

## REGULATORY INTELLIGENCE

**COUNTRY UPDATE-Portugal: Crypto-asset regulation**

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Crypto-asset regulation in Europe is undergoing massive change as the EU's landmark Markets in Crypto Assets regulation (MiCA) takes effect during 2024. Member states and non-EU countries have introduced, or plan to introduce, national rules for improving investor protection and reducing money laundering and market integrity risks associated with this revolutionary but controversial asset class.

Crypto-assets' common feature is using distributed ledger technology (DLT), and they include cryptocurrencies, securities tokens and utility tokens. A subcategory of cryptocurrency called stablecoins, which purport to maintain their value by reference to another asset or assets, are a particular concern for regulators because they can carry stability risks.

After an outline of EU legislation, this article provides an overview of crypto-asset regulation in Portugal by [Ana Sofia Batista](#), [Diogo Pereira Duarte](#), [Isabel Pinheiro Torres](#) and [Joao Diogo Barbosa](#) of [Abreu Advogados](#).

**Principal EU legislation**[Markets in Crypto-Assets Regulation \(EU\) 2023/1114 \(MiCA\)](#)

MiCA establishes a harmonised EU-wide framework for issuing, dealing or intermediating crypto-assets. MiCA treats stablecoins differently from other crypto-assets and divides them into "asset referenced tokens" and "electronic money tokens". Stablecoins that pass threshold conditions will be classified as "significant" by the European Banking Authority (EBA).

MiCA's level 1 rules on stablecoins took effect on June 30, 2024 and its remaining provisions on December 30, 2024.

The European Securities and Markets Authority (ESMA) published [three consultation packages](#) of MiCA level 2 regulatory technical standards and guidelines between July 2023 and March 2024. The [final report](#) for the first package was issued in March 2024, and the [final report](#) for the second package in July 2024. The final report on the third package has not yet been issued, as the consultation on it ended on June 25, 2024.

[Revised Transfer of Funds Regulation \(EU\) 2023/1113 \(TFR\)](#)

The TFR will apply from December 30, 2024 to coincide with the majority of MiCA rules and extends the "travel rule" applicable in traditional finance to crypto-assets. This means information on the source of an asset and its beneficial ownership will have to "travel" with a transaction and be stored on both sides of a transfer.

[Fifth Money Laundering Directive EU 2018/843 \(5MLD\)](#)

This extended the Fourth Money Laundering Directive regime to "providers engaged in exchange services between virtual and fiat currencies" and to "custodian wallet providers".



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On April 24, 2024, the European Parliament adopted a package of AML measures, including an [AML Regulation](#) (AMLR). When it takes effect, AMLR will extend AML and due diligence requirements to most of the crypto sector, not just the entities covered by 5MLD.

#### [Revised Markets in Financial Instruments Directive EU 2014/65 \(MiFID 2\)](#)

Some crypto-assets qualify as "financial instruments" under MiFID 2 [article 4\(1\) point 15](#) and the associated list in [section C of annex 1](#).

#### [Second Electronic Money Directive EU 2009/110 \(EMD2\)](#)

The Commission has acknowledged that some single fiat currency-backed stablecoins can be "electronic money" as defined by EMD2 [article 2\(2\)](#) so there can be overlap with MiCA. EMD2 is being replaced by a new Payment Services Directive (PSD3), trilogue negotiations on which are expected to commence in late summer 2024.

### **Crypto-asset regulation in Portugal**

#### **1. Which body or bodies regulate crypto-assets and related activities?**

Under national law, crypto-assets and related services are subject to the regulatory powers of the Bank of Portugal for anti-money laundering and countering terrorism financing (AML/CFT) purposes, overseeing the registration procedure for entities that intend to act as virtual assets service providers and ensuring compliance with all rules pertaining to AML/CFT.

It must be noted, however, that the regulatory powers of the Bank of Portugal are strictly limited to the registration/licensing process of virtual assets service providers and their compliance with AML/CFT regulations, as per Law no. 83/2017 of August 18, excluding supervision of prudential matters.

National provisions should in any event be interpreted in line with recent changes to European law, particularly the approval of the MiCA Regulation, setting new rules for the authorisation to operate as a crypto-asset service provider in the European Union and outlining a new framework for prudential supervision and market behaviour guidelines. Under the continuing transition period, the Portuguese legal framework is expected to adapt to meet the new regulation, although it is as yet unclear how and when that will happen.

Recently, the Portuguese Securities Market Commission (CMVM) launched a public consultation to market operators in the crypto sector. This initiative has been perceived as a possible indication that the future national framework, incorporating the MiCA Regulation, will likely assign supervisory responsibilities and powers to CMVM, which has not been confirmed by any public statements from relevant stakeholders.

#### **2. Does any existing or proposed national law regulate crypto-asset issuers or service providers?**

It is expected that a new national framework will be adopted by the end of the year, considering the timeline for the entering into force of the MiCA Regulation on December 30. However, no legislative proposal has been published by the government as at the date of this article. For now, the regulatory framework relies exclusively on the Portuguese AML/CFT Law (Law no. 83/2017), and two regulations issued by the Bank of Portugal (Notice no. 3/2021, regulating the rules on the registration process with the Bank of Portugal applicable to entities carrying out activities with virtual assets, and Notice no. 1/2023 establishing the necessary measures to ensure compliance with AML/CFT obligations within the scope of entities that carry out activities with virtual assets).

#### **3. Does any existing or proposed national law impose requirements regarding stablecoin?**

There are no specific national guidelines or legislation governing so-called stablecoins.

#### **4. What rules apply to the promotion of crypto-assets?**

The Portuguese legislator has not issued any specific legislation imposing restrictions on marketing activities related to crypto-assets.

It should be noted, however, that the regulators have been issuing warnings to both investors and entities engaging in relevant activities pertaining to crypto-assets: specifically, the CMVM has issued a statement regarding the offer of tokens. In accordance with that public statement, for tokens which are not deemed securities, the relevant advertisement documents should not use terms that could be confused with those that are normally employed in public offers, such as "investor", "investment", "secondary market" and "admitted to trading".

More broadly, when targeting Portuguese consumers, mandatory Portuguese civil law, consumer protection law and general principles applicable to advertising, as provided for in the Advertisement Code, shall apply. In this sense, all marketing activities shall be transmitted in the Portuguese language, be truthful and not misleading, and clearly identified as such. Additional requirements on advertising will also be applicable if the relevant entities perform marketing activities to promote financial services or products, such as payment services.

"Advertising activities" are defined in the Advertisement Code as the set of operations related to the diffusion of an advertising message to its addressees, as well as the legal and technical relationships arising therefrom between advertisers, professionals, advertising agencies and entities exploiting advertising media or performing the referred operations. These operations include, in particular, the conception, creation, production, planning and distribution of advertising. This definition includes, for example, the use of influencers.

#### **5. What anti-money laundering requirements apply to crypto-asset activities or custody?**



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Under AML/CFT regulations, specifically Law no. 83/2017 and Notice no. 3/2021 from the Bank of Portugal, all entities involved with relevant crypto-asset activities within the Portuguese territory must register with the Bank of Portugal. For the purposes of Law no. 83/2017, the relevant crypto-asset-related activities are:

- crypto-to-fiat exchange services;
- crypto-to-crypto exchange services;
- virtual asset transfer services;
- custodian and management activities.

Portuguese Law includes crypto-to-crypto exchange service providers in the scope of the transposition of 5MLD. Hence, secondary markets that allow crypto-assets to be exchanged for other crypto-assets may be under the scope of Law no. 83/2017 and the Bank of Portugal's registration process.

Along with that registration, all entities under the scope of Law no. 83/2017 must abide by the general framework of anti-money laundering for non-financial institutions. That entails compliance with a substantial network of duties whenever the amount surpasses 1,000.00 euros, of which the following are highlighted:

- preparation and implementation of policies, procedures and control mechanisms, including training, that are appropriate for managing the money laundering risks to which they are likely to be exposed;
- identifying customers and business owners (i.e., implementing know-your-customer (KYC) procedures);
- collecting and keeping information on the business relationship with users and clients (i.e., a customer due diligence obligation);
- monitoring and scrutinising transactions on the basis of risk assessment;
- reporting and cooperating with all competent authorities when encountering any suspicious transaction.

All these requirements involve a significant compliance effort from regulated entities, especially when considering the inherent difficulties associated with obtaining full disclosure from crypto-assets activities.

#### **6. Do any rules restrict banks from holding or dealing in crypto-assets or their derivatives?**

Banks are subject to detailed and strict legislation on holdings and dealings, particularly under the Basel III framework and the CRR and CRD. There are no national specific guidelines or legislation covering crypto holding and dealing by banks.

#### **7. Do any current or proposed rules apply to decentralised finance (DeFi) arrangements?**

Although there are no national specific guidelines or legislation for decentralised finance agreements, stakeholders should consider with due care the possibility of their operations falling under the scope of other financial services regulations.

As for MiCA, DeFi is apparently out of scope if the services are provided without the intervention of intermediaries. Given the untested nature of this new regulation, it is as yet unclear how that provision will be interpreted and enforced, specifically regarding the concept of intermediary and the degree of intervention that could trigger regulatory action.

#### **8. Have there been any significant regulatory or criminal enforcement proceedings involving rules concerning crypto-assets?**

There have not been landmark regulatory or criminal proceedings in Portugal involving crypto-assets. However, there is a growing number of cases on issues such as blocking of funds and similar litigation concerning the governance of crypto platforms and exchanges, so it is possible that this will change in the near future.

*This country profile was kindly provided by [Ana Sofia Batista](#), [Diogo Pereira Duarte](#), [Isabel Pinheiro Torres](#) and [Joao Diogo Barbosa](#) of [Abreu Advogados](#).*

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