens) held with a central bank or a credit institution are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the CASP. CASPs authorised for the custody and administration of crypto-assets on behalf of third parties shall be held liable to their clients for the loss of crypto-assets or of the means of access to the crypto-assets as a result from malfunction or hacks that are attributed to the provision of the relevant service and the operation of the service provider. CASPs' liability shall be up to the market value of the crypto-asset lost. If CASPs authorised for the custody and administration of crypto-assets on behalf of third parties make use of other providers for the custody and administration of the crypto-assets they hold on behalf of third parties, they shall only make use of CASPs authorised in accordance with Art 53.CASPs authorised to hold and administer crypto-assets on behalf of third parties and that make use of other providers for the custody and administration of crypto-assets shall inform their customers thereof.

15. Complaints: CASPs shall investigate all complaints in a fair manner and within 3 working days after reception of the complaint. The CASP will notify a reference number of the complaint to the client and communicate the outcome of such investigations to their clients within a period of time not going beyond 25 working days.
16. Forks: In case of forks or other changes to the underlying distributed ledger technology, or any other event likely to create or modify client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the event's occurrence by such change, except when a valid agreement signed with the custodian pursuant to paragraph 1 prior to the event explicitly provides otherwise.
17. Trading Platforms: CASPs will be authorised for the operation of a trading platform for crypto-assets provided they have set up a partnership with a credit institution which has opened real-name bank accounts for their customers. Operating rules for trading platforms should also prevent and detect insider dealing, market manipulation and attempted insider dealing and market manipulation.
    i. Also, CASPs authorised for the operation of a trading platform for crypto-assets whose annual revenue is above a threshold set by ESMA shall report complete and accurate details of transactions in crypto-assets traded on its platform to the competent authority as quickly as possible, and no later than the close of the following working day.
    ii. Moreover, CASPs authorised for the operation of a trading platform for crypto-assets shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in crypto-assets which are advertised through their systems. The records shall contain the relevant data that constitutes the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported or kept at the disposal of the competent authority.
    iii. Where a CASP executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the crypto-assets and the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees, and any other fees paid to third-parties involved in the execution of the order.
    iv. CASPs authorised to execute orders for crypto-assets on behalf of third parties shall ask the client or potential client to provide information regarding that person's knowledge and experience in crypto-assets, the client's objectives, risk tolerance, financial situation including their ability to bear losses, and basic understanding of risks involved in purchasing crypto-assets so as to enable the CASP to assess whether the crypto-asset envisaged is appropriate for the client. Where the CASP considers, on the basis of the information received under the first subparagraph, that the crypto-asset is not appropriate to the client or potential client, it shall warn the client or potential client.

18. Clearing of Transactions: CASPs that are authorised for the operation of a trading platform for crypto-assets shall complete the final settlement of a crypto-asset transaction on the DLT within 72hrs of the transaction being executed on the trading platform (the original proposal of the EC was in the same day).

19. Execution of orders: CASPs authorised to execute orders for crypto-assets on behalf of third parties shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require crypto-asset service providers to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy. (Per MiFID, 27(7))

20. Advise: CASPs authorised to provide advice on crypto-assets shall in good time before providing advice on crypto-assets inform potential clients: (a) whether or not the advice is provided on an independent basis and (b) whether the advice is based on a broad or on a more restricted analysis of different crypto-assets and, in particular, whether the range is limited to crypto-assets issued or offered by entities having close links with the crypto-asset service provider or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided. CASPs shall also provide potential clients with information on all costs and associated charges, including the cost of advice, where relevant, the cost of crypto-assets recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments. CASPs authorised to provide advice on crypto-assets shall warn clients that, due to their nature: (a) crypto-assets may lose their value in part or in full, (b) crypto-assets may not always be transferable, (c) crypto-assets may not be liquid, (d) the value of crypto-assets may fluctuate, and (e) where applicable, public protection schemes protecting the value of crypto-assets and public compensation schemes do not exist and crypto-assets are not covered by public investor compensation or deposit guarantee schemes.

21. Suitability and Appropriateness test: MEPs introduced this test, where:

    i. CASPs authorised to provide the services outlined in Articles 70 to 73 shall, before offering a service to a client or a prospective client, assess whether and which crypto-asset service offered is appropriate for the prospective client,

    ii. For the purposes of the assessment referred to in paragraph 1, CASPs shall obtain information about the prospective client's knowledge of, and experience in crypto-assets, objectives, risk tolerance, financial situation including the ability to bear losses, and a basic understanding of risks involved in purchasing crypto-assets,

    iii. CASPs shall review the assessment referred to in paragraph 1 for each client every year after the initial assessment made in accordance with that paragraph,

    iv. Where CASPs authorised to provide the services outlined in Articles 70 to 72 consider, on the basis of the information received under that paragraph, that the prospective clients have insufficient knowledge or experience or ability to bear losses, CASPs shall inform those prospective clients that the services offered are inappropriate for them and issue them with a risk warning. That risk warning shall

clearly state the risk of losing the entirety of the money invested. Prospective clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider concerned

v. ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards.

The Regulation is concluded with Amendments on the role of the competent authorities, the delegated acts and the transitional provisions

Specific note on NFTs in MiCA

NFTs are mentioned in the Recitals of the Regulation. MiCA should only apply to crypto-assets that may be transferred among holders without issuers' permission. Crypto-assets that are unique and not fungible with other crypto-assets, which are not fractionable and are accepted only by the issuer, including merchant's loyalty schemes, represent IP rights, guarantees, certificate authenticity of a unique physical asset, or any other right not linked to the ones that financial instruments bear, and are not accepted to trading on a crypto-asset exchange, should be excluded from the scope of this Regulation.

However, this Regulation should explicitly apply if the non-fungible token grants to the holder or its issuer specific rights linked to those of financial instruments, such as profit rights or other entitlements. In these cases, the tokens may be assessed and treated as "security tokens", and be subject, as well as the issuer, to various requirements under relevant financial market regulations, such as Directive (EU) 2015/849 (the AMLD), Directive 2014/65/EU (the MiFID II), Regulation (EU) 2017/1129 (the Prospectus Regulation), Regulation (EU) No 596/2014 (the MAR) and the Directive 2014/57/EU (the MAD).

Crypto-assets that are unique and not fungible with other crypto-assets, which are not fractionable and are accepted only by the issuer, represent IP rights, guarantees, certificate authenticity of a unique physical asset such as a piece of art, or any other right not linked to the ones that financial instruments bear, and are not accepted to trading on a crypto-asset exchange, it is proposed to consider whether an EU-wide bespoke regime should be proposed by the European Commission.

Specific note on FATF recommendations in MiCA

FATF is mentioned in the Recitals of the Regulation. MEPs stress that the notion of crypto-asset service provider is wide. The whole lifecycle of a crypto-asset service is relevant, and the decentralisation of any individual element of operations does not affect the qualification as a crypto-asset service provider and does not relieve such a provider of its obligations. The qualification of a crypto-asset service provider leads to the application of the Travel Rule, which requires crypto-asset service providers to perform extensive Know Your Customer and Anti-Money Laundering checks in respect of the originators and beneficiaries of transactions.

MEPs note that a significant proportion of crypto-asset service providers are deemed to have inadequate KYC and customer due diligence procedures, posing increased risks of money laundering and terrorist financing. In 2019 the FATF adopted the Travel Rule requiring all firms providing services in crypto-assets to obtain and hold required and accurate originator information and required beneficiary information on any transfers in crypto-assets, submit the information to

beneficiary service provider and counterparts, if any, and make it available on request to the authorities.

MEPs also note that the Travel Rule has so far been implemented in few jurisdictions, but not in the Union. With a view to stepping up the fight against money laundering and terrorist financing, the Union should ensure that crypto-asset service providers comply with stringent AML obligations and that the Union AML regulatory framework is aligned with the FATF international standards on combating money laundering and the financing of terrorism.