



15.2.2023

NOTICE TO MEMBERS

Subject: Petition No 0643/2022 by Rui Martins (Portuguese), on behalf of CpC - Cidadãos pela Cibersegurança, on regulating the use of cryptocurrencies in the EU

1. Summary of petition

The petitioner considers that the EU should create a European deterrence plan for the use and regulation of cryptocurrencies. He believes that continuing the current outbreak of appreciation will ultimately affect the real economy and, together with distribution problems, rising raw material and fuel prices and the war in Ukraine, will create an even more negative economic situation. Many investors have now converted their savings into this currency. The petitioner believes that the EU can and should create mechanisms to deter, regulate and monitor transactions in such financial assets that (at least) hinder or (ideally) prevent their use by speculators, cybercriminals, dishonest states or mafias trading in illicit products.

2. Admissibility

Declared admissible on 14 December 2022. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 15 February 2023

The Commission's observations

On 24 September 2020, the Commission adopted a proposal for a Regulation on markets in crypto-assets (MiCA)¹. MiCA has a number of goals: protecting consumers, ensuring market integrity, ensuring financial stability and encouraging innovation in the crypto-assets space. On

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM(2020) 593 final.

30 June 2022, the Council presidency and the European Parliament reached a provisional agreement on the proposal. It is currently in the process of being adopted into law.

MiCA contains numerous provisions aimed at increasing transparency around crypto-assets offered to European citizens as well as transactions and services in those assets intermediated by crypto-asset service providers (CASPs) active in the EU. CASPs therefore need to follow clear rules on corporate governance, how they offer services, handle client funds and keep records. The latter set of rules is particularly important in monitoring suspicious transactions in crypto-assets. In particular, CASPs must keep records of all transactions by their clients so that competent authorities are able to access these records for the purpose of enforcement. These obligations are even stricter when it comes to crypto-assets with in-built anonymisation function ('privacy tokens'), which are often used for illicit activities, including in ransomware attacks. Privacy tokens may only be offered by trading platforms if the holders of those crypto-assets and their transaction history can be identified. There are other various requirements addressed to either CASPs or issuers of crypto-assets that increase overall transparency in the market and give regulators the tools to monitor transactions in crypto currencies.

Importantly, CASPs such as crypto asset exchange platforms are also obliged entities under the Anti-money Laundering Directive² and as such are required, in the context of preventing money laundering and terrorist financing, to perform know-your-customer checks and verify the identity of their users. They are also obliged to monitor transactions on their platform and flag any suspicious transactions to competent authorities.

Finally, the European Parliament and the Council have also agreed new rules to stop illicit flows in the EU, aimed at tracing transfers of crypto-assets. This so called 'travel rule' already exists in traditional finance, and will now cover transfers in crypto-assets, requiring that information on the source of the assets and its beneficiary travels with the transaction and is stored on both sides of the transfer. CASPs will be obliged to provide this information to competent authorities if an investigation is conducted into money laundering and terrorist financing.

The petitioner also expresses concerns about the risks for uninformed investors investing their savings in crypto-assets. The Commission fully appreciates the need to protect investors from putting their money in speculative assets the complexities of which may not fully understand. This sentiment is shared by the co-legislators. That is why MiCA provides for various rules on investor protection, requiring both CASPs and issuers of crypto-assets to provide clear information to investors about the services and tokens offered in the EU. Additionally, the ***MiCA framework gives the right to competent authorities to exercise control over marketing communications.*** Information *contained* in the crypto-asset white paper, *in advertising messages and marketing material, including through new channels such as social media platforms, should* be fair, clear and not misleading. ***Advertising messages and marketing material should be consistent with the information provided in the crypto-asset white paper.*** These marketing rules will reduce the risks that investors end up being misled about the features of assets and services touted by their promoters.

Finally, MiCA also contains organisational and operational requirements for CASPs, to ensure

² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance) PE/72/2017/REV/1, OJ L 156, 19.6.2018, p. 43–74.

that investors' interests and assets are adequately safeguarded.

Conclusion

It is indeed important that the use of crypto-assets for illicit activities in the Union is strongly countered by the authorities, to prevent financing of crime and help develop a healthy ecosystem. Many existing or soon to be applicable rules, such as MiCA, oblige intermediaries in the crypto market to collect information about their customers and transactions, whilst giving regulators and enforcement bodies the tools to detect the misuse of crypto-assets. The Commission also agrees with the petitioner that investors should be appropriately protected when buying crypto. The Commission believes that MiCA will ensure such investor protection and market integrity for investors and consumers wanting to trade in crypto.