

EU REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

유럽연합 암호자산 규제법

- VUB (Free University Brussels) Miryung Kim (김미령)

Agenda

1. *Background*
2. *Objectives & purpose*
3. *Scope*
4. *Definitions & types of crypto assets (CAs)*
5. *Prime focus : Asset-Referenced Tokens (ARTs) & Crypto Asset Service Providers (CASPs)*
6. *Ending notes:*
 - *NFTs & DeFi projects*
 - *Implications for Korea & US*

Background

- 24 Sept 2020 : As part of its *Digital Finance Strategy & Digital Finance Package*, European Commission (유럽연합집행위원회) published a legislative proposal on **Markets in Crypto Assets** (MiCA)
- 24 Nov 2021 : EU Council (Council, 유럽연합이사회) adopted its negotiating mandate on MICA
- 31 March 2022 : Trilogue between between European Parliament (유럽연합의회), EU Council & Commission started
- 30 June 2022 : Provisional agreement reached by EU Council and Parliament
(The final agreement text: Oct 2022)
- Until 2023 : Approval by EU Council & Parliament
- 2024 : Enters into force

Objectives of MiCA

A regulation for

- legal certainty (법적 확실성)
- support technological innovation (기술혁신 지원)
- Future proof
- consumer & investor protection (소비자 및 투자자 보호)
- market integrity (시장결집)
- financial stability(재정안정)
- mitigating risks to monetary policy transmission & to monetary sovereignty (통화정책 실천 및 통화주권에 대한 위험 완화)

***Purpose of MiCA** in plain language*

“to **protect investors** and **preserve financial stability** by creating a regulatory framework.....that allows for **continued innovation** and maintains **the attractiveness of the crypto currencies sector** which is evolving quickly”.

“MiCA will **protect consumers** against some of the dangers of investing in crypto-assets and help them avoid fraudulent schemes. **Crypto0asset service providers** will now become **liable in case they lose investors' crypto-assets**”

--European Council--

IN SCOPE OF MICA

- ALL CRYPTO-ASSETS NOT COVERED ELSEWHERE IN EU FINANCIAL SERVICES LEGISLATIONS AND CRYPTO SERVICE PROVIDERS
- ISSUERS AND CRYPTO-ASSET SERVICE PROVIDERS (CASPS) PROVIDING SERVICES IN THE UNION (개발자, 마케터 등 포함)

(* IN SHORT, IT COVERS **ISSUERS & CASPS** OF UNBACKED CRYPTO-ASSETS & FIAT-BACKED OR FIAT-REFERENCING STABLECOINS, TRADING VENUES & WALLETS)

Not in scope of MiCA

- Traditional financial instruments (MiFID)
including deposits , structured deposits, securitization
- E-money unless it qualifies as 'e- money token'
- European Central Bank (ECB), Member States' national central banks,
European Investment Bank (EIB), public international organizations

Among obligations for Issuers & CASPs....

- 암호화폐 발행인(개발자와 마케터 포함)의 자격과 공시를 의무화
- 시세 조종이나 미공개 정보이용 등의 불공정거래 행위를 금지
- 발행사가 충분한 준비금을 유지해야 하며 하루 거래량 제한
- 암호화폐거래소에 대한 자본금 요건, 진입 규제, 행위 규제, 건전성 규제
- 금융감독원 격인 유럽증권시장감독청(ESMA)이 거래소를 제재할 권한

Definitions of Crypto-Assets (CAs) & Asset-Referenced Tokens (ARTs)

- *CRYPTO ASSET:*

A DIGITAL REPRESENTATION OF VALUE OR RIGHTS WHICH
MAY BE TRANSFERRED & STORED ELECTRONICALLY,
USING DLT OR SIMILAR TECHNOLOGY

- *COVERS:*

ALGORITHMIC 'STABLECOINS' AS LONG AS THESE DO NOT
REFERENCE ONE OR SEVERAL ASSETS

3 TYPES OF CRYPTO-ASSET

1. UTILITY TOKEN

A TYPE OF CRYPTO-ASSET, INTENDED TO PROVIDE DIGITAL ACCESS TO A GOOD OR SERVICE, ON DLT & IS ONLY ACCEPTED BY THE ISSUER OF THAT TOKEN

2. E-MONEY TOKENS

A TYPE OF CRYPTO-ASSET TO BE USED AS MEANS OF EXCHANGE AND THAT PURPORTS TO MAINTAIN A STABLE VALUE BY REFERRING TO THE VALUE OF A FIAT CURRENCY

3. Asset-referenced token (ART)**

*A type of crypto-asset that **purports** to maintain a stable value by referring to the value of several fiat currencies, one or several commodities or one or several crypto-assets, or a combination of asset.*

(자산참조토큰: 여러 화폐나, 하나 이상의 선물 또는 하나 이상의 암호 자산 또는 이러한 자산의 조합을 참조하여 안정적인 가치를 유지한다고 주장하는 암호자산 유형)

Prime focus: “Asset-referenced tokens (ARTs)”

“stablecoins “

General principle

- **No asset-referenced tokens** can be offered in the EU or admitted to trading on a trading platform for crypto-assets **unless**:
 - a) they are offered by an entity established in EU*
 - b) this entity has been authorized in application of Art19*
- **Exemption from authorization for**:
 - a) small offers (< EUR 5 million in EU)*
 - b) offers solely to qualified investors & can only be held by qualified investors*
 - c) Issuers are credit institutions*

Significant asset-referenced tokens(ARTs)?

- EBA(European Banking Authority) can classify an ART as “**significant**” based on
 - Size of customer base of the promoters of ARTs
 - Value of ARTs/market capitalization
 - Size of the reserve of assets
 - Significance of cross-border activity
 - Interconnectedness with financial system

Concluding notes....

- NFTs & DeFi projects?
- MiCA, a double-edged sword for CA investors& industry?
- Implications for Korea (& US)