

# Explanatory note accompanying the public consultation on the draft law implementing certain provisions of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

## 1.Introduction

The present explanatory note ('the **Note**') is issued in relation to the consultation on the national draft law implementing certain provisions of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 ( 'the **Draft**' and '**MiCA**' respectively) . MiCA became fully applicable on 30.12.2024. While MiCA is a European Union ('**EU**') Regulation and applies directly across all Member States ('**MS**'), certain provisions thereof (e.g. designation of competent authorities, their powers and the sanctions arsenal) require national implementation measures<sup>1</sup>. To this end, the Draft has been produced. The provisions of the Draft<sup>2</sup> also include certain provisions on administrative powers and sanctions<sup>3</sup> as well as on criminal sanctions<sup>4</sup>, which are additional to those of MiCA requiring implementation. For these reasons the relevant consultation takes place, in order for stakeholders to provide their views thereupon.

## 2. Addressees

The Note is addressed to a wide array of stakeholders, including but not limited to:

- 1) Offerors under Title II of MiCA;
- 2) Issuers under Title III or IV of MiCA;
- 3) Crypto-asset service providers authorised or entities notified under Title V of MiCA (as the case may be);

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<sup>1</sup> See e.g. the wording of Art.94 para.1 of MiCA: '*...competent authorities shall have, in accordance with national law...*'.

<sup>2</sup> Available in Greek here

<sup>3</sup> Regarding the applicable legal basis see Art.94 para.1 of MiCA: '*...competent authorities shall have, in accordance with national law, **at least** [own emphasis added] the following supervisory and investigative powers...*'; Art.111 para.1 of MiCA: '*...competent authorities to have the power to take appropriate administrative penalties and other administrative measures in relation to **at least** [own emphasis added] the following infringements...*'.

<sup>4</sup> Regarding the applicable legal basis see Art.111 para.1 of MiCA: '***Without prejudice to any criminal penalties** [own emphasis added]...*'

- 4) Advisors and consultants, technology solution (including information and communication technology ('**ICT**') solution) providers and entities having received an outsourcing mandate under MiCA;
- 5) Auditors;
- 6) Entities forming part of the ecosystem of an Asset-Referenced Tokens under MiCA ('**ART**');
- 7) Payment services providers effecting payments in relation to activities under MiCA;
- 8) Competent authorities; and
- 9) Other financial services entities, which may consider that the Draft will have an impact on their business activities and wish to participate in the consultation.

### **3. Content and structure of the Note**

The Note provides certain background information in relation to the provisions of the Draft under consultation. The aim is to describe the applicable context and facilitate stakeholder input. It also includes the input sought from stakeholders.

The content of the Note is limited to the provisions of the Draft and does not constitute an analysis or presentation of the provisions of MiCA.

Terms not further defined herein (e.g. credit institution, electronic money institution, payment institution, central securities depositories, investment firms, market operators and alternative investment fund managers) shall have the meaning ascribed thereto in the Draft.

### **4. The provisions of the Draft for which stakeholder views are sought**

#### **4.1 Designation of competent authorities**

The Draft provides for a split of regulatory and supervisory powers between the Cyprus and Securities Exchange Commission ('**CySEC**') and the Central Bank of Cyprus ('**CBC**') taking the basis for the existing split of supervisory powers into account.

More specifically:

- 1) The CySEC shall be responsible for:
  - a. Title II of MiCA;
  - b. Title III of MiCA; provided the Cyprus-based ART issuer in question is not a credit institution, a payment institution or an electronic money institution;
  - c. Title V of MiCA in relation to crypto-asset service providers ('**CASPs**') authorised by CySEC under Art.63 of MiCA, excl. credit institutions, payment institutions or electronic money institutions. As regards notified entities under Art.59 of MiCA, CySEC shall be responsible for Cyprus-based central securities depositories, investment firms and market operators, alternative investment fund managers and management companies of Undertakings for Collective Investment in Transferable Securities ('**ManCos**'). Within this context, CySEC

shall also be responsible for monitoring any unlawful marketing activities under Art.59 para.5 of MiCA; and

- d. Title VI of MiCA, on the basis of the crypto-assets in question having been admitted to trading/pending admission to trading on a Cyprus-based trading platform falling under CySEC's supervision<sup>5</sup>.

2) The CBC shall be responsible for:

- a. Title III of MiCA; provided the Cyprus-based ART issuer in question is a credit institution, a payment institution or an electronic money institution;
- b. Title IV of MiCA for Cyprus-based credit institutions and electronic money institutions, given that electronic money tokens under Title IV of MiCA ('EMTs') can only be issued by credit institutions and electronic money institutions;
- c. Title V of MiCA in relation to Cyprus-based credit institutions, electronic money institutions and payment institutions operating under an authorisation under MiCA or Cyprus-based credit institutions and electronic money institutions operating under a notification under MiCA. Within this context, the CBC shall also be responsible for monitoring any unlawful marketing activities under Art.59 para.5 of MiCA by Cyprus-based credit institutions, electronic money institutions and payment institutions; and
- d. Title VI of MiCA, on the basis of the crypto-assets in question having been admitted to trading/pending admission to trading on a Cyprus-based trading platform falling under the CBC's supervision<sup>6</sup>.

By way of logical extension of the aforesaid, the CySEC and CBC shall act as designated points of contact for the purposes of regulatory cross-border co-operation under Art.93 para.2 of MiCA for matters falling within their respective competences, as described above<sup>7</sup>.

Stakeholders are invited to provide their views on the designation of competent authorities as described above herein.

## 4.2 Additional investigatory and supervisory powers

Based on the wording of Art.94 para.1 of MiCA that competent authorities shall have, in accordance with national law, '*at least*' the supervisory and investigative powers laid down therein, following additional investigatory and supervisory powers have been added:

- 1) In the context of implementing Art.94 para.1 point (a) of MiCA<sup>8</sup> the information and documents that may be requested shall not only include ad hoc information and documents, but also information and documents to be submitted on a periodical basis within specified deadlines, such as transaction reporting;

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<sup>5</sup> Section4 subsection(2) of the Draft.

<sup>6</sup> Section 4 subsection(3) of the Draft.

<sup>7</sup> Section 4 subsection(4) of the Draft.

<sup>8</sup> Implemented through section5 subsection.1 point (a) of the Draft.

- 2) In the context of implementing Art.94 para.1 point (h) of MiCA<sup>9</sup> prohibited activities shall also encompass the use of a (corporate) name or the issuance of marketing communications or any other process suggesting that a non-CASP is a CASP or that such person is likely to create confusion in this respect<sup>10</sup>;
- 3) The power<sup>11</sup> to require CASPs to provide additional own funds, over and above of those provided under Art.67 of MiCA, in case of a material change to a CASP's business activities or of a CASP-related material risk; and
- 4) The power<sup>12</sup> to require CASPs to carry out audits, including audits of ICT systems, or verifications or to assign such audits or verifications to third parties, such as statutory auditors.

Stakeholders are invited to provide their views on the purposiveness and extent of those additional investigatory and supervisory powers.

### 4.3 Additional administrative infringements and sanctions

Based on the wording of Art.111 para.1 of MiCA that competent authorities shall have, in accordance with national law, the power to take appropriate administrative action in relation to 'at least' the infringements laid down therein, following additional infringements have been added:

- 1) Non-compliance with an administrative order or instruction under section 5 subsection(1) of the Draft and/or non-compliance or non-cooperation in case of an audit, inspection, investigation or request under section 5 subsection(2) of the Draft shall be considered as a breach of the provisions of the Draft; in such a case, the sanctions provided under section 5 subsection(4) of the Draft shall apply<sup>13</sup>;
- 2) The provision of any CASP services<sup>14</sup> by a third-country entity, save where complying with MiCA's reverse solicitation exemption<sup>15</sup>, shall be considered a breach of the provisions of the Draft and shall have as a consequence the imposition of the sanctions provided under section 5 subsection(4) of the Draft<sup>16</sup>;
- 3) Without prejudice to any criminal law sanctions, a person notifying or communicating to the designated competent authorities false or misleading MiCA-related evidence or information or concealing such evidence or information shall be subject to an administrative fine of up to 350.000 EUR, which may rise up to 700.000 EUR in case of repeated breach.

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<sup>9</sup> Implemented through section 5 subsection.1 point (h) of the Draft.

<sup>10</sup> As per Art. 59 para.5 of MiCA

<sup>11</sup> Section 5 subsection(1) point (ac) of the Draft.

<sup>12</sup> Section 5 subsection(1) point (ad) of the Draft.

<sup>13</sup> Section 6 subsection(2) of the Draft.

<sup>14</sup> Art.3 para.1 point 16 of MiCA.

<sup>15</sup> Art.61 of MiCA.

<sup>16</sup> Section 6 subsection(3) of the Draft.

Stakeholders are invited to provide their views on the purposiveness and extent of those additional administrative sanctions.

#### **4.4. Additional criminal sanctions**

Based on the wording of Art.111 para.1 of MiCA that it applies '*Without prejudice to any criminal penalties*', following infringements shall also have a (punishable with imprisonment and/or pecuniary penalty) criminal dimension:

- 1) Unauthorised offering or admission to trading of ARTs by a Cyprus-based entity<sup>17</sup>;
- 2) Unauthorised offering or admission to trading of EMTs by a Cyprus-based entity<sup>18</sup>; and
- 3) Unauthorised provision of CASP services by a Cyprus-based entity<sup>19</sup>.

Stakeholders are invited to provide their views on the purposiveness and extent of those additional penalisations and criminal sanctions.

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<sup>17</sup> Section 12 of the Draft.

<sup>18</sup> Section 13 of the Draft.

<sup>19</sup> Section 14 of the Draft.