

## FINTECH: THE EVOLVING FRENCH REGULATORY LANDSCAPE

As part of the EU Digital Finance Package, the European Commission published a proposal for the Markets in Crypto-Assets (MiCA) in September 2020. A provisionally agreed draft of MiCA was released in June 2022, and approved by the Council of the European Union's Committee of Permanent Representatives and by the European Parliament Committee on Economic and Monetary Affairs in October 2022 and is expected to be published in the Official Journal of the EU in early 2023. MiCA aims at establishing a dedicated and harmonised regulatory framework for the offering of crypto-assets and related provision of services upon them. The existing digital assets regulatory framework in force in France will be replaced by MiCA.

### Key issues

- French digital assets framework
- MiCA
- CBDCs
- NFTs
- EU Pilot Regime

### The existing French regulatory framework: quick reminder and update

The French "loi Pacte", enacted in May 2019, introduced a comprehensive new regulatory framework for digital assets in France, reflecting the strong support from the French regulators and government for innovation through the creation of dedicated legal regimes for initial coin offerings (ICOs) and certain services in relation to digital assets (digital asset service providers – "DASP" or in French "PSAN").

The "loi Pacte" (see below) introduced the concept of digital assets, defined as follows:

- tokens, which are defined as an intangible asset representing, under a digital form, one or more rights that can be issued, written, stored or transferred through a shared digital registration mechanism enabling the identification, directly or indirectly, of the owner of said tokens<sup>1</sup>; or
- cryptocurrencies, which are defined as any digital representation of a value which is not issued or guaranteed by a central bank or a public authority, but which is not necessarily related to a money of legal tender and which does not have the legal status of money, but which

<sup>1</sup> Article 54-10-1, 1° of the French *Code monétaire et financier*.

is, however, accepted by natural or legal persons as a means of exchange and which can be digitally transferred, stored or exchanged.<sup>2</sup>

Under such framework, a PSAN shall register with the AMF where it intends to provide one of the following digital asset services in France:

- custody on behalf of third parties of digital assets or access to digital assets (as the case may be, in the form of private cryptographic keys) in view of holding, storing or transferring digital assets;
- buying or selling of digital assets against currency having legal tender (i.e. fiat);
- exchanging digital assets against digital assets; and
- the operation of a digital asset trading platform.<sup>3</sup>

The question of when a digital asset service is provided in France has been subject to clarifications from the AMF (as to which, please see below).

It is also worth noting that the service providers who seek to register are required to put in place and implement anti-money laundering and counter-terrorist financing (AML-CTF) procedures only with respect to the custody and the buying or selling against fiat services mentioned above.

Please see our previous briefing published in 2019 to learn more about the French regulatory framework created by the "loi Pacte" ([here](#)).<sup>4</sup>

Since the publication of our previous briefing, additional regulatory measures have been adopted to implement the provisions of the "loi Pacte", in particular decree n°2019-1213 of 21 November 2019 in relation to PSANs, decree n°2021-387 of 2 April 2021 on the fight against the anonymity of virtual assets and strengthening the national system for combating money laundering and terrorist financing, and Title II of Book VII of AMF General Regulation (Digital Asset Services Providers).

### **Guidance regarding the location of digital asset services**

The AMF<sup>5</sup> clarified that a digital asset service is considered as being provided in France, thus triggering, as applicable, PSAN registration requirements:

- when it is provided by a digital asset service provider having facilities in France; or
- when it is provided at the initiative of the digital asset service provider to customers residing or established in France.

It further specified that the digital asset service provider shall be deemed as providing a service in France when at least one of the following criteria is met:

- the service provider has commercial premises or a place dedicated to the marketing of digital asset services in France;
- the service provider has installed one or more automatic machines offering digital asset services in France;

<sup>2</sup> Article 54-10-1, 2° of the French *Code monétaire et financier*.

<sup>3</sup> Article L. 54-10-2 of the French *Code monétaire et financier*.

<sup>4</sup> Note that such briefing does not include further amendments to the "loi Pacte" or further implementing regulatory measures.

<sup>5</sup> Article 721-1-1 of the AMF General Regulation.

### **Focus on crypto funds in France**

The "loi Pacte" introduced new provisions relating to French crypto funds. Two types of alternative investment funds (AIF) may invest in digital assets in France:

- professional specialised investment funds (*fonds professionnels spécialisés* (FPS)), provided that they comply with the liquidity and valuation rules applicable to them; and
- professional private equity investment funds (*fonds professionnels de capital investissement* (FPCI)), subject to a limit of 20 % of their assets.

Marketing of these funds is restricted to professional investors and high net worth individuals.

- the service provider addresses a promotional communication, regardless of the medium, to customers residing or established in France;
- the service provider organises the distribution of its products and services through one or several distribution system(s) to customers residing or established in France;
- the service provider has a postal address or a telephone number in France; or
- the service provider has a ".fr" extension to the name domain for its website.

The AMF has also published a Q&A on the PSAN regime (AMF Position DOC-2020-07 – available in English [here](#)). In such Q&A the AMF specifies that the above list of criteria is non-exhaustive and that other facts may be taken into account by the AMF to determine whether the digital asset service is provided in France. The Q&A further clarifies certain key terms such as the concept of "service provider established" in France for the purpose of the optional licence, which should be understood as a legal entity having legal personality (a subsidiary) or a branch in France.

Such Q&A is currently being updated and a new version will be released soon.

### **Digital asset services and other regulated services**

One of the key issues that Fintechs face in France relates to the delineation between digital asset services and other regulated services that are subject to standalone sectoral regulations (in other words investment, banking, payment and e-money services). The borders might appear blurred in some cases which require a legal and regulatory characterisation work exercise. On this front, it is worth noting that MiCA (as we discuss in further detail below) requires crypto-asset issuers to justify why the crypto-asset is not to be considered a financial instrument, e-money, a deposit or a structured deposit.

From a French law perspective, the ACPR published a position on Bitcoin transactions in France as early as 2014<sup>6</sup> in which it indicated that, in the context of a transaction to buy/sell Bitcoins for fiat currency that is legal tender, the intermediation activity of receiving funds from the Bitcoin buyer and transferring them to the Bitcoin seller may characterise the provision of payment services. The ACPR therefore concluded in its position that entities willing to carry out this activity on a regular basis in France must be authorised as a payment service provider (i.e. credit institution, e-money institution, payment institution) or enter into partnership with a PSP as its payment agent.

Regarding investment services, the AMF also concluded in its "Analysis of the legal qualification of cryptocurrency derivatives" published in March 2018 that a cash-settled derivative whose underlying is a cryptocurrency can be considered as a financial contract and that, consequently, the regulations applicable to the marketing of financial instruments in France

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<sup>6</sup> ACPR, *Position on Bitcoin transactions in France* (2014-P-01), 29 January 2014 (please click [here](#) to access the position (in French only)).

apply to cryptocurrency derivatives. Such analysis referred to our conclusion on such topic published in 2015.

Both positions still stand today.

### **White lists published by the AMF**

The AMF publishes "white lists" of approved ICOs (please click [here](#) to see the list) and registered PSANs (please click [here](#) to see the list). However, as of today, no digital asset service provider has been licensed by the AMF under the optional regime. It is worth noting that the French authorities monitor firms' compliance with the requirements of their regulated status. As an illustration, on 27 September 2022, the Board of the AMF, on the proposal of the *Autorité de contrôle prudentiel et de résolution* (ACPR) decided to withdraw the registration obtained by BYKEP SAS as a PSAN in February 2021, with immediate effect. The controls carried out by the ACPR within BYKEP SAS from May 2022 revealed serious failures in its AML-CTF framework justifying the initiation of a withdrawal procedure. The AMF concluded that these failures characterised breaches of the requirements set forth in 1° and 4° of article L. 54-10-3 of the French *Code monétaire et financier*. This is the first time the AMF decides the withdrawal of a DASP's registration since the creation of such regulated status in 2019.

### **MiCA: a new legal framework for crypto-assets and cryptoservices**

MiCA is the European Commission's attempt to create a Europe-wide taxonomy of crypto-assets and establish a regulatory framework for the issuance and provision of services related to crypto-assets that are not currently regulated as financial instruments.

As part of the EU Digital Finance Package, a draft of MiCA was published along with a proposal for a regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT – please see the paragraph below in relation to the EU pilot regime) and a proposal for an EU regulatory framework on digital operational resilience (DORA – for more please see our recent [DORA client briefing](#)).

The MiCA proposal published by the Commission was voted by the EU Parliament's Economic and Monetary Affairs (ECON) Committee of the European Parliament in March 2022. A ban on crypto-assets relying on the Proof of Work (PoW) validation method was narrowly avoided during the vote by the Committee following an amendment tabled by the Green Group to ban cryptos based on such validation method which is very energy intensive. The issue was crucial as otherwise the future of Bitcoin and other widely used crypto-assets would have been conducted outside of the European Union.

In June 2022, a draft of MiCA reflecting a provisional agreement between the EU Council and the EU Parliament following trilogue negotiations was published.

This MiCA proposal was approved by the Council of the European Union's Committee of Permanent Representatives (COREPER) on 5 October 2022 and by ECON on 10 October 2022.

MiCA is expected to be published in the Official Journal of the EU in early 2023, following formal approvals from the EU Parliament plenary and then by the Council. The provisions on asset-referenced tokens and e-money

tokens will apply from 12 months after entry into force, expected to be early 2024. Other provisions of MiCA will apply from 18 months after entry into force (*i.e.* from the second half of 2024).

Within two years, the European Commission is expected to provide a report on the environmental impact of crypto-assets and the introduction of mandatory minimum sustainability standards for consensus mechanisms, including PoW.

Please note that the developments below are based on the version of MiCA as approved by COREPER on 5 October 2022 (available [here](#)).

### Scope of MiCA

MiCA applies both to (i) natural and legal persons and other undertakings that are engaged in the issuance, offer to the public and admission to trading of crypto-assets or (ii) that provide services related to crypto-assets in the European Union.

MiCA defines "crypto-asset" very broadly as "a digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology".

However, MiCA notably excludes crypto-assets that are already regulated as financial instruments, deposits, including structured deposits, funds and securitisation positions. As further explained below, MiCA also excludes CBDCs and crypto-assets that are truly unique and not fungible (such as NFTs).

MiCA sets out three different types of crypto-asset and three consequential regimes depending on the type of crypto-asset:

- asset-referenced tokens;
- e-money tokens; and
- crypto-assets other than asset-referenced tokens and e-money tokens (referred to below as "regular" crypto-assets),

which are briefly compared in the table below.

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
<b>Definition</b>	Crypto-assets other than e-money tokens and asset-referenced tokens.	A type of crypto-asset that is not an e-money token and that purports to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies.	A type of crypto-asset that purports to maintain a stable value by referencing to the value of one official currency.  E-money tokens shall be deemed to be "electronic money" as defined in article 2(2) of the e-money directive <sup>7</sup> .

<sup>7</sup> Directive 2009/110/EC

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
<b>Status and location of the issuer</b>	Issuer must be incorporated as a legal entity.	Issuer must be a legal person or undertaking established in the EU.	Issuer must be authorised as an EU credit institution or an EU e-money institution.
<b>Authorisation of the issuer</b>	None.	Issuer must be authorised either as asset-referenced token issuer under MiCA or as credit institution.	Issuer must be authorised as a credit institution or an e-money institution.  The potential issuer shall notify its competent authority 40 working days before the date on which it intends to issue e-money tokens.
<b>Initial requirements upon the issuer</b>	None.	Distinction between initial requirements that are applicable to credit institutions and initial requirements that shall be complied with to be authorised as issuers of asset-referenced tokens.	Requirements applicable to e-money institutions generally (titles II and III of the e-money directive).
<b>White paper</b>	Publication of a white paper meeting all relevant disclosure requirements notified to the relevant competent authority (no prior approval).	Requirements applicable to credit institutions: <ul style="list-style-type: none"> <li>• release a white paper subject to prior approval; and</li> <li>• prior notification to the competent authority before issuing the asset-referenced token for the first time.</li> </ul> Requirements applicable to other entities: <ul style="list-style-type: none"> <li>• application for authorisation; which includes notably preparation of a crypto-asset white paper meeting all relevant disclosure requirements.</li> </ul>	Publication of a white paper meeting all relevant disclosure requirements notified to the relevant competent authority at least 20 working days before its date of publication (no prior approval).
<b>Marketing communications</b>	Notification of marketing communications upon request of the competent authority. No dissemination of marketing communications prior to	Same as for "regular" crypto-assets.	Same as for "regular" crypto-assets.

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
	publication of the white paper.		
<b>Exemptions to licensing and the white paper requirements</b>	<p>Exemption to title II of MiCA (applicable to other crypto-assets):</p> <ul style="list-style-type: none"> <li>• where the crypto-assets are offered for free;</li> <li>• where the crypto-assets are automatically created as a reward for the maintenance of the DLT or the validation of transactions;</li> <li>• where the offer concerns a utility token of a good or service which exist or is in operation;</li> <li>• where the holder of the crypto-assets has only the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.</li> </ul> <p>Exemption to the white paper requirement and, where applicable, the publication of marketing communications:</p> <ul style="list-style-type: none"> <li>• an offer to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;</li> <li>• where, over a period of 12 months, the total consideration of an offer to the public of crypto-assets in the Union does not</li> </ul>	<p>Only two exemptions to the authorisation requirement:</p> <ul style="list-style-type: none"> <li>• where the average outstanding value of all of asset-referenced tokens never exceeds EUR 5,000,000 over a period of 12 months, and the issuer is not linked to a network of issuers covered by this exemption; and</li> <li>• where the offer to the public is solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.</li> </ul> <p>However, issuers shall still issue and notify the white paper to the competent authority.</p>	<p>Cross-refers to specific exemptions that are set out by the e-money directive, including notably:</p> <ul style="list-style-type: none"> <li>• for monetary value stored on instruments exempted pursuant to article 3(k) of Directive 2007/64/EC<sup>8</sup>; and</li> <li>• for monetary value that is used to make payment transactions exempted as specified in article 3(l) of Directive 2007/64/EC.<sup>9</sup></li> </ul>

<sup>8</sup> i.e. services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services.

<sup>9</sup> i.e. payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
	<p>exceed EUR 1,000,000, or the equivalent amount in another currency or in crypto-assets;</p> <ul style="list-style-type: none"> <li>where 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.</li> </ul>		
<b>Monitoring and restrictions to issue</b>	None.	<ul style="list-style-type: none"> <li>Quarterly report to the competent authority for asset-referenced tokens with a value issued higher than EUR 100 million;</li> <li>restrictions to issue asset-referenced tokens used widely as a means of exchange (i.e. the estimated quarterly average number and value of transactions per day associated to uses as means of exchange is higher than 1 000 000 transactions and EUR 200 million respectively, within a single currency).</li> </ul>	None.
<b>Liability of offerors, persons seeking admission to trading, or operators of a trading platform</b>	<p>The provision in the white paper of information which is not complete, fair or clear or which is misleading may give rise to civil liability.</p> <p>Any contractual exclusion of civil liability shall be deprived of any legal effect.</p>	Same as for "regular" crypto-assets.	Same as for "regular" crypto-assets.
<b>Ongoing obligations</b>	Limited ongoing obligations, including in relation to conduct of	Extensive ongoing obligations (including around conduct of	Ongoing obligations, being those of e-money institutions.

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
	business, communication in a fair, clear and not misleading manner, conflicts of interest and the obligation to maintain all of their systems and security access protocols to appropriate Union standards, acting in the best interests of the holders and treating them equally.	business, ongoing information obligation to holders, complaint handling procedure, conflicts of interest, governance arrangements, own funds requirements, obligation relating to reserve of assets, and orderly wind-down).	
<b>Regulatory capital</b>	None.	The highest of EUR 350,000, 2% of the average amount of the reserve assets, or a quarter of the fixed overheads of the preceding year, to be reviewed annually. <sup>10</sup>	Same as for e-money institutions.
<b>Reserve assets (custody and investment)</b>	None.	Reserve assets must be segregated and held in an account opened in the books of, as applicable, a credit institution (for fiat currencies and financial instruments), of a crypto-asset service provider (for crypto-assets) or of an investment firm (for financial instruments).  Reserve assets can be invested but only in highly liquid financial instruments with minimal market, concentration and credit risk.	None.
<b>Claims on issuer / redemption right</b>	Retail holders of crypto-assets shall have a right of withdrawal (period of 14 calendar days to withdraw their agreement). <sup>11</sup>	Upon request of the holder of asset-referenced tokens, the issuer must redeem at any moment by paying in funds (other than e-money) the market value of the asset-referenced tokens held or by delivering the referenced assets.	Holders of e-money tokens are entitled to a claim for redemption at any moment, and at par value, of the monetary value of the e-money token held.
<b>Payment of interest on tokens</b>	Not applicable.	Prohibited.	Prohibited.

<sup>10</sup> The quarter of the fixed overheads of the preceding year has been added by the European Parliament.

<sup>11</sup> Article 12 of MiCA.

	"Regular" crypto-assets	Asset-referenced tokens	E-money tokens
<b>Change in control</b>	Not applicable.	Yes: specific regime is set out by MiCA.	Yes: application of the e-money directive regime.
<b>Significant issuances</b>	Not applicable.	Additional obligations are applicable to issuers of asset-referenced tokens that are classified as significant by the EBA. Voluntary classification is also possible.	Additional obligations are applicable to issuers of e-money tokens that are classified as significant by the EBA. Voluntary classification is also possible.

## Regulating crypto-asset service providers (CASPs)

MiCA also sets out a new licensing and supervisory framework that will be applicable to anyone seeking to provide crypto-asset services in the EU. Such framework is inspired by the regulatory framework governing the provision of financial services (in particular MiFID 2 / MiFIR).

The candidate must be a legal person or an undertaking that has been authorised as crypto-asset service provider or is a credit institution, central securities depository, investment firm, market operator, e-money institution, a management company of UCITS or an AIFM that is allowed to provide crypto-asset services.

An authorisation as a crypto-asset service provider shall be valid for the entire European Union and shall allow crypto-assets service providers to provide services throughout the Union through the passporting regime.

The provision of crypto-asset services by credit institutions, central securities depositories, investment firms, market operators, e-money institutions, management companies of UCITS and AIFMs is subject to prior notification to the competent authority. Except for credit institutions, such entities are only authorised to provide certain crypto-asset services.

MiCA does not provide for a separate third country regime. This means that persons located in a non-EU jurisdiction and wishing to actively promote and/or advertise their services to clients in the EU will have to obtain full authorisation. ESMA is expected to develop guidelines to specify when a third country firm is deemed to solicit EU clients. Otherwise, they could rely on reverse solicitation. Such concept is meant to follow that introduced by MiFID 2 (article 42) and MiFIR (article 46(5) paragraph 2).

Crypto-asset service providers are subject to general requirements that include conduct of business rules, prudential requirements, governance requirements, rules relating to safekeeping of clients' crypto-assets and funds, complaint-handling requirements, as well as the identification, prevention and management of conflicts of interest, outsourcing and orderly wind-down plans.

MiCA sets out requirements that are specific to each crypto-asset service.

Rules are also provided in relation to the acquisition or disposal of a qualifying holding in an entity that is a crypto-asset service provider.

MiCA also defines a threshold (i.e. at least 15 million active users, on average, in one calendar year, in the EU) from which the crypto-asset service provider is considered as "significant", triggering the obligation to notify the competent authority and providing it the relevant information. The competent authority shall then notify ESMA. ESMA will have an "intervention power" to prohibit or restrict the provision of cryptoasset services by the service provider if there are threats to market integrity, investor protection or financial stability.

## **ESMA's register**

It is worth noting that ESMA will establish a register of crypto-asset white papers of "regular" crypto-assets, issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers.

## **Market abuse regime**

As a new type of asset class, crypto-assets that do not qualify as financial instruments under MiFID II fall outside the scope of the market abuse regulation (MAR). However, MiCA sets out new market abuse rules for crypto-asset markets to guarantee market integrity. These rules apply to crypto-assets that are admitted to trading on a trading platform for crypto-assets operated by an authorised crypto-asset service provider or for which a request for admission to trading on such a trading platform has been made. They notably include requirements relating to the disclosure of inside information, the prohibition of insider dealing, the prohibition of unlawful disclosure of inside information and the prohibition of market manipulation.

## **MiCA future regime vs French existing regime**

MiCA will replace existing national frameworks applicable to crypto-assets. In the meantime, however, it is interesting to put into perspective the differences between the two regimes. These are set out in the Annex (MiCA future regime vs French existing regime).

MiCA includes a grandfathering clause for crypto-assets issued before its entry into force, with the exception of asset-referenced tokens and e-money tokens. There will also be a transitional period allowing existing local crypto-asset service providers to continue providing their services for 18 additional months or until they obtain the new MiCA licence. This is relevant for French licensed PSANs who could benefit from this transitional period and a simplified procedure to transition from the current French regime to the new rules under MiCA.

Regarding payments in e-money, please note that they are currently limited to EUR 3,000 in France.<sup>12</sup>

## **Exclusions from MiCA: CBDCs and NFTs**

### **CBDCs**

MiCA does not apply to central bank digital currencies (CBDCs) issued by the ECB and national central banks of the Member States when acting in their capacity as monetary authority. Recital 7 of MiCA specifies that crypto-assets issued by central banks acting in their monetary authority capacity should not be subject to MiCA, and nor should services related to crypto-assets that are provided by such central banks.

The Banque de France recently successfully completed the last experiment of its programme for interbank settlements in CBDC, launched in March 2020 (click [here](#) to read more).

The Banque de France announced in July 2022 that it is now starting the second phase of its CBDC experimentation programme. François Villeroy de Galhau, the Governor of the Banque de France, stated a clear intention

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<sup>12</sup> Decree n° 2016-1985 of 30 December 2016 on the capping of cash payments for pledge transactions and payments made with e-money.

to get closer to a viable prototype and test it in practice with more private players and foreign central banks in the second half of 2022 and in 2023. According to the Banque de France, this experimentation programme shows that CBDC could be used as a currency of settlement as early as 2023, with the implementation of the European Pilot Regime (click [here](#) to read more). That said, according to market rumours, further delays are expected.

Considering the fact that the European monetary system is based on the complementarity of private money with public money, the ECB has launched an investigation into the possible issuance of a digital euro alongside cash, to ensure that public money can maintain its fundamental role in the digital age (click [here](#) to read more).

### **NFTs**

A non-fungible token (NFT) is a unique crypto-asset that represents rights to an underlying "tokenised", often digital asset, which is created and transferred using DLT. This contrasts with many existing crypto-assets, including cryptocurrencies like Bitcoin, which are fungible or interchangeable.

The scope of the purchaser's usage rights with respect to an NFT is determined by the conditions or licence terms attached to the applicable NFT.

Article 2(a) of MiCA clearly excludes NFTs from the scope of application of MiCA. However, recital (6c) of MiCA specifies that the issuance of crypto-assets as NFTs in a large series or collection should be considered as an indicator of their fungibility. Recital (6c) of MiCA also indicates that the exclusion of NFTs from MiCA is without prejudice to qualification of such crypto-assets as financial instruments. Further, recital 6(a) also suggests that competent authorities should adopt a substance over form approach, under which the features of the asset in question should determine the qualification, not its designation by the issuer.

### **EU Pilot Regime**

On 24 September 2020, as part of the Digital Finance package, the European Commission published a proposal for a pilot regime (the Pilot Regime) for market infrastructures based on DLT. The Pilot Regime regulation<sup>13</sup> was published on 2 June 2022 and shall generally apply from 23 March 2023.<sup>14</sup> The Pilot Regime aims to help the development of the European infrastructure for the trading, clearing and settlement of tokenised securities using DLT by providing a regulatory sandbox in which it will be possible to disapply European legislation such as MiFID II and the CSDR. The European Commission hopes that the Pilot Regime experiments will allow a market consensus to emerge as to what a permanent EU regulatory regime for the use of DLT in capital markets should look like, and help market infrastructures (*i.e.* the central securities depositories and multilateral trading facilities) develop DLT platforms that can handle both trade and post-trade activities.

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<sup>13</sup> Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology (available by clicking [here](#)).

<sup>14</sup> Except for specific provisions listed by article 19 of the Pilot Regime regulation.

For Paris Europlace, the Pilot Regime is a part of a general move towards the emergence of fully digital end-to-end solutions which will gain market acceptance without any technological or legal "big bang" that could threaten financial stability and cause systemic risk.<sup>15</sup> The Legal High Committee for Financial Markets of Paris (HCJP) has also been supportive of the Pilot Regime, proposing various changes to French law in order to ensure that there is no conflict between French law and the Pilot Regime which might prevent French actors from participating or French law being used as the governing law of experiments.<sup>16</sup>

### **Transfer of funds regulation: Travel Rule and KYC**

The recast of the existing transfer of funds regulation (TFR) was adopted by the European Parliament on 10 October (text available [here](#)). Such recast version aims at ensuring the traceability of crypto-assets is the same as for regular money transfers. Service providers will be required, further to the so called "travel rule" to exchange information on transactions carried out by their customers, in particular the nature of the transaction, its amount and its counterparties, regardless of the amount or nature of the transaction. KYC checks will also be mandatory for all platform-to-platform transactions from the first euro. From platform to private portfolios, such requirement will apply from EUR 1,000.

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<sup>15</sup> Paris Europlace, *Digital finance for the European economy*, 25 March 2022 (available by clicking [here](#)).

<sup>16</sup> HCJP, *Les titres financiers digitaux "Security Tokens"*, 27 November 2020 (please click [here](#) to access the report in French only).

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## Annex

### MiCA future regime vs French existing regime

Please note that the comparison table below is based on the MiCA's version as approved by the Council of the European Union's Committee of Permanent Representatives of 5 October 2022.

	French Regime	MiCA Regime	Comments
<b>Definitions</b>			
Definition	Defines digital assets by distinguishing (utility) tokens from cryptocurrencies.	Defines crypto-assets and provides three separate definitions: asset-referenced tokens, e-money tokens and a catch-all category of other crypto-assets (referred to below as ""regular" crypto-assets").	The MiCA definition of crypto-asset is very broad and includes several types of assets.  The French definition of digital asset is more explicit.
Exclusions	Financial instruments under MiFID II are excluded.	The following are notably excluded from MiCA's scope: <ul style="list-style-type: none"> <li>• financial instruments under MiFID II;</li> <li>• deposits, including structured deposits;</li> <li>• funds, other than e-money tokens;</li> <li>• securitisation positions;</li> <li>• non-life or life insurance products; and</li> <li>• pension products.</li> </ul>	MiCA makes the effort to exclude instruments that are already regulated by other EU sectoral legislations so as to have a clear articulation between the EU texts.  The French regime explicitly excludes financial instruments only.
<b>Regime</b>			
<b>1. Offer of crypto-assets to the public</b>			
<i>General principles</i>	Optional visa from the AMF. Issuers of tokens are granted the option to file their ICO information document (referred to in practice as a "white paper") with the AMF in view to obtain a visa for their offering.  ICOs which do not hold the optional visa are not invalid, but they will not be capable of being marketed or being the subject of financial promotion in France.	<b>"Regular" crypto-assets:</b> the issuer must publish a white paper notified to the relevant competent authority.  <b>Asset-referenced tokens:</b> the issuer must be authorised, either as asset-referenced token issuer under MiCA or as credit institution.  Credit institutions must produce a white paper subject to prior approval and notify their competent authority before issuing the	MiCA's requirements apply to both the issuance, offer of crypto-assets to the public and their listing on a crypto-asset trading platform.  The French regime only considers the offering of digital assets.  The French regime is optional and does not distinguish between the various categories of digital assets, whereas MiCA provides for different

	French Regime	MiCA Regime	Comments
		<p>asset-referenced token for the first time.</p> <p>The application for authorisation as asset-referenced token issuer includes preparation of a white paper.</p>	regimes depending on the crypto-asset class involved.
		<p><b>E-money tokens:</b> the issuer must be authorised as a credit institution or as an e-money institution.</p> <p>The issuer shall notify its competent authority 40 working days before the date on which it intends to issue e-money tokens.</p>	
<i>Ongoing obligations</i>	No specific ongoing obligations, but the issuer must comply on a continuous basis with the requirements which were conditions of the visa.	<p><b>For issuers of "regular" crypto-assets:</b> limited ongoing obligations (please see above).</p> <p><b>For issuers of asset-referenced tokens:</b> extensive ongoing obligations (please see above).</p> <p><b>For issuers of e-money tokens:</b> issuers must comply with all requirements applicable to e-money institutions (please see above).</p>	<p>The French regime does not impose any specific ongoing obligations on the issuer once the visa is obtained.</p> <p>MiCA provides for separate ongoing obligations which must be complied with by the issuer depending on the crypto-asset class involved.</p>
<b>2. Providers of services on crypto-assets</b>			
<i>Services covered</i>	<ul style="list-style-type: none"> <li>the custody on behalf of third parties of digital assets or access to digital assets (as the case may be, in the form of private cryptographic keys) in view of holding, storing or transferring digital assets;</li> <li>the buying or selling of digital assets against fiat currencies;</li> <li>the provision of digital asset/digital asset exchange services;</li> <li>the operation of a digital asset trading platform;</li> </ul>	<ul style="list-style-type: none"> <li>the custody and administration of crypto-assets on behalf of third parties;</li> <li>the operation of a trading platform for crypto-assets;</li> <li>the exchange of crypto-assets for funds;</li> <li>the exchange of crypto-assets for other crypto-assets;</li> <li>the execution of orders for crypto-assets on behalf of third parties;</li> <li>placing of crypto-assets;</li> <li>providing transfer services for crypto-</li> </ul>	The services on crypto-assets covered by the French regime and the MiCA regime are not exactly the same.

	French Regime	MiCA Regime	Comments
	<ul style="list-style-type: none"> <li>other services involved: reception and transmission of orders on digital assets on behalf of third parties; digital asset portfolio management on behalf of third parties; advice to subscribers of digital assets; underwriting of digital assets; placing of digital assets on a firm commitment basis; placing of digital assets without a firm commitment basis.</li> </ul>	assets on behalf of third parties; <ul style="list-style-type: none"> <li>the reception and transmission of orders for crypto-assets on behalf of third parties;</li> <li>providing advice on crypto-assets;</li> <li>providing portfolio management on crypto-assets.</li> </ul>	
<i>Regime</i>			
<i>Authorisation/Registration</i>	<p><b>Mandatory registration:</b> For the first four services listed above: mandatory prior registration with the AMF.</p> <p><b>Optional licence:</b> For the other services: optional licensing regime. Entities which do not hold the optional licence will not be able to undertake general solicitation or carry out any other marketing step in France in relation to the digital asset services they offer.</p>	Mandatory authorisation with respect to all services. Credit institutions, central securities depositories, investment firms, market operators, e-money institutions, management companies of UCITS and AIFMs may provide certain types of crypto-asset services, depending on their regulated status and subject to prior notification to the competent authority.	MiCA requires crypto-asset service providers to be authorised, without making a distinction based on the service involved. Other regulated entities may provide certain types of crypto-asset services, depending on their regulated status and subject to prior notification. The French regime only requires registration for the provision of some digital asset services only.
<i>Passporting rights</i>	No	Yes: either through the right of establishment (including through a branch) or through the freedom to provide services.	The French regime being specific to France, it is only domestic in scope. MiCA, as for other sectoral EU legislation, provides for an EU-wide passport.
<i>General requirements applicable to all digital asset services</i>	<p><b>Mandatory registration:</b> requirement upon the persons who effectively manage the service provider; the natural persons who hold more than 25% of the capital or voting rights or who exercise a power of control, compliance with AML-CTF rules when providing four</p>	General requirements relate to conduct of business, prudential safeguards, governance requirements, safekeeping of both crypto-assets and funds, complaint handling procedure, identification, prevention and management of conflicts of	The general requirements set out by MiCA are more stringent than the general requirements set out by the French regime. Pursuant to MiCA, AML-CTF requirements would be applicable to every crypto-asset service provider, whereas the French regime requires compliance with the AML-CTF rules only

	French Regime	MiCA Regime	Comments
	<p>types of services (please refer to above).</p> <p><b>Optional licence:</b> Applicants must subscribe a professional liability insurance, implement resilient IT systems, and establish adequate security procedures and policies to manage conflicts of interest and internal audits.</p>	interest, outsourcing and orderly wind-down. <sup>17</sup>	with respect to services triggering mandatory registration requirements.
<i>Specific requirements applicable to each of the services listed</i>	Yes	Yes	Both regimes set out specific requirements per service provided.
<i>Market abuse regime / acquisition regime</i>	No	MiCA establishes market abuse rules for crypto-asset markets and provides rules governing the acquisitions of capital or voting rights in issuers of asset-referenced tokens and crypto-asset service providers.	MiCA is the only one to provide a market abuse regime, as well as rules governing the acquisition of issuers of asset-referenced tokens and crypto-asset service providers.

<sup>17</sup> The European Parliament has also included requirements in relation to AML/CTF.