

# PROPOSAL FOR A REGULATION ON MARKETS IN CRYPTO- ASSETS

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AVOCAT A LA COUR

# **PROPOSAL FOR REGULATING CRYPTO ASSETS**

## ***LEGAL FRAMEWORK***



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# I. Scope of MiCAR

**All types of crypto-assets which currently fall outside the scope of existing EU legislation on financial services.**

**Crypto assets in general  
(other than asset-referenced token and e-money token)**

**Asset-referenced tokens (= global stable coins)**

**E-money tokens (= payment tokens – 1:1: stable coins)**

**Crypto-assets issuers**

**Asset-referenced token issuers**

**E-money token issuers**

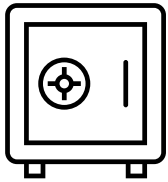
**Crypto-asset services providers**

**Credit institutions**

**Investment firms**

**E-money institutions**

# Exemptions for credit institutions



**When issuing asset-referenced  
tokens, including significant  
tokens**

**No authorisation is  
needed**

**No specific own  
fund requirements**

**When providing one or more  
crypto-asset services**

**No authorisation is  
needed**



# Exemptions for investment firms

**No authorization of crypto-asset service provider is needed, if they are authorised to provide one or several investment services similar to the crypto-asset services**

## **Crypto-asset services equivalent to the investment services and activities :**

- Operation of an MTF + operation of an OTF → operation of a trading platform for crypto-assets ;
- Dealing on own account → exchange of crypto-assets for fiat currency or for other crypto-assets ;
- Execution of orders on behalf of clients → execution of orders for crypto-assets on behalf of third parties ;
- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis + placing of financial instruments without a firm commitment basis → placing of crypto-assets ;
- Reception and transmission of orders in relation to one or more financial instruments → the reception and transmission of orders for crypto-assets on behalf of third parties ;
- Investment advice → providing advice on crypto-assets.

# Supervision

Compliance with all the requirements will be supervised by national competent authorities (NCAs).



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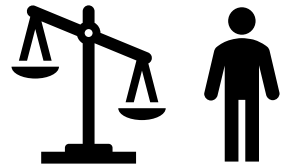
# **II. FRAMEWORK FOR** **CRYPTO-ASSETS**

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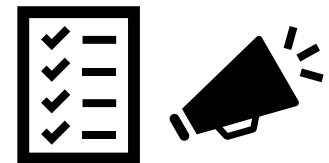
**CRYPTO-ASSET MEANS “A DIGITAL REPRESENTATION OF VALUE OR RIGHTS WHICH MAY BE TRANSFERRED AND STORED ELECTRONICALLY, USING DISTRIBUTED LEDGER TECHNOLOGY OR SIMILAR TECHNOLOGY”.**

## Requirements to be fulfilled by all crypto-assets issuers (≠ asset-referenced tokens and e-money tokens)

- **Legal entity**



- **Draft, notify and publish a crypto asset-white paper**



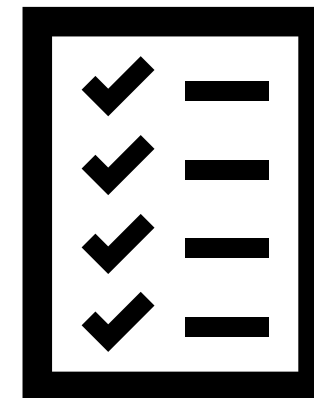
# Content and form of the crypto-asset white paper



Detailed description of :

- the issuer,
- the project and planned use of funds,
- the conditions, rights, obligations and risks attached to the crypto-assets.
- .....

Information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets.



## Notification & publication of the crypto-asset white paper

### **No ex ante approval by the authorities**

→ Undue administrative burdens should be avoided. Competent authorities should, however, after publication, have the power to request that additional information is included in the crypto-asset white paper, and, where applicable, in the marketing communications

**Notification of the crypto-asset white paper** shall explain why the crypto- asset described in the crypto-asset white paper is not to be considered: a financial instrument, electronic money, a deposit, a structured deposit.

**Publication of the crypto asset white paper** on the website of the issuer & should remain available for as long as the crypto-assets are held by the public.

## Summary of the crypto- asset white paper

Key information in brief and non-technical language

Should help potential purchasers of the asset-referenced tokens to make an informed decision;

Shall contain a **warning**, in particular, that:

→ The crypto-asset white paper **does not constitute a prospectus.**

→ The offer to the public of crypto-assets **does not constitute an offer or solicitation to sell financial instruments** – which can be made only by means of a prospectus or other offering documents pursuant to national laws.



## Consumer protection

Issuers of crypto-assets shall **act honestly, fairly and professionally** in the **best interest** of the holders of crypto-assets

**Liability rules for issuers** - upon evidence provided by the holders of crypto-assets

**Right of withdrawal for consumers** (within a period of 14 days, starting from the day of the consumers' agreement to purchase those crypto-assets)



# EXEMPT

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## EXEMPTED

Crypto-assets that are offered for **free (except: Data!)**

Crypto-assets that are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions

Crypto-assets that are **unique and not fungible** with other crypto-assets

Crypto-assets are **offered to fewer than 150 natural or legal persons** per Member State where such persons are acting on their own account

Over a **period of 12 months**, the total consideration of an offer to the public of crypto-assets in the Union does **not exceed EUR 1 000 000**, or the equivalent amount in another currency or in crypto-assets

The offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets **can only be held by such qualified investors**

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# **III. FRAMEWORK FOR** **ASSET-REFERENCED** **TOKENS**

**ASSET-REFERENCED TOKEN MEANS “TYPE OF CRYPTO ASSET THAT PURPORTS TO MAINTAIN A STABLE VALUE BY REFERRING TO ONE OR SEVERAL CURRENCIES BEING LEGAL TENDER, COMMODITIES OR OTHER CRYPTO-ASSETS, OR A COMBINATION OF SUCH ASSETS”.**

## Requirements to be fulfilled by asset-referenced token issuers

- **Obligation to be based in the EU**



- **Obligation to be authorised**



- **Obligation to draft a white paper and to notify it to the competent authority**



# Application for authorisation



Information

- governance arrangements;
- a crypto-asset white paper;
- **legal opinion that the asset-referenced tokens do not qualify as financial instruments, electronic money, deposits or structured deposits;**
- etc.

## Additional white paper requirements

a detailed description of the issuer's governance arrangements

a detailed description of **the reserve of assets**, of the **custody arrangements** for the reserve assets, including **the segregation of the assets**;

in case of an investment of the reserve assets, a detailed description of the investment policy for those reserve assets;

a detailed information on the nature and enforceability of rights, including any direct **redemption right** or any claims, that holders of asset-referenced tokens and any legal or natural person may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures.



If such rights haven't been granted : the crypto-asset white paper shall contain a clear and unambiguous statement that all the holders of the crypto-assets do not have a claim on the reserve assets or cannot redeem those reserve assets with the issuer at any time.

## Special obligations for all issuers of asset-referenced tokens



Complaint handling procedure

Prevention, identification, management and disclosure of conflicts of interest

White Paper publication

Governance arrangements

Own funds requirements

**Wind down plan**



**Obligations related to the  
reserve of assets**

Obligation to have reserve assets, and composition  
and management of such reserve of assets



Custody of reserve assets



Investment of the reserve assets



Rights on issuers of asset-referenced tokens or on the  
reserve assets (including direct claim or redemption  
rights for the holders), CAN be granted.



# Consumer protection

Issuers of asset-referenced tokens shall **act honestly, fairly and professionally** in the **best interest** of the holders of asset-referenced tokens

**Liability rules for issuers** - upon evidence provided by the holders of crypto-assets

**Ongoing information** to holders of asset-referenced tokens



**EXEMPT**

**NO AUTHORISATION**

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EXEMPTED

Over a **period of 12 months**, the average outstanding amount of asset-referenced tokens **does not exceed EUR 5.000.000** (or equivalent amount in another currency)

The offer to the public of the asset-referenced tokens is solely addressed to qualified investors and the asset-referenced tokens **can only be held by such qualified investors**

The issuer is a **credit institution**

**IMPORTANT** : The issuers are NOT exempted from the obligation to draft a white paper and to notify it to the competent authority and if the issuer is a credit institution, the white paper also needs to be approved by the competent authority of their home Member State

# Significant asset-referenced tokens

Classified as such by the EBA on the basis of a set of criteria (at least 3 must be met) :

- the size of the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities;
- the value of the asset-referenced tokens issued or, where applicable, their market capitalisation;
- the number and value of transactions in those asset-referenced tokens;
- the size of the reserve of assets of the issuer of the asset-referenced tokens;
- the significance of the cross-border activities of the issuer of the asset-referenced tokens;
- the interconnectedness with the financial system.



Specific requirements

Supervision by a college of supervisors established by the EBA

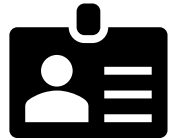
# **III. FRAMEWORK** **FOR E-MONEY** **TOKENS**

**E-MONEY TOKEN MEANS “A TYPE OF CRYPTO-ASSET THE MAIN PURPOSE OF WHICH IS TO BE USED AS A MEANS OF EXCHANGE AND THAT PURPORTS TO MAINTAIN A STABLE VALUE BY REFERRING TO THE VALUE OF A FIAT CURRENCY THAT IS LEGAL TENDER”.**

**N.B. : PRINCIPLE EMI DIRECTIVE APPLIES, BUT THERE ARE SOME DEROGATIONS.**

## Requirements to be fulfilled by all e-money token issuers

- **Obligation to be authorised as a credit institution or as an electronic money institution**



- **Obligation to comply with requirements applying to electronic money institutions**



- **Obligation to draft a white paper and to notify it to the competent authority**



- **Content of the crypto-asset white paper** : There are no additional white paper requirements (but it should explicitly indicate that holders are provided with a claim in the form of a right to redeem).



- **Content of the crypto-asset white paper summary** : It should contain a warning that :
  - the holders of e-money tokens have a redemption right at any moment and at par value;
  - the conditions of redemption, including any fees relating thereto.



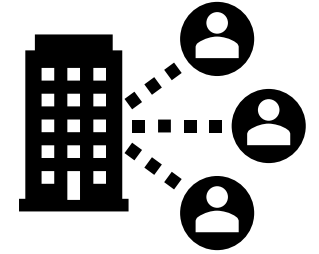
## Specific redemption obligation

All holders of e-money tokens shall be provided with a claim on the issuer of such e-money tokens

Issuers of such e-money tokens shall issue e-money tokens at par value and on the receipt of funds

Upon request by the holder of e-money tokens, the respective issuer must redeem, at any moment and at par value, the monetary value of the e-money tokens held to the holders of e-money tokens (in cash or by credit transfer)

Redemption can not just only in limited cases be subject to a fee, but it must be stated in the crypto-asset white paper



In principle  
article 11 of  
EMI directive  
applies, but  
there are some  
derogations

## Consumer protection

Issuers of asset-referenced tokens shall **act honestly, fairly and professionally** in the **best interest** of the holders of asset-referenced tokens

**Liability rules for issuers** - upon evidence provided by the holders of crypto-assets

Funds received by issuers of e-money tokens in exchange of e-money tokens and that are invested in secure, low-risk assets **shall be invested in assets denominated in the same currency as the one referenced by the e-money token**



**EXEMPT**

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EXEMPTED

E-money tokens marketed, distributed, held by qualified investor and can only be **held by qualified investors**

If the average outstanding amount of e-money tokens **does not exceed EUR 5 000 000**, or the corresponding equivalent in another currency, over a **period of 12 months**, calculated at the end of each calendar day.

**IMPORTANT :** The issuers are NOT exempted from the obligation to draft a white paper and to notify it to the competent authority.

# Significant e-money tokens

Classified as such by the EBA on the basis of the **following criteria** (at least 3 must be met) :

- the size of the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities;
- the value of the asset-referenced tokens issued or, where applicable, their market capitalisation;
- the number and value of transactions in those asset-referenced tokens;
- the size of the reserve of assets of the issuer of the asset-referenced tokens;
- the significance of the cross-border activities of the issuer of the asset-referenced tokens;
- the interconnectedness with the financial system.



Specific requirements

## Compliance with certain requirements applying to issuers of asset-referenced tokens

Custody requirements for reserve assets

Investment rules for the reserve assets

Wind-down plan

**Special  
obligations  
of issuers of  
significant  
asset-  
referenced  
tokens**

# **IV. FRAMEWORK FOR** **CRYPTO-ASSET** **SERVICE PROVIDERS**

**CRYPTO-ASSET SERVICE PROVIDER MEANS “ANY PERSON WHOSE OCCUPATION OR BUSINESS IS THE PROVISION OF ONE OR MORE CRYPTO-ASSET SERVICES TO THIRD PARTIES ON A PROFESSIONAL BASIS”.**

**The various crypto-asset services**

**the custody and administration of crypto-assets on behalf of third parties**

**the operation of a trading platform for crypto-assets**

**the exchange of crypto-assets for fiat currency or for other crypto-assets**

**the execution of orders for crypto-assets on behalf of third parties**

**placing of crypto-assets**

**the reception and transmission of orders for crypto-assets on behalf of third parties**

**providing advice on crypto-assets**

## Requirements to be fulfilled by all crypto-asset service providers

- **Obligation to be a legal person**



- **Obligation to be authorised**



EU PASSPORT



Register of all crypto-asset service provider established by the EBA

## Obligations for all crypto-asset service providers



Organisational requirements

Rules on mandatory complaint handling procedures and on conflicts of interest

Rules on outsourcing

Specific requirements dependent on the type of crypto-asset service provider

## Consumer protection

Issuers of asset-referenced tokens shall  
**act honestly, fairly and  
professionally** in the **best interest** of  
the holders of asset-referenced tokens

**Prudential requirements**

**Rules on safekeeping of clients'  
funds**



THANK YOU  
FOR YOUR ATTENTION

