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NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Regulation on Markets on crypto-assets and amending Directive (EU) 2019/1937 (MiCA)

- Preparation of the trilogue

I. Introduction

1. On September 24, 2020, the Commission presented its "Digital Finance Package," including the proposed Regulation on Markets in Crypto-Assets. The Council approved its negotiating mandate in Coreper on November 24, 2021, as outlined in ST 14061/21 + ADD1. The European Parliament approved a negotiating mandate on March 23, 2022.
2. A first political trilogue took place on March 31, 2022 and a second one on June 1, 2022. Progress were made on several important items.

II. Preparation of the third political trilogue

3. The third political trilogue, which will be held on June 14 in the European Parliament's premises, will be the opportunity to take stock of the work done at technical level and to come back on the main provisions of the text on which a compromise still needs to be found.
4. Discussions to prepare the third political trilogue were held on May 31 and June 3 in Council Working Parties.
5. Regarding the scope of the Regulation, the Presidency could :
 - (i) express its strong preference for excluding non fungible tokens (« NFT ») from the scope of the regulation and advocate setting up a dedicated regime in another legislation. If necessary, the Presidency could nevertheless show openness towards a Commission's compromise proposal which would include a very limited inclusion of such crypto-assets and sufficiently large exemptions ;
 - (ii) in order to ensure a better harmonisation of the classification of crypto-assets within the EU, propose a solution based on guidelines instead of the regulatory technical standards proposed by the European Parliament. This solution would limit encroachments on national interpretations of the notion of financial instruments within the framework of directive 2014/65/EU ("MiFID").
6. Regarding crypto-assets which are not deemed stable, the Presidency will oppose the European Parliament's idea to require a localization in the EU of the offerors, since it would take a severe blow to the attractiveness of the European market.

7. The co-legislators made different choices on the supervisory framework. The Presidency will :
- (i) strongly oppose a supervision by ESMA of the biggest crypto-asset service providers (CASP), and insist on supervision par national competent authorities in line with the EU legislation applying to equivalent entities in the sphere of traditional finance (for instance trading venues) ;
 - (ii) oppose the European Parliament's idea to task ESMA with the supervision of issuers of significant ARTs, since the EBA appears to be better suited to supervise crypto-assets which are likely to be used as means of payments;
 - (iii) maintain the choice made by the Council of a limited scope of legal opinions issued by EBA and ESMA in the authorization process of ART issuers (classification of the crypto-asset) ;
 - (iv) insist strongly on the importance to take into account the specificities of non euro area Member States (national supervision for issuers of significant EMT referring a non euro currency and used predominatly – 80% – in a single Member State);
8. Concerning the idea – particularly important to the European Parliament – to take into account the environmental impact of crypto-assets, the Presidency could show openness towards the Commission compromise proposal while calling for improvements, notably in terms of proportionality.

9. The European Parliament preliminary agreed during the second trilogue to include AML provisions as much as possible in the AML package. Besides, it insisted on drawing a list of non-compliant CASP, either in MiCA or in the Transfer of Funds Regulation. The Presidency could show openness to work on designing, at the European level, a list of MiCA non-compliant CASP.
10. The Presidency could show openness to shorten implementation periods of the regulation and grandfathering clauses, especially in relation to CASP.

III. Question

11. Do you deem the approach proposed by the Presidency acceptable?
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