

On April 20, 2023, the European Parliament voted in favor of adopting the European Commission's Proposal for Regulation on Markets in Crypto-assets, which was published in the Official Journal of the EU on 08.06.2023 г. – <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593>. With this, the procedure for the adoption of the regulation is complete, with the approval by the European Council on May 16, 2023 – with this, the EU will adopt the first regulation of relations regarding the issuance, offering and services related to crypto assets.

Even when defining the scope of the Regulation on Markets in Crypto-assets, several essential notes are necessary. According to Art. 3, item 2 of the project, a crypto-asset is the digital representation of value or rights that can be transferred and stored using distributed ledger technology or other similar technology – a technologically neutral concept that allows the regulation to cover the development of technology. Already at this stage, the proposed definition creates difficulties, insofar as it is not clear which characteristics of the distributed ledger technology – i.e. the technology for distributed (decentralized) data records, which at least for the moment is better known as “blockchain” – are essential. Accordingly, it is difficult to predict which technologies would be considered similar. It should be noted here that “blockchain” includes several different technologies: for encrypting information, for tying new to old records, and for ensuring that records stored in a decentralized manner match (the so-called “consensus” of the network). However, in various blockchain solutions, some elements of this technology may be absent, for example, ledgers can be kept centrally, which precludes the need for consensus rules. However, such a blockchain solution, which still stores encrypted records and binds them as a guarantee against their subsequent alteration, will remain outside the scope of the regulation, unless the technology used is interpreted to be similar to that of a distributed ledger. I.e. even at this stage, questions arise as to how the regulation will be applied.

The regulation proposed with the Regulation on Markets in Crypto-assets provides for several levels of regulation, according to the risks associated with the respective activity: regulation of ordinary crypto-assets; of asset-backed tokens; of electronic money tokens.

With respect to ordinary crypto-assets that are not asset-backed tokens or e-money tokens, several sets of obligations are envisaged. First of all, such crypto-assets can be admitted for trading on crypto-asset trading platforms without requiring the issuer to have a prior license. On the other hand, the issuer must necessarily be a legal entity and have prepared a white

paper on the parameters of the crypto-asset. The white paper must be notified in advance to the competent authority of the relevant member state, and the white paper itself must be published. The white paper binds the issuer of crypto-assets to be liable if the information in it is untrue or misleading, and long corresponding compensations to those who have invested in the crypto-asset. In this regard, a special procedure is provided for reflecting in the white paper changes in the qualities of the crypto-asset, which may affect the decision to acquire it. As an additional guarantee, in the case of crypto-assets that are not traded through a platform, the right to refuse the purchase is also provided. The issuer is obliged to act honestly and professionally when offering crypto-assets, to provide clear and non-misleading information, to avoid conflicts of interest. There are also restrictions on any form of preferential treatment that is not explicitly described in the white paper that introduces the crypto-asset.

However, these rules, which are the most general provided in the draft regulation, do not apply to crypto-assets that are offered for free or that are automatically provided as a reward for maintaining distributed ledgers or validating transactions, effectively excluding Bitcoin from the field of application of the regulation. In addition, the regulation does not apply to unique crypto-assets that cannot be replaced by others, as well as to those that are offered only to qualified investors or have a total value of 1,000,000 euros for a period of 12 months, in which are publicly offered. It should be noted, that in the draft regulation, it is expressly provided that the provision of crypto-assets against personal data is not free – a lasting concept in the European legislation to respect the value of personal data, respectively to assign obligations to the persons who wish to work with them.

The regime is significantly more restrictive for asset-backed tokens – ie. crypto-assets, the value of which is tied to several fiat currencies, or one or more commodities, or other cryptocurrencies, or combinations of assets. To offer such tokens, the issuer should obtain a license. The obligations regarding the issuer in these cases are significantly more serious – the white paper must include data on its management; for the reserve of assets that secures the tokens; the possibilities to get the value of these tokens from the reserve assets or the other mechanisms to guarantee their liquidity, etc. The white paper, as well as its amendments in these cases, must be approved by the competent authorities. As an additional obligation, asset-backed token issuers should also provide information to token holders at least once a month, as well as provide a procedure for handling their complaints.

In addition, issuers of such tokens are provided with detailed rules for ongoing management, capital requirements and maintaining a reserve of assets.

The Regulation on Markets in Crypto-assets provides separate rules for another type of crypto-asset – an electronic money token, which is intended to serve as a medium of exchange and is tied to the value of fiat currency, which is a legal tender. To issue this type of token, a license should also be obtained, but in this case, part of the rules for electronic money companies also apply – as the issuer has an obligation of a certain value to the token holder, i.e. upon request, the holder can immediately receive this value. Again, an essential element of the regulatory requirements is the presentation of a white paper, as the mechanisms and rules for working with the tokens described in it bind the issuer. In these cases, however, the white paper does not need to be approved in advance by the competent authorities.

Additional obligations are also provided for asset-backed tokens and e-money tokens, which due to their distribution may be considered significant for the purposes of the Regulation.

The Regulation on Markets in Crypto-assets also contains separate rules for persons who provide services related to crypto-assets, which must be legal entities established in the EU and have a corresponding license. Separate requirements for integrity, impartiality and professionalism have been introduced in relation to such suppliers; maintaining certain capital or insurance; organizational requirements regarding the activity – including the members of the management bodies, the persons with more than 20% of the capital or voting rights, as well as the staff; protection of customers' crypto-assets; complaints procedures; prevention of conflict of interest. Separate rules are also provided for specific types of services – such as custody, management, exchange against other assets, organization of a trading platform, provision of consultations, etc.

In addition, obligations are introduced for all persons not to take actions that may be characterized as market abuse. Obligations for the disclosure of inside information are expressly provided when it may influence the decisions of investors, but at the same time a prohibition is provided for the misuse of such information. Actions that may lead to market manipulation are also prohibited – including through fictitious transactions, media reports, etc.

Since the Regulation on Markets in Crypto-assets regulates matters that are related to activities such as investment intermediation, issuance of electronic money, etc., in a number

of cases a judgment must be made as to how subsidized or preferentially the rules on the specific type of activity. For compliance with the rules provided for in the regulation, significant control powers have been assigned to the competent authorities of the member states.

Some of the concepts in the Regulation on Markets in Crypto-assets have already been introduced into European law with the adoption of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU – <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0858>, which regulates the operation of market instruments that are based on the technology of decentralized ledgers. In Bulgaria, the Ministry of Finance has already proposed for public discussion a draft Law amending and supplementing the Law on Markets in Financial Instruments, which ensures the implementation of the rules of Regulation 2022/858 at the national level. – <https://www.minfin.bg/bg/legislation7/432>.

As a potential problem of the regulation can be considered the lack of suggestions on how to act in relation to decentralized networks that operate without observing the proposed rules. The regulation focuses on the regulation of legal entities that issue crypto-assets or provide services in this regard, but there is no mechanism to apply the rules to a network of individual individuals who simply implement a protocol for working with crypto-assets. The regulation steps on the understanding that there should always be a clearly delineated beneficiary from the offering of crypto-assets or services related to them, but in a number of cases identifying this beneficiary might be accompanied by significant difficulties.

In general, decentralized networks, as well as the decentralized autonomous organizations that can be built in such networks, pose a serious challenge for this approach, insofar as they involve a large number of actors, who, however, are often not united by a common interest. As a result, it is difficult to apply measures in relation to all participants – and the Regulation on Markets in Crypto-assets, at least for the time being, does not offer solutions in this direction.