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Additional Information

Level 1 Regulation

MiCA

Topic

Stablecoin

Subject Matter

Scope of public offering

Question

Regarding ARTs or EMTs under MiCAR, what services provided in or into the EU constitute an offering to the public, a seeking admission to trading or a placing of an ART or EMT?

ESMA Answer

17-01-2025

Answer provided by the European Commission

Since the application of Titles III and IV of MiCA on 30 June 2024, any issuer of an asset-referenced token (ART) or e-money token (EMT) offered to public or admitted to trading in the Union will have to be authorised in the EU in accordance with Article 16(1) and Article 48(1), subject to the transitional provisions relating to ARTs referred to in Article 143(4) and (5) of MiCA.

While the first sub-paragraph of Article 16(1) and Article 48(1) prohibits offering to public or seeking admission to trading unless the offeror or person seeking admission to trading is an authorised issuer complying with MiCA, the same applies to offering to public or seeking admission to trading by persons other than the issuer under the second subparagraphs of Article 16(1) and Article 48(1). Other persons than the issuer may offer to public or seek admission to trading of an ART or EMT, if the following conditions are met:

- the issuer of the ART or EMT is authorised in the EU in accordance with Article 16(1) or Article 48(1), respectively;
- the person must obtain a written consent from the issuer.

It follows from both first and second sub-paragraphs of Article 16(1) and 48(1) that offering to public or seeking admission to trading of ARTs or EMTs is only possible if the issuer of such tokens is authorised under MiCA.

Providing certain crypto-asset services amounts to an offering to public or seeking admission to trading. In particular, operators of trading platforms for crypto-assets that list ARTs or EMTs for which the issuer has not been authorised under MiCA are to be considered as persons seeking admission to trading on the own initiative of the operator under Articles 16(1) or Article 48(1).

Other crypto-asset services could also constitute an offering to the public, which requires a case-by-case assessment. For instance, providers of crypto-asset services engaged in exchange services, reception and transmission of orders or execution services could be regarded as making an offer where they promote or advertise, as part of these services, an

ART or EMT.

Provision of crypto-asset services with respect to ARTs and EMTs that amounts to offering to public or admission to trading in non-compliance with Titles III and IV has been prohibited since 30 June 2024. This is the case also if the ARTs or EMTs had been first offered to public or admitted to trading before the application of Titles III and IV and continue to be offered to public or admitted to trading.

Disclaimer: The answer clarifies provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.