XReg.Consulting

Deeper dive into Europe's new cryptoassets laws

20 October 2020

Who we are

- Group of former policymakers and regulators specialising in cryptoassets, helping:
  - governments make sound policy
  - regulators supervise effectively
  - public authorities build capacity
  - cryptoasset firms thrive and follow the rules

Your presenters

Siân Jones
Senior Partner

Ana James
Policy & International Relations Manager

Ernest Lima
Partner & Policy Lead

Introduction

Markets in Crypto-assets Regulation

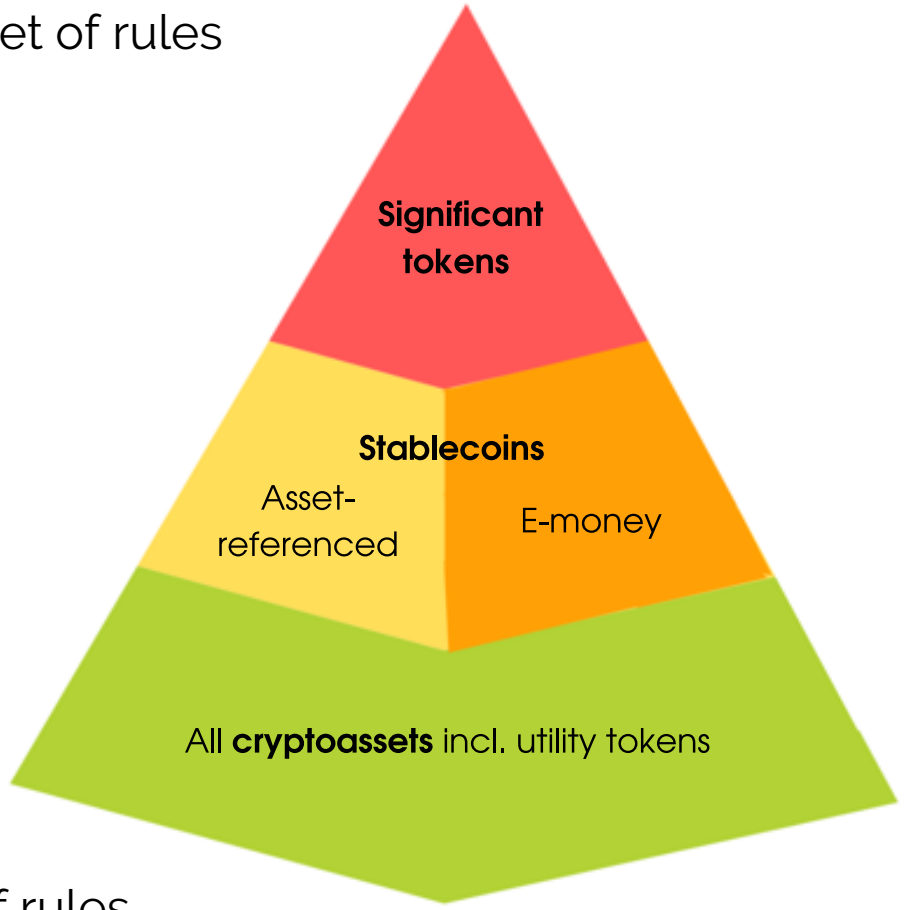
- Regulates **all** cryptoassets that are not financial instruments
- Sets rules for token issuers & defines content of whitepapers
- Imposes rules on *asset-referenced tokens & e-money tokens*
- Establishes EU-wide authorisation & supervision of *crypto-asset service providers*
- Requires issuers & CASPs to be legal entities

Definitions

- Crypto-asset
  - *Digital representation of value or rights which may be transferred and stored electronically, using distributed ledger or similar technology*
- Crypto-asset Service Provider
  - *Anyone providing a crypto-asset service to third parties by way of business*
- Crypto-asset services
  - *Includes custodians, exchanges & trading platform operators*

The rules stack

Stringent set of rules



Base set of rules

Leaked vs. final version

EUROPEAN COMMISSION

Brussels, XXX
[…](2020) XXX draft

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets (MiCA)

(Text with EEA relevance)

EUROPEAN COMMISSION

Brussels, 24.9.2020
COM(2020) 593 final

2020/0265 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

(Text with EEA relevance)

{SEC(2020) 306 final} - {SWD(2020) 380 final} - {SWD(2020) 381 final}

- Leaked > Provisional > Final proposal
- Some headings changed
- Some definition wordings changed
- ~~Payment transactions with asset-referenced tokens~~
- Immediate start date for issuers of asset-referenced tokens

Timeline

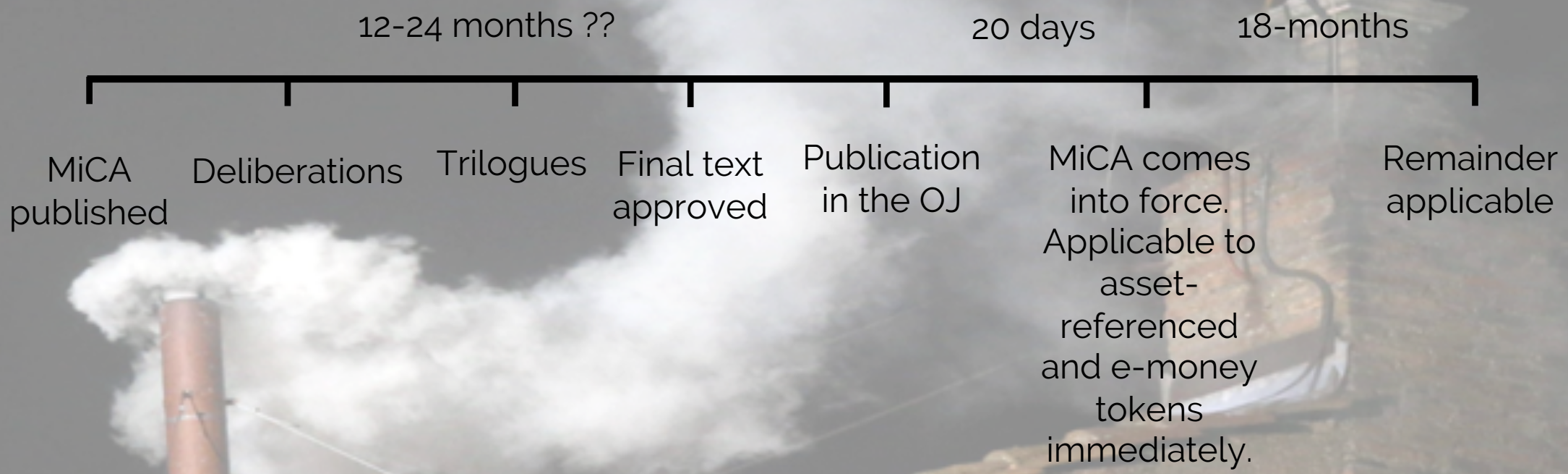


Photo by: Gregorio Borgia, AP

Pilot regime for market infrastructures

- Sandbox for cryptoassets deemed as financial instruments
- Use of DLT currently constrained
- Long-term experimentation
- Inform decisions on future regime
- Constraints temporarily removed by case-by-case exemptions

DLT market infrastructures

means either a DLT multilateral trading facility or a DLT securities settlement system

Who can apply?	To operate	Temporary exemptions
Investment firms or market operators	DLT MTF	-Recording of DLT transferrable securities -Obligation of intermediation
Central Securities Depositories	DLT securities settlement system	-Security account, transfer orders, recording of securities, integrity of issue, segregation of assets -Outsourcing -Obligation of intermediation -Cash settlement -Access to other market infrastructures

Instruments

- Subset of financial instruments
  - DLT transferrable securities that are not liquid

Shares	Bonds
EUR 200m	EUR 500m

  - Limits on issuer market capitalisation and total market value of DLT transferrable securities

Additional requirements

Clear business plan

Rules on the functioning of the proprietary DLT they operate

Fit for purpose IT and cyber arrangements

Adequate arrangements in place to safeguard client assets

Exit strategy

Digital Operational Resilience Regulation (DORA)

- Applies to **all** financial services entities including CASPs and issuers
- Introduction of sector-wide requirements to mitigate:
  - Cyber-attacks
  - Other risks to Information & Communication Technologies (ICTs)
- Comprehensive and well-documented ICT risk management framework
- Measures to oversee service providers
- Cooperation between regulators
- Consequential amendments to EU Regs

Consequential changes Directive

- Necessary consequential amendments
- Amends existing EU financial services Directives-
  - CRD, Solvency II, PSD2, AIFMD to introduce DORA cross-references
  - MiFID II to-
    - make cross-references to DORA
    - continuity and regularity of investment services and activities
    - clarify legal treatment of cryptoassets
    - complement the PRR

DFP Strategies

Digital Finance Strategy

- Remove fragmentation
- Facilitate digital innovation
- Promote data-driven finance
- Address digital transformation

Retail Payments Strategy

- Increasingly digital & instant payments
- Innovative & competitive payments
- Efficient & interoperable retail payments
- Efficient international payments

Key impacts

- Friction between financial instruments & crypto-assets
- DeFi prohibited
- Privacy features prohibited
- No transitional arrangements for asset-referenced tokens
- Raising capital harder for start-ups
  - 8x higher prospectus threshold available for securities
- Not-so-level playing field
  - Banks, investment firms & PIs don't require CASP authorisation
  - Only banks & EMIs can issue e-money tokens
  - Pilot Regime exemptions targeted at incumbents

Questions

To receive updates on the Digital Finance Package:
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ana@xreg.consulting