
Press release

AFME welcomes agreement on the Markets in Crypto Assets Proposal (MiCA)

1 July 2022

Commenting on the provisional interinstitutional agreement on the Markets in Crypto Assets Proposal (MiCA) reached between the French Presidency of the Council of the European Union and the European Parliament, **James Kemp, Managing Director at the Association for Financial Markets in Europe (AFME)**, said:

“MiCA is an ambitious legislative proposal to create EU-wide minimum requirements for all crypto-assets issuers and service providers. This will bring regulatory certainty, reduce fragmentation and underpin the development of a robust and well-functioning market.

“In particular, AFME welcomes the pragmatic approach taken to include decentralised autonomous organisations (DAOs) and non-fungible tokens (NFTs). This is a positive development that will future-proof the EU’s regulatory framework and help it to evolve to meet the challenges presented in this rapidly evolving space, while maintaining alignment with existing EU standards and guidelines.

“Amid rapid technological change and significant market innovations, the rationale for MiCA has become more important than ever for the EU. Despite the fact a provisional agreement has been reached, the completion of MiCA will still take several years due to the Regulatory Technical Standards (RTSs) underpinning the legislation.

“As MiCA is finalised, AFME continues to advocate for further legal certainty on the requirements imposed on custodians of crypto assets, and, in particular, to clarify the difference between liability in cases of negligence and misconduct, and extraneous events (such as a nation state hack), which may be beyond a custodian’s control. The final provisions on liability should ensure that a proportionate and balanced approach is adopted.

“Going forward, it is crucial that MiCA takes into account the broad global context of digitisation, ensuring that the EU remains open to global sources of innovation, standards and markets.”

Specifically, AFME:

- Stresses that further clarity should be provided for custodial liability arrangements. A balanced and proportionate approach to assessing liability is key to ensure customers and clients are not driven towards unregulated solutions or self-custody, ultimately putting them at greater risk of loss, and reducing the ability for authorities to monitor and mitigate financial crime. AFME believes additional language is required to clarify what is “attributable” to custodians (i.e., losses caused by ‘wilful misconduct or gross negligence’) to ensure alignment with the service standards applicable to traditional assets.
- Welcomes the fact that the provisions for Decentralised Autonomous Organisations (DAOs) have become more proportionate and risk-based. The proposed overall exclusion of so-called “decentralised activities” risked creating a gap in the application of MiCA, leading to risks to financial stability and potential knock-on impacts. We thus welcome the sensible approach taken by the co-legislators which only excludes activities provided in a *fully* decentralised manner, without any intermediary, which significantly reduces risks for investors.

- Also welcomes the approach taken on Non-Fungible Tokens (NFTs) to ensure that any NFTs that are fungible in some form or not *fully* unique, will be covered by MiCA. An outright exclusion of NFTs could have a serious impact on financial stability and investors.
- Welcomes the balanced approach adopted on the environmental impact of crypto-assets which looks at treating crypto-assets in the same way as other asset classes, by including them in the EU Sustainable Finance Taxonomy. AFME's members are committed to supporting the transition to a sustainable economy and strongly support the further development of sustainable finance. The financial sector plays a crucial role in underpinning the transition to zero greenhouse gas emissions, notably by helping to allocate capital and providing long-term investment in ways that are consistent with achieving key climate objectives.
- Encourages further considerations to be given to how the final MiCA text covers crypto-currencies to ensure some are not excluded from the regulatory perimeter, which could expose investors to significant risks.

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Notes to Editors:

Background:

Following the European Commission's (EC) legislative proposal for the Markets in Crypto Assets proposal for the Financial Sector (MiCA) on September 24th, 2020, the European Parliament (EP) and the Council have been negotiating their respective amendments in support of the finalisation of the proposal and its forthcoming implementation. Interinstitutional negotiations (known as 'trilogues') have been taking place since the beginning of the year with the aim to finalise the legislation before the summer.

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About AFME:

AFME (Association for Financial Markets in Europe) advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on its strong and long-standing relationships, its technical knowledge and fact-based work. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information please visit the AFME website: www.afme.eu.

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