Scope and architecture

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MiCA regulates "crypto-assets", defined as digital representations of value or rights able to be transferred and stored electronically using distributed ledger or similar technology. It carves out what other Union law already covers: financial instruments under MiFID II, deposits, funds other than e-money tokens, securitisation positions and insurance products. It also leaves out crypto-assets that are unique and not fungible with other crypto-assets, the NFT exclusion, and services provided in a fully decentralised manner without any intermediary.[1] A Swiss reader will recognise FINMA's three categories in a different dress. MiCA's "asset-referenced token" (ART) and "e-money token" (EMT) correspond to the stablecoin problem that FINMA addressed in its 2019 supplement and 2024 guidance. MiCA's residual category of "other crypto-assets" captures FINMA's payment and utility tokens. Asset tokens that are securities fall outside MiCA and into MiFID II, as they fall under FinSA and FinMIA in Switzerland and under the Securities and Futures Act in Singapore.

The Regulation is organised in nine titles. Title II governs offers to the public and admission to trading of crypto-assets other than ARTs and EMTs and imposes the white-paper duty. Title III governs ARTs and requires authorisation of the issuer, a reserve of assets and redemption rights. Title IV governs EMTs and reserves their issuance to credit institutions and electronic money institutions. Title V creates the CASP licence and the conduct rules. Title VI is a market-abuse regime for crypto-assets. Titles VII to IX allocate supervision between national competent authorities, the European Banking Authority (for significant ARTs and EMTs) and the European Securities and Markets Authority, and contain delegated powers and transitional provisions.[2]

Notes

1. Regulation (EU) 2023/1114, Art. 2(3) and (4), Art. 3(1)(5), recitals 10, 11 and 22. The NFT exclusion does not cover fractional parts of a unique asset or large series whose uniqueness is nominal (recital 11).
2. Regulation (EU) 2023/1114, structure of Titles I to IX. Significant ARTs and EMTs are supervised by the EBA under Art. 43 ff. and Art. 56 ff.

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