

MICA REGULATION UNDER SCRUTINY

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Abstract: *The Markets in Crypto-assets Regulation (MiCA) seeks to regulate crypto-asset services and crypto-asset service providers within the European Union as an area, which was mainly built on the idea of independence from the current “traditional” financial system and its regulatory framework. MiCA, inspired by the Markets in Financial Instruments Directive (MiFID II) as a cornerstone of the EU financial services regulation, now aims to change the paradigm.*

The paper focuses on examining the scope of the relevant crypto-asset services compared with the investment services catalogue under MiFID II. By analysing the definitions and content of individual services, it seeks to identify possible differences and frictions. Further, it categorises and evaluates prospective requirements put on the crypto-asset service providers (CASPs). As a result, the paper emphasizes the relevant differences of MiCA and MiFID II lists, as well as provides an overview of the new requirements put on crypto-asset service providers.

Keywords: *crypto-asset services, crypto-asset service providers, investment services, MiCA, MiFID II*

I. INTRODUCTION

MICA¹ AND CRYPTO-ASSET SERVICES: CHANGING THE PARADIGM

In May 2023, the long-awaited Markets in Crypto-assets Regulation (MiCA) was finally published in the Official Journal. It seeks to lay down EU-wide uniform rules on issuance, admission to trading, as well as providing selected services related to crypto-assets which do not qualify as financial instruments, electronic money, deposits, or structured deposits under the present EU financial services regulatory framework. Hence, MiCA covers namely currency tokens, stablecoins,² and utility tokens. It includes authorization, prudential, consumer protection and supervisory rules, and requirements.

Targeting the ecosystem, which was mainly built on the idea of decentralization³ and independence from the current traditional financial system and its regulatory framework,⁴ transposing the financial services regulation principles to crypto-assets and coming with some of the standard regulatory institutes, inspired by the Markets in Financial Instruments Directive⁵ (MiFID II) as a cornerstone of the EU financial services regulation, MiCA

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¹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA).

² “E-money tokens” and “Asset-referenced tokens” under MiCA.

³ In detail WALCH, A. Deconstructing “Decentralization”: Exploring the Core Claim of Crypto Systems. In: Chris Brummer (ed.). *Cryptoassets*. New York: Oxford University Press, 2019, pp. 39–68.

⁴ In detail HACKER, P., LIANOS, I., DIMITROPOULOS, G., EICH, S. *Regulating Blockchain*. Oxford: Oxford University Press, 2019, pp. 6–9.

now changes the paradigm. It has, unsurprisingly, provoked discussion not only among the crypto-asset market participants, but within academia as well.

As a contribution to the ongoing debate, the article, first, focuses on individual crypto-asset services compared with the “traditional” investment services under MiFID II. By analysing the scope of individual crypto-asset services, it seeks to identify possible frictions. It also examines the impacts MiCA might have on how individual corresponding investment services under MiFID II are interpreted, and vice versa. Subsequently, the paper provides an overview of the new requirements put on crypto-asset service providers and seeks to identify possible relevant differences, which might potentially contradict the level playing field⁶ and technological neutrality principles and which further research shall examine to ensure investor protection.⁷

II. MIMICKING THE MIFID: CRYPTO-ASSET SERVICES AND RELATION TO INVESTMENT SERVICES LIST

Conditions and requirements for providing the crypto-asset services present one of the central elements of the MiCA. MiCA includes a wide list of services and activities relating to crypto-assets, which qualify as crypto-asset services under the proposed regulatory regime, namely the following:

- a) the custody and administration of crypto-assets on behalf of third parties (i.e., wallet providers);
- b) the operation of a trading platform for crypto-assets;
- c) the exchange of crypto-assets for fiat currency or other crypto-assets against the provider's own capital (fiat-crypto or crypto-crypto exchange);
- d) execution of orders regarding crypto-assets on behalf of third parties (purchase, sale);
- e) placing of crypto-assets;
- f) providing crypto asset transfer services from one DLT address/account to another;
- g) the reception and transmission of orders for crypto-assets on behalf of third parties;
- h) providing advice on crypto-assets; and finally
- i) portfolio management in relation to crypto-assets.⁸

To qualify as crypto-asset service, the activity shall relate to crypto-assets as defined by the MiCA. This seems rather straightforward, but it is worth mentioning that because of such a condition, services related to crypto-assets which qualify as financial instruments, such as security/asset tokens, will not present crypto-asset services under MiCA, but rather more rigorously regulated investment services. As such, they will be covered by existing rules, namely MiFID II and related legislation.

⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [2014] OJ L 173/349 (MiFID II).

⁶ In detail COLAERT, V., BUSCH, D., INCALZA, T. *European Financial Regulation. Levelling the Cross-Sectoral Playing Field*. Oxford: Hart Publishing, 2019, p. 482.

⁷ HERRING, R. J., SANTOMERO, A. M. *What is optimal financial regulation?* Wharton: The Wharton School. University of Pennsylvania, 1999, pp. 2-11. In: *ResearchGate* [online]. [2024-02-06]. Available at: <https://www.researchgate.net/publication/23739233_What_Is_Optimal_Financial_Regulation>.

⁸ Cf. Art. 3(1)(9) MiCA.

Following from the current research,⁹ we shall note that the scope of the term “financial instrument” in relation to crypto-assets remains unclear in many respects, mainly due to partly different transpositions of the relevant term into the national legislation of individual Member States. This causes an unlevel playing field, opens space for regulatory arbitrage, and raises uncertainty when interpreting the scope of MiCA.¹⁰

Comparing the crypto-asset services list and the corresponding list of investment services in the relevant MiFID II annex, the inspiration is apparent, as the services show similarities. MiCA clearly expresses its aim to approximate both categories of services in various provisions, maybe the most prominent in relation to the special regime for investment firms authorised under MiFID II when providing crypto-asset services. As a result of such approach, the investment firms licensed under MiFID II are authorised to provide relevant crypto-asset services under MiCA, which correspond to the investment services they provide under their respective MiFID II authorisation, without needing to obtain the additional authorisation under MiCA.

III. COMMENTS ON SELECTED CRYPTO-ASSET SERVICES

The essence and content of individual services related to crypto-assets are largely similar to “traditional” investment services.

III.1 Crypto – fiat and crypto – crypto exchange

Both services relate to the exchange of crypto-assets, either for fiat currency that is legal tender or other crypto-assets.¹¹ The present services comprise of concluding purchase or sale contracts concerning crypto-assets with third parties against fiat currency or other crypto-assets by using proprietary capital of the service provider.

Under the MiCA wording, these services are equal to dealing on own account investment service, defined by MiFID II as trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments. Thus, MiCA considers dealing on own account being an integral part of providing the exchange of crypto-assets

⁹ CFHACKER, P., THOMALE, C. Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law. *European Company and Financial Law Review*. 2018, Vol. 15, pp. 645–696. In: SSRN [online]. [2024-02-06]. Available at: <<https://ssrn.com/abstract=3075820>>; MAUME, P., FROMBERGER, M. Regulation of Initial Coin Offerings: Reconciling US and EU Securities Laws. *Chicago Journal of International Law*. 2019, Vol. 19, No. 2. In: SSRN [online]. [2024-02-06]. Available at: <<https://ssrn.com/abstract=3200037>>; ZICKGRAFF, P. Initial Coin Offerings – Ein Fall für das Kapitalmarktrecht? Die Aktiengesellschaft. *Zeitschrift für deutsches, europäisches und internationales Aktien-, Unternehmens- und Kapitalmarktrecht*. 2018, No. 9, pp. 293–308 or ZETZSCHE, D. A., ANNUNZIATA, F., ARNER, D. W., BUCKLEY, R. P. The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy. *European Banking Institute Working Paper Series*. 2020, Vol. 77, No. 7, pp. 21–22. In: SSRN [online]. [2024-02-06]. Available at: <<https://ssrn.com/abstract=3725395>>.

¹⁰ ZETZSCHE, D. A., ANNUNZIATA, F., ARNER, D. W., BUCKLEY, R. P. *The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy*. pp. 21–22.

¹¹ Categorization of exchange services as genuine services is supported by MAIA, G., VIEIRA DOS SANTOS, J. MiCA and DeFi (‘Proposal for a Regulation on Market in Crypto-Assets’ and ‘Decentralised Finance’). In: Francisco Pereira Coutinho – Martinho Lucas Pires – Bernardo Barradas (eds.). Forthcoming article in “Blockchain and the law: dynamics and dogmatism, current and future”. In: SSRN [online]. 1. 7. 2021 [2024-02-06]. Available at: <<https://ssrn.com/abstract=3875355>>.

services (both in case of crypto-crypto and crypto-fiat exchange scenarios), that is by using the funds of the respective service provider.

MiCA expressly bans service providers that are authorised for the operation of a trading platform for crypto-assets from dealing on own account on the platform they operate, even when they are authorised for the crypto-fiat or crypto-crypto exchange services. Due to this restriction, only the intermediation or commission based transactions are permissible.¹² Other scenarios or transactions containing dealing on own account with crypto-assets are, however, not covered by MiCA and thus remain unregulated. This is namely the case when the activity is performed in such a way that it does not involve the provision of services to third parties and qualifies as mere management of own crypto-assets undertaken by the service provider.

Somewhat surprisingly, MiCA does not cover the exchange of crypto-assets for financial instruments.¹³ This seems rather suboptimal and potentially contradicting the investor protection principle, since the complexity of transactions and risks related might generally be higher than in case of crypto-fiat or even crypto-crypto exchange scenarios. It is, however, to be considered if such a scenario, facilitated by the service provider, could qualify as providing one of the investment services involving the distribution of financial instruments. That is primarily the reception and transmission of orders in relation to one or more financial instruments or placing of financial instruments without a firm commitment basis,¹⁴ or dealing on own account under MiFID II,¹⁵ or a combination of the relevant investment services. The materiality and technological neutrality seem to be the appropriate criterion. At the same time, a careful case-by-case analysis is necessary. The sole fact that the financial instruments are exchanged for crypto-assets as a contribution in kind, not for fiat money as in case of standard intermediated purchase of financial instruments, very likely does not change the materiality of the transaction and thus does not preclude the application of MiFID II. If the exchange scenario materially corresponds to the standard purchase of financial instruments and differs only in the means of exchange used (fiat versus crypto), it can be concluded that such a case is likely to be subject to existing financial services regulation.

i. Execution of orders

The fully identical services include the execution of orders for crypto-assets on behalf of third parties, defined as concluding agreements to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets on behalf of third parties. This corresponds to the respective service under MiFID II, defined as acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit insti-

¹² SAIDAT, A. Markets in Crypto-assets Regulation – Vertrieb von Kryptofinanzinstrumenten. *Recht der Finanzinstrumente*. 2021, Vol. 11, No. 3, p. 178.

¹³ ZETZSCHE, D. A., ANNUNZIATA, F., ARNER, D. W., BUCKLEY, R. P. *The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy*. p. 8.

¹⁴ Annex I Section A(1) and (7) of MiFID II.

¹⁵ Annex I Section A(3) of MiFID II.

tution at the moment of their issuance.¹⁶ The slight difference in wording (using the term “to subscribe” in case of the crypto-asset service and the term “sell at the moment of their issuance” in case of the investment service), has no material effect, as both of the service aim at the primary, as well as secondary market.

ii. Reception and transmission of orders

Second, it is the reception and transmission of orders for crypto-assets on behalf of third parties, defined as reception from a person of an order to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution. Unlike MiFID II, MiCA does not expressly provide that this crypto-asset service also includes bringing together two or more investors, thereby bringing about a transaction between those investors.¹⁷ We might, however, deduce this conclusion by means of analogy, nevertheless with the limits stressed out by the Court of Justice of the EU in its *Khorassani* case.¹⁸

Notably, the definition of the service above in relation to crypto-assets includes the term “subscription” and may thus lead to the conclusion that this service may be provided at the primary as well as secondary crypto-asset market. In case of investment services, this conclusion was not entirely clear, as the activities undertaken towards a prospective investor in financial instruments at the primary markets were either considered solely as placing of a financial instrument, or combination of placing (from the issuer’s perspective) and reception and transmission of orders (from the investor’s perspective). In this respect, MiCA could help to overcome the uncertainty as it seems to support the latter conclusion.

iii. Advice

Third, it is providing advice on crypto-assets, defined as 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. The comparison with MiFID II investment advice, defined as the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments,¹⁹ allows for two conclusions.

It shows emphasis on “specific recommendation”, in addition to the “personalised recommendation” as well as on the preparatory stages of the actual provision of the advice to the client. The practical impact of this wording is questionable, from the current MiFID II interpretation perspective it seems rather limited.

¹⁶ Cf Art 4(1)(5) MiFID II.

¹⁷ Cf Rec (44) MiFID II.

¹⁸ Judgement of the European Court of Justice of 14 June 2017. *Mohammad Zadeh Khorassani v. Kathrin Pflanz*. Case C-678/15. In: *EUR-Lex* [online]. 14. 6. 2017 [2024-02-06]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015CJ0678&from=en>>; which stressed out the direct relation of the service to a particular crypto-asset or crypto-assets (cf. points 28, 32, 38 and 39 of the substantiation).

¹⁹ Cf Art 4(1)(4) MiFID II.

Furthermore, and prominently, advice concerning the use of crypto-asset services (or a specific service) would fall expressly into the scope of MiCA. This is a crucial difference from the narrower investment advice definition under MiFID II, as the advice to use a specific investment service or services does not generally qualify as investment advice under MiFID II, provided it does not relate to one or more transactions relating to (specific) financial instruments. From the crypto-asset service provider perspective, the regulated advice scenario might indeed be wide and might cover for instance the sole recommendation to use a crypto exchange or crypto custody services, which do not relate or lead directly to a transaction with crypto-assets.

iv. Operating crypto trading platform

The MiFID II corresponding crypto-asset services, whose definition and statutory content slightly differs due to the nature of crypto-assets, composition of the operation of a trading platform for crypto-assets, the custody services, and placing of crypto-assets.

Operating a crypto trading platform is defined as 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. As apparent, the service covers both platforms operating crypto-crypto and crypto-fiat trades.

It does, however, not cover trades comprising financial instruments, typically crypto derivatives or asset tokens. Such platforms shall be regulated as trading venues under MiFID II, that is as multilateral trading facilities (MTFs) or organised trading facilities (OTFs). This would be the case of platforms allowing financial instruments to be traded against crypto-assets. If such platforms, and this is the usual scenario, allow crypto-crypto or crypto-fiat trades at the same time, they would need to utilise the MiCA top-up regime, discussed in last paragraph of chapter 2.

v. Crypto custody

Crypto custody service, defined as 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, is modified to cover the crypto-asset nature (i.e., wallet custody), but materially corresponds to the ancillary service of safekeeping and administration of financial instruments for the account of clients, including custodianship and related services under MiFID II.²⁰ It covers both physical custody, as well as custody of the means of access, and shows an analogy to the “traditional” custody of physical securities as well as book-entry securities.

vi. Placing

The placing of crypto-assets materially corresponds to the two relevant placing investment services from the MiFID II catalogue, that is underwriting of financial instruments

²⁰ Cf Annex I Section B(1) MiFID II.

and/or placing of financial instruments on a firm commitment basis and placing of financial instruments without a firm commitment basis.²¹ Under MiCA, the placing consists in 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 does not involve an offer to the public or an offer to existing holders of the issuer's crypto-assets. It therefore covers both marketing activities in the primary markets in crypto-assets, here without any further conditions, and the activities in the secondary market, provided the crypto-assets has not been admitted to trading yet.

Differently from MiFID II, MiCA on the one hand does not distinguish between placing on a firm commitment and no commitment basis, on the other it distinguishes placing from an offer to the public as offer to third parties to acquire a crypto-asset in exchange for fiat currency or other crypto-assets. This is, again, a very interesting difference from MiFID II. Under MiFID II, there has been little doubt that placing of financial instruments could take multiple forms, including the offer (of securities) to the public under the Prospectus Regulation.²² This seems to be a consequence of a different approach presented by MiCA, which considers placing as solely a marketing activity. In the context of Prospectus Regulation, this would match the advertisement as a communication relating to a specific offer of securities to the public or to an admission to trading on a regulated market aiming to specifically promote the potential subscription or acquisition of securities.²³ However, questions requiring further research arises, such as where to draw the distinction line between pure marketing activity and an offer to the public with regard to crypto-assets, as well as whether such an approach is feasible and justified from the investor protection perspective, since marketing activity typically qualifies as an offer to the public.

III.2 Portfolio management

Portfolio management in the case of crypto-assets does not differ in any way from the identical service related to financial instruments. It thus consists in the individual management of the client's portfolio, including one or more crypto-assets, based on the service provider's own discretion according to the limits of the mandate set by the contract with the client.²⁴

IV. CRYPTO-ASSET SERVICE PROVIDERS

While the catalogue of crypto-asset services analysed in the above chapter serves to define the scope of MiCA, the real focus of the regulation is to set requirements for the persons providing such services.

²¹ Cf Annex I Section A(6), (7) MiFID II.

²² Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. In: *EUR-Lex* [online]. 14. 6. 2017[2024-02-06]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R1129&from=EN>>; (hereinafter "Prospectus Regulation").

²³ Cf. Art 2(k) of the Prospectus Regulation.

²⁴ Cf. Art 3(1)(17a) MiCA.

The crypto-asset service providers (CASPs), defined as any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis, present a new category of financial service providers in the EU regulatory framework. As in the case of other pieces of the related EU legislation, MiCA lays down uniform rules on the authorisation and supervision, prudential requirements, as well as conduct of business rules.

To qualify as a CASP, the provision of services must be undertaken as a business activity for a third party and against a payment. Services provided for free will generally fall out of scope of MiCA, but there is a relevant exception from that rule. Under MiCA, in relation to offer to the public, 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 crypto-assets, offered 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. This shall apply by analogy for the provision of crypto-asset services, and such a scenario would thus require the proper CSAP authorisation. Furthermore, activities carried out on own account won't qualify as a provision of crypto-asset services. This is the crucial criterion of distinction between a CASP and an issuer of crypto-assets, when the latter does not perform any activity for a third party and thus does not require to be authorised as a CASP²⁵

IV.1 Authorisation

As a general requirement, the provision of services in relation to crypto-assets requires a prior authorisation by national competent authority of the respective Member State under MiCA. There are, however, relevant exemptions. First, credit institutions authorised under the CRD²⁶ do not need to obtain an additional authorisation to provide one or more crypto-asset services and will fall out of scope of the most MiCA provisions. In this case, no other conditions apply.

Second, as already mentioned above, it similarly applies to investment firms authorised under MiFID II. In this case, however, as an additional condition, the above mentioned applies only where the respective firm provides only one or several crypto-asset services deemed equivalent to the investment services and activities for which it is authorised under MiFID II. At the same time, the scope of applicable MiCA provision differs, including the general prudential and organizational requirements in case of investment firms. The same is true for other selected financial services providers.

The authorisation can only be granted to legal persons that have a registered office in the EU. If an authorisation is granted, the provider might make use of the standard passporting procedure known from the other sectors of EU financial services regulation.

²⁵ SAIDAT, A. *Markets in Crypto-assets Regulation – Vertrieb von Kryptofinanzinstrumenten*. p. 173.

²⁶ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. In: *EUR-Lex* [online]. 26. 6. 2013 [2024-02-06]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0036>>.

IV.2 General requirements and obligations

Considering its scope, we can divide the MiCA requirements catalogue in two parts. There are general requirements and obligations, which apply to all CASPs, regardless of the type of crypto-asset service they provide, and there are bespoke obligations connected with the provision of specific crypto-asset service. This, again, corresponds to the MiFID II approach, which also differentiates the level of requirements according to the investment service provided, although the level of differentiation presented by MiCA is generally higher.

General requirements comprise of standard organisational and conduct of business rules. Namely, CASPs are obliged to act honestly, fairly, and professionally in the best interest of clients, including informing and warning the client accordingly. They are also subject to organizational rules and rules on safekeeping of clients' crypto-assets and funds. Furthermore, the CASPs must establish and maintain a complaints handling procedure, as well as conflict of interest policy, and comply with the related rules in case of outsourcing. Additionally, MiCA includes specific own funds requirements (prudential safeguards) and lays down requirement for an insurance policy covering the operational risk.

IV.3 Bespoke requirements and obligations

The second and more extensive catalogue comprises of bespoke obligations applying to the provision of specific crypto-assets services. It is worth mentioning that every single crypto-asset service is subject to related bespoke requirements. The present paper does not aim to analyse these requirements in detail; however, a brief overview seems beneficial.²⁷

Perhaps the strictest rules apply to the crypto custody services. Beside requirements on contractual arrangements with clients, register of positions of clients and asset segregation, they also include rigorous liability rules, which has already been subject to criticism.²⁸ In case of operating a crypto trading platform, the requirements comprise of operating rules, prohibition of dealing on own account, resilience requirements put on the trading systems, pre- and post-trade transparency, as well as obligations in relation to the settlement of transactions. Exchange services are subject to requirements on non-discriminatory policy, price transparency, as well as transparency on orders and transactions. Execution of orders follows the best execution policy and related information requirements towards clients. In the case of placing of crypto-assets, MiCA brings rules on CASP's agreement with the issuer as well as specific rules on conflicts of interest. Reception and transmission of orders is subject to rules governing the proper transmission of orders, inducements rules notably stricter than in the case of the corresponding investment service, and information handling rules. Finally, advice on crypto-assets is subject to specific suitability rules and requirements put on the skills and knowledge of the CASP.

²⁷ For a detailed analysis, cf. SAIDAT, A. *Markets in Crypto-assets Regulation – Vertrieb von Kryptofinanzinstrumenten*. pp. 172–179.

²⁸ ZETZSCHE, D. A., ANNUNZIATA, F., ARNER, D. W., BUCKLEY, R. P. *The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy*. p. 8.

Relation of the MiCA specific requirements list to the MiFID II requirements list deserves further research, which shall be conducted elsewhere. We expect that there are differences in both lists, that do not result solely from the specific nature of crypto-assets. As an example, the MiCA rules for advice on crypto-assets come up with a specific suitability test and volatility warning requirement. Unlike the MiFID II suitability test, if the result of MiCA test proves the investment in crypto-asset or use of crypto-asset service as unsuitable, the advice still might be provided.

V. CONCLUSIONS

It is clear from the previous lines that MiCA represents a challenge for the crypto-asset segment as a whole. So, what to expect from the new legislation? Very likely significant market consolidation. For existing service providers related to crypto-assets, MiCA comes with the necessity to adapt their operations and provided services, often based on the greatest possible degree of autonomy and differentiation from “traditional” financial services, to the requirements and processes of standard financial regulation. In addition to personnel, process, organizational, and financial aspects, it is often also a challenge on an almost philosophical level. However, for those of the providers who obtain the license, in addition to simplifying expansion abroad, the way to “equalize” the services provided by them with traditional financial services opens. This can have a number of positive consequences, both in relation to reaching new categories of clients and, for example, to the sensitive issue of access to bank accounts.

For traditional regulated institutions, MiCA and especially the simplified notification process embedded there represent a convenient ticket to a world which, at least in public statements, they have so far avoided for regulatory, reputational, and business reasons. It will be interesting to see if and how much they take advantage of this opportunity. Even when briefly summarizing the MiCA requirements, as they were outlined in the previous lines, it is obvious that, compared to the existing nature, often startup providers have a significant competitive advantage in fulfilling them.

For retail clients of services related to crypto-assets, in the optimal case, MiCA will increase both the availability and comprehensibility of the services provided, as well as the level of client protection when using them. For clients - institutional investors, including investment funds, MiCA can apparently enable investments in this class of assets and the use of services related to crypto-assets even in cases where the current legal framework, risk management and compliance policies, or business decisions of the parties involved preclude this for the time being.

If we mention the potential benefits of MiCA, the potential risks need to be mentioned with equal emphasis. Perhaps the most pressing risk is regulatory overkill. That is, a situation where the requirements of MiCA (and related legal regulations) turn out to be so extensive that they will ultimately lead to a dampening of the development of this new segment of financial services, a reduction in competitiveness and thus the availability and attractiveness of services for investors. The related loss of opportunity for the domestic (and not only) financial sector does not need to be emphasized.