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EU Reaches Provisional Crypto/Digital Assets Directive Deal

On June 30, 2022, the European Union ("EU") reached a landmark agreement on a "Marketplace in Crypto-assets" ("MiCA") Directive, intended to provide common rules for regulating the cryptocurrency-digital assets market across the 27-member state EU bloc. The provisional agreement brought together agreement by the European Parliament, European Council and the European Commission.

We have recently reported on U.S. developments in regulating the crypto/digital asset market ([see](#), [Bipartisan Senate Bill on Crypto/Digital Assets Introduced](#); [U.S. Executive Order Issued to Develop Crypto/Digital Assets Regulatory Framework](#), both available at [Kurtin PLLC Information Technologies & Internet](#)). With MiCA, the EU is moving in several innovative directions different from the U.S. direction. Among the MiCA provisions are:

Oversight and Consumer - Investor Protection

- The European Securities and Market Authority, or "ESMA," will be responsible for regulatory authority and supervision over cryptoassets and cryptoasset service providers ("CASPs"), and a new framework will be established to regulate public offerings and trading of cryptoassets that are not currently regulated by existing financial services legislation, including asset-reference (stablecoins, asset-backed tokens and certificates) and e-money digital tokens, and ensure market integrity, including transparency, disclosure and authorization (as compared to the U.S., in which current proposals would divide cryptoasset regulatory supervision between the U.S. Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC")).
- Provisions to prevent money laundering, use of digital tokens and coins for terrorist finance and market manipulation measures will be included in the Directive.
- Improved transparency and disclosure for consumers and investors on the risks, costs and charges of buying and trading cryptoassets.
- Non-fungible tokens ("NFTs") of all kinds, offered at a fixed price (i.e., not used for trading) will at least initially be exempt from the MiCA regime. Interestingly, treatment of NFTs was a major sticking point in the MiCA negotiations.

Energy and Environment

- MiCA requires significant CASPs to disclose the energy consumption and environmental impact of listed cryptoassets. ESMA will be charged with preparation of technical standards to provide the market with guidance on how those disclosures will be carried out. CASPs will be charged with publishing environmental and climate impact data pursuant to the ESMA disclosure standards on their websites.

For additional information, please contact us at info@kurtinlaw.com.

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