

FINTECH: THE EVOLVING FRENCH REGULATORY LANDSCAPE – CRYPTOASSETS/ASSET-REFERENCED TOKENS/E-MONEY TOKENS 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 notify its supervisory authority of the intention to issue an asset-referenced	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 dépôts</i> in France; KfW in Germany; CDP in Italy;

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.

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		token no later than three months prior to the intended date of initial issuance. ³	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 cryptoassets in the Union does not exceed 	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 by such qualified investors. 	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>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 		
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 cryptoasset service provider (for cryptoassets)	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
		<p>or of an investment firm providing the ancillary service of safekeeping and administration of financial instruments.¹²</p> <p>Reserve assets can be invested but only in highly liquid financial instruments with minimal market, concentration and credit risk.</p>	
Claims on issuer / redemption right	N/A	<p>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</p>	<p>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.</p>
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).

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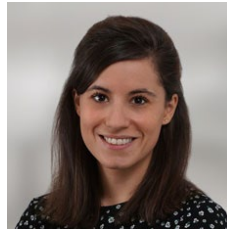
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