

**Legal Issues in Computer  
Security 2023  
Cryptocurrencies**

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**2021/0239 (COD)**  
**Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the prevention of the use of the financial system for the purposes of money laundering or terrorist**  
**financing**  
**(Text with EEA relevance)**

(6) Technology keeps evolving, offering opportunities to the private sector to develop new products and systems to exchange funds or value.

While this is a positive phenomenon, it may generate new money laundering and terrorist financing risks, as criminals continuously manage to find ways to exploit vulnerabilities in order to hide and move illicit funds around the world.

Crypto- assets service providers and crowdfunding platforms are exposed to the misuse of new channels for the movement of illicit money and are well placed to detect such movements and mitigate risks.

The scope of Union legislation should therefore be expanded to cover these entities, in line with the recent developments in FATF standards in relation to crypto-assets.

(11) Directive (EU) 2018/843 was the first legal instrument to address the risks of money laundering and terrorist financing posed by crypto-assets in the Union.

It extended the scope of the AML/CFT framework to two types of crypto-assets services providers: providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers.

Due to rapid technological developments and the advancement in FATF standards, it is necessary to review this approach.

(93) The anonymity of crypto-assets exposes them to risks of misuse for criminal purposes.

Anonymous crypto-asset wallets do not allow the traceability of crypto-asset transfers, whilst also making it difficult to identify linked transactions that may raise suspicion or to apply to adequate level of customer **due diligence**.

In order to ensure effective application of AML/CFT requirements to crypto-assets, it is necessary to prohibit the provision and the custody of **anonymous crypto-asset wallets by crypto-asset service providers**.

Monero?

(6) 'financial institution' means:

(ea) a crypto-asset service provider;

(13) 'crypto-asset' means a crypto-asset as defined in Article 3(1), point (2) of Regulation *[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]* except when falling under the categories listed in Article 2(2) of that Regulation;

So called MICA Regulation

(14) ‘**crypto-asset service provider**’ means a crypto-assets service provider as defined in Article 3(1), point (8) of Regulation [*please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final*] where performing one or more crypto-asset services as defined in Article 3(1), point (9) of that Regulation, with the exception of providing advice on crypto-assets as defined in point (9)(h) of that Article;



(14a) ‘**Self-hosted address**’ means a self-hosted address as defined in Article 3(1), point (18a) of Regulation [*please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final*];

2a. By way of derogation from paragraph 1, point (b), crypto-asset service providers shall:

apply customer due diligence measures when carrying out an occasional transaction that amounts to value of at least EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions;

apply at least customer due diligence measures referred to under Article 16(1), point (a), when carrying out an occasional transaction where the value is below EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions.

## Article 30a

Specific enhanced due diligence measures for cross-border correspondent relationships for crypto- asset service providers

1. By way of derogation from Article 30, with respect to cross-border correspondent relationships involving the execution of crypto-asset services as defined in Article [XX] of Regulation *[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]* with a respondent entity not established in the EU and providing similar services, including transfers of crypto-assets, crypto-asset service providers shall, in addition to the customer due diligence measures laid down in article 15, when entering into a business relationship:

determine if the respondent entity is licensed or registered;

gather sufficient information about the respondent entity to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the entity and the quality of supervision;

assess the respondent entity AML/CFT controls;

obtain approval from senior management before the establishment of the correspondent relationship;

document the respective responsibilities of each party to the correspondent relationship;

(f) with respect to payable-through crypto-asset accounts, be satisfied that the respondent entity has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent entity, and that it is able to provide relevant customer due diligence data to the correspondent entity, upon request.

Where crypto-asset service providers decide to terminate correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision.

Crypto-asset service providers shall update the due diligence information for the correspondent relationship on a regular basis or when new risks emerge in relation to the respondent entity.

Where crypto-asset service providers decide to terminate correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision.

Crypto-asset service providers shall update the due diligence information for the correspondent relationship on a regular basis or when new risks emerge in relation to the respondent entity.

Crypto-asset service providers shall take into account the information collected pursuant to the first paragraph in order to determine, on a risk sensitive basis, the appropriate measures to be taken to mitigate the risks associated with the respondent entity.



AMLA shall issue guidelines to specify the criteria and elements that crypto-asset services providers shall take into account for conducting the assessment referred to in paragraph 1 and the risk mitigating measures referred to in paragraph 2, including the minimum action to be taken by crypto-asset service providers where the respondent entity is not registered or licensed.

## Article 31a

Measures to mitigate risks in relation to transactions with a self-hosted address

1. Crypto-asset service providers shall identify and assess the risk of money laundering and financing of terrorism associated with transfers of crypto-assets directed to or originating from a self-hosted address. To that end, crypto-asset service providers shall have in place internal policies, procedures and controls.

Crypto-asset service providers shall apply mitigating measures commensurate with the risks identified. Those mitigating measures shall include one or more of the following:

- a) taking risk-based measures to identify, and verify the identity of, the originator or beneficiary of a transfer made from or to a self-hosted address or beneficial owner of such originator or beneficiary, including through reliance on third parties;
- b) requiring additional information on the origin and destination of the crypto-assets;
- c) conducting enhanced ongoing monitoring of those transactions;
- d) any other measure to mitigate and manage the risks of money laundering and financing of terrorism as well as the risk of non-implementation and evasion of targeted financial sanctions and proliferation financing-related targeted financial sanctions.

2. AMLA shall issue guidelines to specify the measures referred to in this Article, including the criteria and means for identification and verification of the identity of the originator or beneficiary of a transfer made from or to a self-hosted address, including through reliance on third parties, taking into account the latest technological developments;

## *Article 58*

Anonymous accounts and bearer shares and bearer share warrants

1. Credit institutions, financial institutions and crypto-asset service providers shall be prohibited from keeping anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes, anonymity-enhancing coins or anonymous crypto-asset wallets as well as any account otherwise allowing for the anonymisation of the customer account holder.

## *Article 58*

Owners and beneficiaries of existing anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes or crypto-asset wallets shall be subject to customer due diligence measures before those accounts, passbooks, deposit boxes or crypto-asset wallets are used in any way.

2. Credit institutions and financial institutions acting as acquirers within the meaning Article 2, point (1) of Regulation (EU) 2015/751 of the European Parliament and of the Council<sup>44</sup> shall not accept payments carried out with anonymous prepaid cards issued in third countries, unless otherwise provided in the regulatory technical standards adopted by the Commission in accordance with Article 22 on the basis of a proven low risk.

Proposal for a

**REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL**

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



## *Article 1*

### **Subject matter**

This Regulation lays down uniform rules for the following:

1. transparency and disclosure requirements for the issuance and admission to trading of crypto-assets;
2. the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and issuers of electronic money tokens;
3. the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers;
4. consumer protection rules for the issuance, trading, exchange and custody of crypto- assets;
5. measures to prevent market abuse to ensure the integrity of crypto-asset markets.

## Scope

1. This Regulation applies to persons that are engaged in the issuance of crypto-assets or provide services related to crypto-assets in the Union.
  2. However, this Regulation does not apply to crypto-assets that qualify as:
    - a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;
    - b) electronic money as defined in Article 2, point (2), of Directive 2009/110/EC, except where they qualify as electronic money tokens under this Regulation;
- ...

3. This Regulation does not apply to the following entities and persons:

(d) persons who provide crypto-asset services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent companies;

‘distributed ledger technology’ or ‘DLT’ means a type of technology that support the distributed recording of encrypted data;

‘crypto-asset’ means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;

(3) ‘asset-referenced token’ means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;

(4) 'electronic money token' or '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;

(5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token;

(6) 'issuer of crypto-assets' means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets;



(7) ‘offer to the public’ means an offer to third parties to acquire a crypto-asset in exchange for fiat currency or other crypto-assets;

(8) '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;

(9) ‘crypto-asset service’ means any of the services and activities listed below relating to any crypto-asset:

- (a) the custody and administration of crypto-assets on behalf of third parties;
- (b) the operation of a trading platform for crypto-assets;
- (c) the exchange of crypto-assets for fiat currency that is legal tender;
- (d) the exchange of crypto-assets for other crypto-assets;
- (e) the execution of orders for crypto-assets on behalf of third parties;
- (f) placing of crypto-assets;
- (g) the reception and transmission of orders for crypto-assets on behalf of third parties
- (h) providing advice on crypto-assets;

(10) ‘the custody and administration of crypto-assets on behalf of third parties’ means **safekeeping** or **controlling, on behalf** of third parties, crypto-assets or the means of access to such crypto-assets, where applicable in the form of private cryptographic keys;

(11) ‘the operation of a trading platform for crypto-assets’ means **managing** one or more trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner **that results in a contract**, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender;

(12) ‘the exchange of crypto-assets for fiat currency’ means concluding purchase or sale contracts concerning crypto-assets with third parties against fiat currency that is legal tender by using proprietary capital;

(13) ‘the exchange of crypto-assets for other crypto-assets’ means concluding purchase or sale contracts concerning crypto-assets with third parties against other crypto-assets by using proprietary capital;

(15) ‘placing of crypto-assets’ means the marketing of newly-issued crypto-assets or of crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offer to the public or an offer to existing holders of the issuer’s crypto-assets;



(17) ‘providing advice on crypto-assets’ means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party’s request or on the initiative of the crypto-asset service provider providing the advice, concerning the acquisition or the sale of one or more crypto-assets, or the use of crypto-asset services;

## Art. 4

1. No issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, in the Union, offer such crypto-assets to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that issuer:

- a. is a legal entity;
- b. has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5;
- c. has notified that crypto-asset white paper in accordance with Article 7;
- d. has published the crypto-asset white paper in accordance with Article 8;
- e. complies with the requirements laid down in Article 13.

Paragraph 1, points (b) to (d) shall not apply where:

- a) the crypto-assets are offered for free;
- b) the crypto-assets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions;
- c) the crypto-assets are unique and not fungible with other crypto-assets;
- d) the crypto-assets are offered to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;
- e) 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;
- f) 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.

For the purpose of point (a), crypto-assets shall not be considered to be offered for free where purchasers are required to provide or to undertake to provide **personal data to the issuer in exchange** for those crypto-assets, or where the issuer of those crypto-assets receives from the prospective holders of those crypto-assets any third party fees, commissions, monetary benefits or non-monetary benefits in exchange for those crypto-assets.

## *Article 5*

### *Content and form of the crypto-asset white paper*

The **crypto-asset white paper** referred to in Article 4(1), point (b), shall contain all the following information:

- a) **a detailed description of the issuer** and a presentation of the **main participants** involved in the project's design and development;
- b) a **detailed description of the issuer's project**, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public;

- c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets and the subscription terms and conditions;
- d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions for exercising those rights;
- e) 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;
- f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and the implementation of the project;

2. All information referred to in paragraph 1 shall be fair, clear and not misleading. The crypto-asset white paper shall not contain material omissions and shall be presented in a concise and comprehensible form.

3. The crypto-asset white paper shall contain the following statement: “The issuer of the crypto-assets is solely responsible for the content of this crypto-asset white paper. This crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union”.

4. The crypto-asset white paper shall not contain any assertions on the future value of the crypto-assets, other than the statement referred to in paragraph 5, unless the issuer of those crypto-assets can guarantee such future value.



5. The crypto-asset white paper shall contain a clear and unambiguous 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.

7. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the essential elements of the crypto-assets concerned. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential purchasers of the crypto-assets to make an informed decision.

The crypto-asset white paper shall be made available in machine readable formats. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10.

## *Article 6*

### ***Marketing communications***

Any marketing communications relating to an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, or to the admission of such crypto-assets to trading on a trading platform for crypto-assets, shall comply with all of the following:

- a) the marketing communications shall be clearly identifiable as such;
- b) the information in the marketing communications shall be fair, clear and not misleading;
- c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper, where such a crypto-asset white paper is required in accordance with Article 4;
- d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets concerned.

## *Article 7*

### *Notification of the crypto-asset white paper, and, where applicable, of the marketing communications*

Competent authorities shall not require an ex ante approval of a crypto-asset white paper, nor of any marketing communications relating to it before their publication.

## *Article 7*

### *Notification of the crypto-asset white paper, and, where applicable, of the marketing communications*

...

Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to the competent authority of their home Member State at least 20 working days before publication of the crypto-asset white paper. That competent authority may exercise the powers laid down in Article 82(1).

## *Article 8*

### ***Publication of the crypto-asset white paper, and, where applicable, of the marketing communications***

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website for as long as the crypto-assets are held by the public.