

## Client Alert:

# Exploring the EU's Crypto Regulatory Landscape

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The cryptocurrency market hit a major milestone in February of this year, reaching a collective market cap of \$1.7 trillion. This milestone evidences the influx of both institutional and retail investors who have jumped on the crypto bandwagon over recent years and signals the crypto market is winning acceptance around the world. High profile successes such as Bitcoin (whose value has increased over 350% in the last 6 months and is trading at a record high of ~\$54,000 per coin), along with the likely introduction of (regulated) Central Bank Digital Coins, are also attracting more and more lay investors into the virtual currency space.

Each day seems to come with the announcement of a new coin or token (there are now over 8,000 alternative coins), or a new use of the blockchain that promises to revolutionise the way we think about currency and business transactions. These opportunities in the cryptocurrency market are exciting, but they have far outpaced the regulators.

In the EU today, the regulation of cryptocurrencies is the same set of regulations that preside over traditional securities and commodities, leaving everyone trying to fit a square peg in a round hole. Regulators accept without argument, the need for clarity and regulation in these markets. The complicated technology, tremendous volatility and desire for privacy within the industry creates an urgent



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need to put safeguards in place for investors and consumers, and to stop the proliferation of money laundering through the use of cryptocurrency or the blockchain technology.

We explore two steps the EU has recently taken to bolster its crypto regulatory framework.

## 1 Establishing the Regulation on Markets in Crypto-Assets (MiCA)

In September 2020, the European Commission (EC) launched its Digital Finance Strategy, which includes a proposal for the *Regulation on Markets in Crypto-Assets* to help regulate currently out-of-scope crypto-assets and their service providers in the EU and provide a single licensing regime across all member states by 2024. If passed, the MiCA would turn the EU into the largest and most significant regulated space for cryptocurrencies anywhere in the world.

Several EU states such as Germany, Luxembourg and Switzerland have already passed clear legal frameworks for blockchain and digital assets nationally. For example, Germany has fully integrated the custody of crypto-assets into banking laws, with over 50 financial institutions already expressing interest in a custody license. Not surprisingly, Deutsche Bank has already unveiled plans to offer a crypto custody service (storage and security) for institutional clients holding significant volumes of cryptocurrencies.

With the new MiCA, the EC aims to:

- Provide legal certainty for crypto-assets not covered by existing EU financial services legislation;
- Establish uniform rules for crypto-asset service providers and issuers at EU level;

- Replace existing national frameworks applicable to crypto-assets not covered by existing EU financial services legislation; and
- Establish specific rules for so-called 'stablecoins.'

The EC's recent proposal aims to create a harmonized EU framework for the issuance, application, and provision of services in crypto-assets. The proposed regulations lay down uniform rules on: (i) transparency and disclosure requirements for the issuance and admission to trading of crypto-assets; (ii) the authorisation and supervision of crypto-asset services providers and issuers; (iii) the operation, organisation and governance of issuers of asset-referenced tokens and e-money tokens and crypto-asset service providers; (iv) consumer protection rules; and (v) measures to prevent market abuse and to ensure integrity of markets in crypto-assets.

## 2 Addition of Cryptocurrency Requirements in the New EU

**AML Directives** The EU's 5th Money Laundering Directive (5AMLD) came into force for member states on 10 January 2020. The 5AMLD was a milestone regulation for cryptocurrencies, as this was the first time that certain cryptocurrency service providers, specifically virtual currency exchange platforms (VCEPs) and custodian wallet providers (CWPs), were classified as "obliged entities" under the Directive. This means that platforms managing their users' private keys now must conform to the same AML requirements as conventional financial institutions, including registering their businesses with local country regulators (e.g., Germany's BaFin), establishing KYC, CDD and SAR procedures, and providing identifiable user information, such as real names and addresses, to FIUs when requested.

Many virtual asset exchanges were ill-prepared and poorly equipped to handle the vast changes the 5AMLD introduced. The significant financial, technical and privacy-related incumbrances that the 5AMLD brought has already forced several crypto firms to either close or relocate jurisdictions. However, while EU crypto firms are struggling to meet the new regulatory guidelines presented by the 5th (and now 6th) AML Directives, the introduction of these new regulations nevertheless pave the way for EU crypto companies to launch more cryptocurrency products and, importantly, compete with other markets.

## Addressing Regulatory Gaps Between Now and 2024

The ongoing evolvement of crypto regulation in the EU creates an urgent need for organisations to consider what the right crypto regulatory and compliance framework is for their business. Many organisations lack in-house expertise to understand current and future crypto compliance regulations, so finding and hiring the right in-house or external crypto advisers is critical. There is a growing number of professionals (including accountants, tax professionals and compliance officers) keeping pace

with the ever-changing compliance implications that are arising from new regulations and who, working together, can help organisations navigate the new reporting and compliance requirements for 2021 and beyond.

### About the Authors

*Svetlana Stepanaviciute, a Managing Director with StoneTurn, has over a decade of experience in fraud and FCPA investigations, dispute resolution, risk assessments, anti-money laundering (AML) and compliance work. Svetlana has a specific focus on assisting clients with reviews of their AML and know your customer (KYC) and sanctions programs.*

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