Offers to the public and the white paper

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Title II applies to any offeror of a crypto-asset other than an ART or EMT in the Union and to any person seeking admission to trading. The offeror must be a legal person, must draw up a crypto-asset white paper with the content of Annex I, must notify it to the competent authority of its home Member State at least twenty working days before publication, and must publish it. There is no approval, which distinguishes the white paper from a FinSA or SFA prospectus. The offeror is liable under Art. 15 for information that is incomplete, unfair or misleading. Marketing communications must be consistent with the white paper and identifiable as marketing. Retail holders have a fourteen-day right of withdrawal for tokens bought directly from the offeror and not yet admitted to trading.[1]

Two features matter for a Swiss or Singapore issuer. First, the offeror need not be established in the Union. The home Member State of an offeror established in a third country is the Member State where the crypto-asset is first offered or first admitted to trading. A Zug AG can therefore offer its utility token to the European public by notifying a white paper to, say, the German or French authority without creating a Union subsidiary.[2] Second, the white paper's Annex I content overlaps substantially with what FINMA expects in a token-sale documentation under its

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ICO Guidelines and with what a Singapore SFA private-placement memorandum contains. An issuer that drafts one disclosure document to the MiCA standard will usually satisfy the Swiss and Singapore requirements for a non-security token with modest additions. The reverse does not hold.

Example

A Zug GmbH develops a decentralised storage protocol and plans a public sale of a utility token to European and Asian buyers in September 2026. The token gives access to storage capacity that the network already provides. Under MiCA the token is an "other crypto-asset". The sale to the European public needs a white paper notified to the authority of the Member State where the offer first opens, and the GmbH is the liable offeror. No CASP licence is needed for the GmbH's own primary sale. Under Swiss law the GmbH needs a FINMA assessment confirming utility classification, no FinSA prospectus and, because it accepts payment in crypto assets and fiat from the public without holding them for the buyers, no AML affiliation unless it also exchanges tokens. Under Singapore law the token is outside the SFA if it is a pure utility token, and the GmbH's sale from Zug to Singapore residents is not a DPT service. The Asian distribution through a Singapore affiliate that takes buyers' funds would be a different matter: see Part K, Chapter I.

Notes

1. Regulation (EU) 2023/1114, Arts. 4 to 15 and Annex I. The exemptions in Art. 4(2) and (3) cover offers to fewer than 150 persons per Member State, offers below EUR 1 million over twelve months, offers to qualified investors only, and tokens offered for free, created through mining or validation, or utility tokens for goods and services that already exist. ↩
2. Regulation (EU) 2023/1114, Art. 3(1)(33)(b) and Art. 8. The point is often missed because the CASP rules in Title V do require Union establishment. ↩

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