

FINTECH: THE EVOLVING FRENCH REGULATORY LANDSCAPE – CRYPTOASSETS/ASSET-REFERENCED TOKENS/E-MONEY TOKENS COMPARISON TABLE & MICA FUTURE REGIME VS FRENCH EXISTING REGIME COMPARISON TABLE

Cryptoassets/asset-referenced tokens/e-money tokens comparison table

	"Regular" cryptoassets	Asset-referenced tokens	E-money tokens
Definition	Cryptoassets other than e-money tokens and asset-referenced tokens.	A type of cryptoasset that is not an e-money token and that purports to maintain a stable value by referring to any other value or right or a combination thereof, including one or more official currencies.	A type of cryptoasset the main purpose of which is to be used as a means of payment, and which purports to maintain a stable value by maintaining a portfolio which ensures that the token maintains the value of a fiat currency that is legal tender; e-money tokens which maintain the value of a fiat currency of the Union shall be deemed to be e-money as defined in Article 2(2) of Directive 2009/110/EC.
Status and location of the issuer	Legal entity established in the EU, natural person having its residence in the EU, entity established or having a seat in the EU and subject to the rights and obligations of the EU, or a decentralised autonomous organisation. ¹	Legal entity established in the EU.	Legal entity established in the EU.
Licence	Issuer must have received authorisation from the competent authority. ²	Issuer must be authorised either as asset-referenced token issuer under MiCA or as credit institution. Where authorised as credit institution, issuer shall	Issuer must be authorised as a credit institution or an e-money institution, or must be on the list of national entities that are exempted under CRD (including, notably, the <i>Caisse des</i>

¹ Such statutes have been added by the European Parliament, as the Commission proposal was only referring to a legal entity.

² The requirement of authorisation has been added by the European Parliament.

	"Regular" cryptoassets	Asset-referenced tokens	E-money tokens
		notify its supervisory authority of the intention to issue an asset-referenced token no later than three months prior to the intended date of initial issuance. ³	<i>dépôts</i> in France; KfW in Germany; CDP in Italy; BGK in Poland; ICO in Spain ⁴). ⁵ In addition, the ECB shall decide whether to authorise e-money tokens and shall adopt a decision within three months. ⁶
Initial requirements upon the issuer	Three requirements ⁷ <ul style="list-style-type: none"> • have AML-CTF measures in place; • no parent undertaking or subsidiary in a third-country that is listed as a high-risk third country or as a non-cooperative jurisdiction for tax purposes; • no 0% corporate tax rate, or no taxes on company profits. 	No additional initial requirements.	Requirements applicable to e-money institutions generally (titles II and III of the e-money directive).
White paper	Publication of a white paper meeting all relevant disclosure requirements notified to the relevant competent authority (no approval). Possibility for the issuer to ask competent authorities for prior approval of the white paper, in which case that prior approval will be valid throughout the Union. ⁸	Publication of a white paper meeting all relevant disclosure requirements and approved by the relevant competent authority. When an applicant issuer is authorised under MiCA, its white paper is deemed to be approved.	Publication of a white paper meeting all relevant disclosure requirements notified to the relevant competent authority (no approval).
Exemptions to licensing and the white paper requirements	Seven exemptions among which, in particular: <ul style="list-style-type: none"> • where the cryptoassets are offered for free; • where the cryptoassets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions; • where, over a period of 12 months, the total consideration of an offer to the public of 	Only two exemptions: <ul style="list-style-type: none"> • where the average outstanding amount of asset-referenced tokens does not exceed EUR 5,000,000 over a period of 12 months; and • where the offer to the public is solely addressed to qualified investors and the asset-referenced tokens can only be held 	Only two exemptions: <ul style="list-style-type: none"> • where e-money tokens are marketed, distributed and held by qualified investors and can only be held by qualified investors; and • if the average outstanding amount of e-money tokens does not exceed EUR 5,000,000 over a period of 12 months.

³ This prior notification regime has been added by the European Parliament.

⁴ Article 5(2) of the CRD.

⁵ The latest status has been added by the European Parliament.

⁶ Such requirement of authorisation by the ECB has also been added by the European Parliament.

⁷ These requirements have been added by the European Parliament.

⁸ Such possibility has been added by the European Parliament.

	"Regular" cryptoassets	Asset-referenced tokens	E-money tokens
	<p>cryptoassets in the Union does not exceed EUR 1,000,000, or the equivalent amount in another currency or in cryptoassets;</p> <ul style="list-style-type: none"> • where the offer to the public of the cryptoassets is solely addressed to qualified investors and the cryptoassets can only be held by such qualified investors; • where the cryptoassets have a specified purpose of use and can only be used for purchases of a specific store or network of stores, cannot be transferred between holders, and do not have a wider general purpose of use.⁹ 	<p>by such qualified investors.</p>	
Ongoing obligations	Limited ongoing obligations, including in relation to conduct of business, 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.	Extensive ongoing obligations (including around conduct of business, complaint handling procedure, conflicts of interest, governance arrangements, own funds requirements, obligation relating to reserve assets, and orderly wind-down).	Ongoing obligations, being those of e-money institutions.
Reporting obligations to ESMA (added by the European Parliament)	N/A	Yes ¹⁰	N/A
Regulatory capital	N/A	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. ¹¹	Same as for e-money institutions.
Reserve assets	N/A	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	N/A

⁹ This exemption has been added by the European Parliament.

¹⁰ The reporting obligations to ESMA have been added by the European Parliament.

¹¹ The quarter of the fixed overheads of the preceding year has been added by the European Parliament.

	"Regular" cryptoassets	Asset-referenced tokens	E-money tokens
		cryptoasset service provider (for cryptoassets) or of an investment firm providing the ancillary service of safekeeping and administration of financial instruments. ¹² Reserve assets can be invested but only in highly liquid financial instruments with minimal market, concentration and credit risk.	
Claims on issuer / redemption right	N/A	Each unit of asset-referenced token shall be pledged at par value with an official currency unit of a Member State. Holders must have redemption rights at all times on the reserve assets. Upon request by the holder, the issuer shall redeem, at any moment and at market value, the monetary value of the asset-referenced tokens. ¹³	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.
Payment of interest on tokens	N/A	Prohibited	Prohibited
Change in control	N/A	Yes: specific regime is set out by MiCA.	Yes: application of the e-money directive regime.
Significant issuances	N/A	Additional obligations are applicable to issuers of asset-referenced tokens that are classified as significant by the EBA. ¹⁴	Additional obligations are applicable to issuers of e-money tokens that are classified as significant by the EBA. ¹⁵

¹² The possibility for the reserve assets to be held in an account opened in the books of an investment firm has been added by the European Parliament.

¹³ The initial proposal from the Commission did not require the issuers to grant to the holders of asset-referenced tokens any direct claim or redemption rights on the issuer or on the reserve assets.

¹⁴ The European Parliament has notably added a specific regime that is applicable to significant asset-referenced tokens that are being widely used for payments in the EU (quasi e-money tokens).

¹⁵ The European Parliament has added the requirement that the classification by the EBA is subject to prior consultation of the ECB (and the relevant central banks of Member States whose currency is not the euro).

MiCA future regime vs French existing regime

Please note that the comparison table below is based on the MiCA proposal as amended by the European Parliament.

	French Regime	MiCA Regime	Comments
Definitions			
Definition	Defines digital assets by distinguishing (utility) tokens from cryptocurrencies.	Defines cryptoassets and provides three separate definitions: asset-referenced tokens, e-money tokens and a catch-all category of other cryptoassets (referred to below as ""regular" cryptoassets").	The MiCA definition of cryptoasset 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 excluded from MiCA's scope: <ul style="list-style-type: none"> • financial instruments under MiFID II; • e-money (except where qualifying as e-money tokens under MiCA); • deposits; • structure deposits; and • securitisations. 	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.
Regime			
1. Offer of cryptoassets to the public			
<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.	<p>"Regular" cryptoassets: the issuer must be authorised and must publish a white paper (priorly notified to the competent authority – possibility to apply for a prior approval (i.e. not a mere notification)).</p> <p>Asset-referenced tokens: the issuer must be authorised (as asset-referenced token issuer under MiCA or as credit institution) and must publish a white paper that is approved by the home state authority.</p> <p>E-money tokens: the issuer must be authorised as credit institution or e-money institution, or must be on the list of national entities that are exempted under CRD</p>	MiCA's requirements apply to both the offering of cryptoassets to the public and their listing on a cryptoasset 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 regimes depending on the cryptoasset class involved.

	French Regime	MiCA Regime	Comments
		(such as the <i>Caisse des dépôts</i> in France). In addition, the ECB shall decide whether to authorise e-money tokens and shall adopt a decision within three months. The issuer must publish a white paper (priorly notified to the competent authority).	
<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.	For issuers of "regular" cryptoassets: limited ongoing obligations (please see above). For issuers of asset-referenced tokens: extensive ongoing obligations (please see above). For issuers of e-money tokens: issuers must comply with all requirements applicable to e-money institutions (please see above).	The French regime does not impose any specific ongoing obligations on the issuer once the visa is obtained. MiCA provides for separate ongoing obligations which must be complied with by the issuer depending on the cryptoasset class involved.
2. Providers of services on cryptoassets			
<i>Services covered</i>	<ul style="list-style-type: none"> 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; the buying or selling of digital assets against fiat currencies; the provision of digital asset/digital asset exchange services; the operation of a digital asset trading platform; other services involved: reception 	<ul style="list-style-type: none"> the custody and administration of cryptoassets on behalf of third parties; the operation of a trading platform for cryptoassets; the exchange of cryptoassets for fiat currency that is legal tender; the exchange of cryptoassets for other cryptoassets; the reception and transmission of orders for cryptoassets on behalf of third parties; the execution of orders for cryptoassets on 	The services on cryptoassets covered by the French regime and the MiCA regime are not exactly the same.

	French Regime	MiCA Regime	Comments
	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.	behalf of third parties; <ul style="list-style-type: none"> • placing of cryptoassets; • providing advice on cryptoassets; • the transfer of cryptoassets; • the exchange of cryptoassets for financial instruments; • providing portfolio management on cryptoassets; • the provision of a portfolio management service.¹⁶ 	
<i>Regime</i>			
<i>Authorisation/Registration</i>	<p>Mandatory registration: For the first four services listed above: mandatory prior registration with the AMF.</p> <p>Optional licence: 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.	<p>MiCA requires cryptoasset service providers to be authorised, without making a distinction based on the service involved.</p> <p>The French regime only requires registration for the provision of some digital asset services only.</p>
<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.

¹⁶ The last four services have been added by the European Parliament.

	French Regime	MiCA Regime	Comments
<i>General requirements applicable to all digital asset services</i>	<p>Mandatory registration: 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 types of services (please refer to above).</p> <p>Optional licence: 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>	General requirements relate to conduct of business, prudential safeguards, organisational requirements, safeguarding of both cryptoassets and funds, complaint handling procedure, management of conflicts of interest and outsourcing. ¹⁷	<p>The general requirements set out by MiCA are more stringent than the general requirements set out by the French regime.</p> <p>Pursuant to MiCA, AML-CTF requirements would be applicable to every cryptoasset service provider, whereas the French regime requires compliance with the AML-CTF rules only with respect to services triggering mandatory registration requirements.</p>
<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 cryptoasset markets and provides rules governing the acquisitions of capital or voting rights in issuers of asset-referenced tokens and cryptoasset 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 cryptoasset service providers.

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

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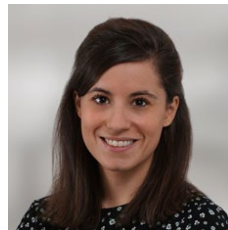
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