Crypto-asset Issuances and Offers to the Public: The Differences Under MiCA

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Executive Summary

This article examines the regulatory framework established by the EU's Markets in Crypto-Assets Regulation (MiCA) through a thorough exploration of two of its foundational concepts: crypto-asset issuances and offers to the public. By exploring four distinct technical modalities of crypto-asset creation, the article discusses how MiCA's definition of an "issuer" turns on control over crypto-asset creation rather than the mere technical act of issuance.[1] This control-based definition creates a functional exemption from the requirements under MiCA for decentralized protocols with no identifiable issuer for the relevant crypto-assets, while covering centralized issuers engaged in public solicitations for sale.

Similarly, the thesis that is laid out in this article in relation to "offers to the public" demonstrates that MiCA requires sufficiently-defined terms of offer to form binding agreements upon acceptance, not merely informational content about crypto-assets.

This detailed interpretation based on the text of MiCA, which addresses only identifiable issuers with control over crypto-asset creation that engage in public offerings or otherwise seek trading admission, creates a targeted regulatory perimeter that is better suited to respecting technical innovation while protecting market participants.

[1] The use of the term "issuer", along with the very definition stipulated in MiCA, leave a lot to be desired. The modality of token generation may at times be incompatible with the normative understanding of issuance, and indeed one of the purposes of this article is to study the term "issuance" from various angles so as to address the legislative uncertainty.

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1. A Preamble on MiCA

The Markets in Crypto-Assets Regulation (**MiCA**) regulates natural and legal persons, and certain other undertakings that are engaged in the issuance, offer to the public, and admission to trading of crypto-assets or that provide services related to crypto-assets in the European Union. [2] It is worth noting that MiCA does not regulate crypto-assets in and of themselves, but rather it regulates *persons* undertaking activities *in relation to* crypto-assets.

The term "crypto-asset" under MiCA is defined as "*a digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology*".[3] MiCA covers three categories of crypto-assets, namely:

1. E-Money Tokens (**EMTs**), which are crypto-assets that purport to maintain a stable value by referencing the value of one official currency.
2. Asset-referenced Tokens (**ARTs**), which are crypto-assets that are not an EMT, and which purport to maintain a stable value by referencing any other value or right or combination thereof, including one or more official currencies.
3. Other crypto-assets (**OCAs**), which are crypto-assets that are neither an EMT nor an ART, or any other crypto-asset excluded from MiCA under Article 2(4), such as financial instruments and structured deposits which are regulated by other EU legislation. "Utility Tokens" are a sub-set of OCAs, and are defined as "*crypto-assets that are only intended to provide access to a good or a service supplied by their issuer".* [4]

MiCA is largely split into three parts when it comes to addressing the conduct of persons vis-à-vis crypto-assets. The first part, being offers to the public of crypto-assets and the admission to trading of crypto-assets on trading platforms, is covered under the following titles:

- Title II, regulating offers to the public and admission to trading of crypto-assets other than ARTs or EMTs;
- Title III, regulating offers to the public and admission to trading of ARTs; and
- Title IV, regulating offers to the public and admission to trading of EMTs.

Title V then goes on to regulate crypto-asset service providers (**CASPs**). Lastly, Title VI regulates market abuse.

The focus of this article will particularly relate to Title I (laying out the scope and the definitions) and the Preamble since these cover the very essence of issuances and offers to the public that will be assessed, while making sparing references to Titles II to IV.

2. Issuance

2.1. The Three Modalities of Crypto-Asset Issuance: Control Mechanisms and Implications

Crypto-assets enter circulation through three primary technical mechanisms, each with distinct implications for issuer control, decentralization, and governance. Understanding these modalities provides critical insight into the power dynamics underpinning different blockchain networks and tokens.

[2] Article 2(1), MiCA.

[3] Article 3(1)(5), MiCA.

[4] Article 3(1)(9), MiCA.

2.1.1. "Coinbase" Transactions: Protocol-Level Issuance

When Satoshi Nakamoto designed Bitcoin, the issuance mechanism was hardcoded into the protocol itself.[5] New bitcoins come into existence exclusively through "coinbase" transactions - special transactions that reward miners for successfully validating blocks. This model has since been adopted by blockchain networks using consensus mechanisms other than proof-of-work, including proof-of-stake through modified mechanics. Such issuances occur through pre-defined inflation schedules and serve as a means of rewarding validators while shaping the network's economic infrastructure.[6]

Control Characteristics

Protocol-level issuance typically provides the **lowest degree of centralized control** over token creation. The issuance follows predetermined rules. For instance, Bitcoin's block reward automatically halves every 210,000 blocks.[7] No single person can modify the issuance schedule without network consensus, with changes requiring coordination among multiple stakeholders (miners/validators, node operators, developers, users), often resulting in the "fork" of a network.

For a variety of reasons, once deployed, it would generally be extremely difficult for the original development team to unilaterally alter the token creation schedule (ergo the network's "monetary policy"). Even Satoshi Nakamoto, were they to return, would have no special authority to change Bitcoin's creation schedule. This constraint results in monetary policies that resist arbitrary changes.

The distributed nature of consensus required for protocol changes in most widely-used networks also creates significant inertia against modifications, effectively eliminating the potential of direct control resting with any single central authority.

2.1.2. Smart Contract Issuance: Application-Level Creation

With the emergence of blockchains with programmable application-layers like Ethereum, a new issuance mechanism became possible: tokens created and managed via smart contracts.[8] This approach powers most tokens in the ecosystem today, from stablecoins to governance tokens to NFTs.

Control Characteristics

Smart contract issuance offers a **spectrum of control possibilities**:

- Contracts can be designed with varying degrees of centralized control;
- Administrative privileges may grant certain addresses special powers;
- Minting functions can be permissioned or permissionless; and
- Upgrade mechanisms may allow changing the smart contract's functionality.

At the highly centralized end, smart contracts might include:

- Privileged administrative addresses with unlimited minting authority;
- Ability to pause transactions or freeze assets;
- Backdoor functions allowing fundamental rule changes; or
- Upgrade mechanisms that can replace the entire contract logic.

At the decentralized end, contracts might be:

[5] "Bitcoin: A Peer-to-Peer Electronic Cash system", Satoshi Nakamoto < https://bitcoin.org/bitcoin.pdf>
[6] "Proof-of-Stake vs Proof-of-Work", Ethereum Foundation < https://ethereum.org/en/developers/docs/consensus-mechanisms/pos/pos-vs-pow/>
[7] "Bitcoin block reward, block size, block time", Coinbase (https://www.coinbase.com/en-gb/learn/crypto-basics/bitcoin-block-reward-block-size-block-time-whats-the-difference)
[8] "Introduction to Smart Contract", Ethereum Foundation (https://ethereum.org/en/developers/docs/smart-contracts/)

- Immutable (*i.e.*, no person holds administrative privileges) with fixed supply or algorithmically determined issuance;
- Governed by token-holder voting systems with a sufficiently large and distributed set of holders;
- Without special privileges for the original deployer; or
- With time-locked or multisignature safeguards.

The original deployers of a smart contract token tend to have as much ongoing control as they programmed into the smart contract. Many projects begin with centralized control for flexibility during early development, with promises to transition toward decentralization over time.

2.1.3. Fork-Based Creation: Divergent Issuance

The third modality emerges from blockchain's open-source nature: the ability to copy an existing blockchain, modify it, and launch it as a distinct network with its own asset.[9] Bitcoin Cash, the current Ethereum network (with Ethereum Classic representing the 'original' version of the code), and numerous other crypto-assets were created through this process.

Control Characteristics

Fork-based creation essentially results in a **transfer of control to new stewards**. Developers of the forked blockchain have no special authority over the forked asset, with 'governance' and future development falling under a new team's purview, along with a different supporting network of nodes, validators, and users. Initial token distribution typically mirrors the parent chain at the fork point, and technical direction tends to diverge significantly from the original chain.

This mechanism tends to highlight the decentralized nature of permissionless, open-source blockchain networks - if a sufficient number of members of a community disagrees with the direction of a project, they can "exit" through a hard fork while preserving the economic state up to the fork point.[10]

2.1.4. Hybrid Modalities of Issuances

While the three modalities outlined above are the predominant ways through which tokens are created, there may well be instances where a mix of the various modalities is present, particularly when one considers the myriad Layer-2 ("L2") networks that have emerged to process transactions off the main chain while inheriting the security of the underlying blockchain. These networks often employ issuance modalities that cater to their own infrastructure and governance systems, but typically such modalities are not sufficiently distinguished from the three identified above, and therefore should not be viewed as separate or novel categories.

2.2. The definition of an "issuer" under MiCA

The technical mechanism through which a crypto-asset is created fundamentally shapes the control dynamics within the ecosystem to which the token relates, which is important when determining whether a person or entity meets the definition of an "issuer" for a given token under MiCA.

MiCA defines an "issuer" as "*a natural or legal person, or other undertaking, who issues crypto-assets*".[11] Recital 20 furthermore states that "*issuers of crypto-assets are entities that have control over the creation of crypto-assets*".

[9] "Forks and Contracts", Max Boonen (https://www.b2c2.com/newspost/forks-and-contracts)
[10] "What are blockchain hard forks and soft forks?", Kraken Learn team (https://www.kraken.com/en-gb/learn/what-are-blockchain-hard-forks-soft-forks)
[11] Article 3(10), MiCA.

Recital 22 adds an interesting dimension to the understanding of issuances under MiCA, as it states that “where crypto-assets have no identifiable issuer, they should not fall within the scope of Title II, III, or IV of this Regulation”.

2.2.1. The concept of control over crypto-asset issuances

The notion of "*control over the creation of crypto-assets*" referenced in Recital 20 of MiCA is a crucial juncture for the identification of issuers, and therefore merits a detailed examination.

Control in this context extends beyond the mere technical act of deploying smart contracts or initiating token creation. Rather, it encompasses a meaningful ability to influence or determine fundamental aspects of a crypto-asset's issuance, supply, or essential parameters. This control can manifest through various technical, governance, and economic mechanisms, each with distinct regulatory implications. Reference is made to the UNIDROIT Principles on Digital Assets and Private Law which provide a useful comparative framework, defining control as encompassing "the exclusive ability to prevent others from obtaining substantially all of the benefit from the digital asset," "the ability to obtain substantially all of the benefit from the digital asset," and "the exclusive ability to transfer the [aforementioned] abilities to another person”.[12] While these principles address control in the context of proprietary rights rather than regulatory classification, they offer valuable insights into how control can be conceptualized across legal frameworks.

2.2.1.1. Technical manifestations of control

From a technical perspective, control over creation typically manifests through privileged access to specific smart contract functions that govern issuance. The most direct form of control exists when a person possesses exclusive or privileged rights to create new units of a crypto-asset, including both initial creation and ongoing ability to expand supply. The person that can execute the *mint* function effectively controls monetary policy for the token ecosystem. Similarly significant is the ability to alter fundamental parameters affecting issuance, such as supply caps, distribution schedules, or monetary policy variables. These capabilities allow a person to modify the economic characteristics of the asset after its initial deployment, thereby exhibiting a notable element of control over the crypto-asset’s economic attributes.

The power to modify the underlying code that governs issuance represents another form of control, particularly when such modifications can alter the economic characteristics of the asset. Upgradeable contracts essentially grant the authority to redefine the asset itself; functions such as *pause/unpause* capabilities that can temporarily halt token operations represent a form of indirect control over issuance by allowing a person to suspend creation, with these circuit-breaker mechanisms providing ongoing influence over the token's functionality. Furthermore, the ability to assign or revoke permissions that control issuance functions constitutes second-order control that can be equally significant from a regulatory perspective. Persons that can designate who has minting privileges effectively retain ultimate control over issuance, even if they do not directly execute minting operations.

Perhaps the most relevant technical manifestation of control is the retention of administrative keys that grant privileged access to the smart contract's critical functions. The person holding these keys can unilaterally execute actions affecting all token holders, tending to create an asymmetric power relationship. The presence of admin keys therefore transforms what would otherwise be a trustless, code-governed relationship into one requiring ongoing trust in the discretion and competence of the controlling person.

2.2.1.2. Temporal aspects of control

Control over issuance exists along a temporal dimension that affects its regulatory significance. In some cases, control may be limited to establishing the initial parameters and distribution of the crypto-

[12] Unidroit Principles on Digital Assets and Private Law, International Institute for the Unification of Private Law (Unidroit), September 2023 (https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked-1.pdf)

asset, with no ongoing authority; this includes scenarios where the person deploying the contract relinquishes all privileged access after initial setup. More extensive control includes a continuing ability to influence new issuances after initial creation. This is typical in managed token systems where supply adjustments occur in response to market conditions or business objectives.

Some systems implement progressive decentralization, where control transitions from centralized to distributed governance over time. This evolution creates regulatory complexity as the identifiable "issuer" gradually becomes more diffuse. Another temporal pattern involves contingent control, where certain systems implement control functions that activate only under specific conditions, such as emergency intervention mechanisms that can only be triggered in response to predefined security threats or market anomalies.

2.2.1.3. The distinction between economic and legal relationships

Technical control over crypto-asset issuance tends to create economic relationships with token holders, as issuance decisions directly impact token value and functionality. However, these economic relationships do not automatically translate into legal relationships in all contexts. In some scenarios, particularly those involving highly autonomous or algorithmic systems, economic relationships may exist without creating clear legal obligations. Protocol-level issuance through mining or validation rewards, where no identifiable legal entity controls the issuance, exemplifies this distinction. Similarly, algorithmic mechanisms that adjust supply based on predefined parameters without human intervention, forked assets where holders of an original asset receive new assets without establishing legal relationships with fork initiators, and secondary market trading where purchasers develop economic exposure without direct legal relationships with issuers all represent scenarios where economic relationships exist without necessarily creating legal obligations.

Conversely, control mechanisms, particularly those involving retained administrative capabilities, may transform economic relationships into ones with legal dimensions. This transformation occurs through the creation of reasonable expectations regarding how control will be exercised, implied or explicit promises about token functionality and economic characteristics, information asymmetries that create disclosure obligations, and power imbalances that may establish duties of care. The presence of these factors may transform the relationship from purely economic to one with legal dimensions.

2.2.1.4. Centralization without legal relationships

Interestingly, not all instances of centralization or control necessarily establish legal relationships between the party that can exercise control over the protocol or issuance of tokens, and the token holders themselves. The relationship between technical control and legal obligations is more nuanced than a direct correlation would suggest.

Technical coordination without legal authority represents one such scenario. Some development teams, though centralized, coordinate protocol upgrades through opt-in mechanisms that require node operator consensus. While the development team exercises influence through their expertise and coordination capacity, they do not possess legal authority to unilaterally impose changes. This creates a form of centralization without direct legal relationships with token holders, as the ultimate implementation power rests with the distributed network of operators rather than the coordinating entity.

For crypto-assets where the admin key is controlled by a sufficiently large and decentralized set of holders, the MiCA classification of an issuer becomes more nuanced. Rather than using the term “DAO” which may be confusing due to the use of the word “organization”, we will use a novel abbreviation which perhaps can be more factually accurate – **DALGS**, or **Diffused And Large Governance Set**. When assessing governance structures like DAOs (or our new preferred term, DALGS), the evaluation should look beyond formal arrangements to actual control dynamics, notably: a) the size and diversity of the governing body; b) voting thresholds and participation rates; c)

technical implementation of governance mechanisms; and d) whether influence is genuinely distributed or concentrated in practice.

When control over protocol parameters and issuance functions is vested in a DALGS, the protocol retains centralized capabilities (such as the ability to mint tokens, freeze accounts, or modify core parameters) but these powers can only be exercised through collective governance processes rather than by any single person. This creates a paradox for regulatory classification: the smart contract contains the same administrative functions that would typically indicate centralized control, yet no single participant possesses the ability to execute these functions unilaterally. Instead, control is fragmented across thousands of token holders who must coordinate through on-chain voting mechanisms to exercise these administrative powers.

Unlike a traditional issuer who can directly execute privileged functions, DALGS participants can only influence outcomes proportional to their token holdings and subject to the governance protocol's rules (quorum requirements, timelock delays, proposal thresholds). The protocol thus maintains centralized technical capabilities while distributing the ability to exercise those capabilities so widely that no person or identifiable group could potentially meet the threshold for being considered a controlling party or issuer under traditional regulatory frameworks.

Delegated technical administration without discretionary authority can also create centralization without necessarily establishing legal relationships. When a person maintains infrastructure or provides coordination services but lacks discretionary decision-making power over substantive protocol parameters, their role may be purely ministerial. If their actions are mechanically determined by transparent rules or direct participant votes with no meaningful discretion, they might plausibly function as technical intermediaries rather than controlling persons with legal obligations to token holders.

These examples illustrate that the presence of technical centralization, while creating economic relationships, does not deterministically establish legal relationships between persons capable of exercising control and token holders.

2.2.1.5. Admin key retention and the creation of legal relationships

The retention of admin keys or similar privileged access to smart contracts represents a particularly significant form of control that tends to establish legal relationships between the controlling persons retaining admin keys and the token holders. This occurs for several interconnected reasons that stem from the nature of the control relationship created.

Unlike autonomous systems, admin keys provide actual human control over the protocol, creating identifiable counterparties who can be held legally accountable. This human element may transform code-based interactions into traditional legal relationships by establishing a focal point of responsibility. Token holders reasonably expect admin key holders to exercise control responsibly and in accordance with disclosed parameters.

Admin key retention triggers disclosure obligations, as this control capacity represents material information for token purchasers. Additionally, admin key holders often function as *de facto* fiduciaries by controlling assets or contracts on behalf of others, having the power to affect token holders' economic interests, and potentially possessing specialized or insider knowledge not available to token holders. These characteristics closely resemble traditional fiduciary relationships that courts have historically recognized and enforced.

Traditional legal frameworks have established principles for custodial relationships and situations involving control over others' assets. The existence of definable controlling persons creates jurisdiction for courts to apply these principles to crypto-assets, likely drawing parallels to established legal doctrines. The key distinction is that admin key retention, unlike purely algorithmic systems, creates an ongoing human-controlled relationship rather than merely setting initial parameters for an autonomous system. This control capacity may establish a continuing relationship between controlling

persons retaining the admin key and token holders, that could extend beyond the initial token distribution.

2.2.1.6. Admin key retention by a DALGS

It is important to distinguish individual or small-group admin key retention from scenarios where administrative keys are controlled by a DALGS. In DALGS scenarios, the admin capabilities technically exist but are distributed among a sufficiently large and diverse set of participants that no single person maintains effective control. Multi-signature arrangements requiring supermajority approval from hundreds or thousands of independent participants can create a fundamentally different relationship than single-entity administrative control.

Several critical factors could be present for admin key retention by a DALGS so as not to potentially create identifiable legal relationships between those retaining control over the admin key, and the base of token holders:

1. **High governance voting thresholds and quora requirements** - When protocol modifications require supermajority approval (e.g., 67% or higher) from a diverse token holder base, this tends to significantly diffuse control. Similarly, high minimum participation requirements (quorum) may ensure that decisions cannot be made by a small subset of participants during periods of low engagement, preventing temporary concentrations of power.
2. **Immutable smart contract implementation** - The governance mechanism itself could be implemented in immutable smart contracts that cannot be overridden by any privileged person. When voting procedures are hardcoded and immutable, with no "backdoor" override capabilities, this tends to ensure that the governance process itself cannot be easily modified by founders or early participants.
3. **Genuinely dispersed voting power** – In order to minimize the possibility of legal relationships with identifiable persons subsisting, the distribution of voting power would ideally have to be dispersed across a large number of independent participants which are not under common control. A governance system with thousands of token holders where a small group controls a majority of tokens would likely not qualify as sufficiently diffused. Metrics such as the Nakamoto coefficient (the minimum number of persons required to control 51% of governance power) help provide quantitative measures of this distribution.
4. **Built-in transparency requirements** - Transparency requirements could be built into the governance system, with all proposed changes publicly visible and subject to discussion periods before voting. This level of transparency tends to lend itself to equal information access to all participants, with any exercise of control being made publicly known to the community at large.
5. **Evolution beyond founding team influence** – For a governance system to be potentially deemed as mature enough to break the nexus of a legal relationship with identifiable persons, the governance system should ideally have evolved beyond its founding team's influence. Many projects necessarily begin with founder-controlled governance that gradually transitions to community control. For a DALGS to potentially result in the absence of legal relationships with identifiable persons, this transition should be demonstrably complete, with founders potentially not having special privileges or disproportionate influence over governance outcomes.

When these factors are present in combination, the locus of control tends to shift from identifiable individuals or entities to the governance system itself, possibly resulting in the absence of legal relationships with any specific controlling and identifiable person. However, this analysis remains contextual and jurisdiction-dependent especially within the context of private law, with some legal frameworks potentially more willing than others to recognize diffused governance as lacking identifiable controlling parties.

2.2.1.7. The spectrum of control and legal relationships

The relationship between technical control over issuance and resulting legal obligations exists on a spectrum rather than as a binary classification. This spectrum approach provides a nuanced framework for assessing when and how control creates legal relationships between persons enjoying privileged access powers in relation to a token, and the token holders themselves.

At the most centralized end of the spectrum are single-entity control structures where a definable entity maintains comprehensive influence through multiple technical mechanisms (minting, pausing, upgrading, and other functions). These high-control scenarios tend to create present legal relationships that can resemble traditional issuer-holder relationships in regulated securities. The controlling entity typically bears disclosure obligations, fiduciary-like duties, and contractual responsibilities toward token holders.

Moving toward greater distribution of control, we encounter moderate control scenarios where control functions are shared among a limited group of identifiable participants. These include multi-signature arrangements requiring consensus among several persons or federated governance models with defined roles for different participants. Such structures create more nuanced legal relationships, with responsibilities potentially distributed among multiple parties according to their specific control capacities. While legal relationships could still exist, they become more complex as control diffuses, raising questions about joint liability and allocation of responsibilities among controlling persons.

Further along the spectrum are governance-based control systems where token holders collectively determine issuance decisions through voting mechanisms. These structures could be carefully analyzed to determine whether they represent genuine diffusion of control or merely formalized mechanisms that mask *de facto* centralized control. When governance power remains concentrated among founders, early investors, or a small group of affiliated persons, the voting mechanism potentially does not eliminate the creation of legal relationships with these effectively controlling persons. Conversely, when voting power is genuinely distributed among thousands of independent participants through DALGS meeting the criteria previously discussed under Section 2.2.1.6., the governance mechanism itself, rather than any particular participant, becomes the locus of control. In these genuinely diffused scenarios, it becomes increasingly difficult to identify specific persons bearing legal responsibilities to token holders.

Limited control scenarios emerge when control is primarily algorithmic or subject to significant technical constraints. Systems with fixed issuance schedules, predetermined monetary policies, or automatic adjustment mechanisms tend to remove human discretion from ongoing issuance decisions. While the original system designers may bear certain legal responsibilities related to system design and initial representations, these responsibilities become increasingly attenuated over time as the algorithm operates autonomously. However, if human intervention capabilities remain "dormant" but available (such as emergency circuit breakers), these may still create residual legal relationships depending on their scope and the circumstances of their potential use.

At the furthest end of the spectrum are renounced control scenarios, where all privileged functions have been permanently disabled through verifiable technical mechanisms. When initial deployers irrevocably relinquish control capabilities, ongoing legal relationships become minimal or even outright eliminated. However, they are rarely eliminated entirely, as deployers may still bear responsibilities for the accuracy of representations made during initial distribution regarding the immutable characteristics of the system. The permanent nature of this relinquishment should be technically verifiable rather than merely declared.

This spectrum of control demonstrates that the intensity and nature of legal relationships correlate with the degree and form of technical control retained. As control becomes more diffused, algorithmic, or permanently relinquished, legal relationships become correspondingly more attenuated, complex, or limited in scope. However, the mere existence of a governance mechanism or claims of decentralization are likely insufficient to eliminate legal relationships altogether; the actual distribution and exercise of control should be carefully analyzed to determine the resulting legal implications.

2.2.1.8. Control and regulatory classification

The correlation between control over issuance and the formation of legal relationships provides a coherent rationale for MiCA's regulatory approach. By identifying "control over creation" as the defining characteristic of issuers, MiCA effectively targets regulatory obligations at those persons most likely to have meaningful legal relationships with token holders. This approach aligns regulatory responsibility with technical ability to influence token holder interests, creating consistency between control capacity and legal accountability.

This alignment is particularly evident in MiCA's different treatment of various crypto-asset categories. For ARTs and EMTs, which typically involve ongoing control over both issuance and redemption mechanisms, MiCA imposes comprehensive regulatory requirements for issuers offering ARTS or EMTs to the public, or seeking their admission to trading, in the EU/EEA ("***Union***") - including authorization, reserve management, governance standards, and disclosure obligations. These requirements correspond to the strong legal relationships resulting from the significant control that tends to be exercised by issuers of such tokens. Conversely, MiCA's approach to crypto-assets without identifiable issuers recognizes that without meaningful control, the traditional issuer-holder legal relationship does not exist in a form that warrants full regulatory intervention.

The control-based regulatory framework in MiCA acknowledges that the technical ability to exercise determinative influence over a crypto-asset creates relationships warranting legal recognition and protection.

MiCA's recognition that crypto-assets may exist without identifiable issuers[13] further demonstrates its nuanced approach to the relationship between control and regulation. By excluding crypto-assets without identifiable issuers from certain regulatory requirements, MiCA acknowledges that in the absence of controlling persons, traditional regulatory approaches focused on issuer obligations become inapplicable. This exemption recognizes the technical reality that some crypto-assets operate through governance mechanisms so diffuse or algorithmic processes so autonomous that they lack the concentration of control that typically creates legal relationships with specific issuers.

However, MiCA still maintains appropriate regulatory oversight by subjecting crypto-asset service providers ("***CASPs***") to comprehensive requirements regardless of whether the crypto-assets they handle have identifiable issuers. This creates a balanced framework that accommodates truly decentralized innovation while maintaining appropriate protections at the CASP level as regulated service providers, and as a result, those persons which ultimately have a legal contractual relationship with clients.

2.2.2. Assessment framework for identifying control over creation

Determining whether a person has "control over the creation of crypto-assets" sufficient to be identified as an issuer under MiCA necessitates a structured analytical framework. Such an assessment could examine multiple dimensions of control to provide a comprehensive evaluation of whether a person exercises the kind of influence that merits regulatory classification as an issuer.

The assessment may start with technical exploration of creation and issuance mechanisms. Direct creation capability, being the unilateral ability to create new units of a crypto-asset through privileged functions like minting, likely provides evidence of control. Similarly important is parameter modification authority, which enables a person to alter fundamental characteristics governing issuance, such as supply caps, distribution schedules, or consensus mechanisms. The assessment should include careful examination of smart contract code to identify any privileged functions, admin keys, or upgrade mechanisms that provide ongoing influence over issuance.

Beyond direct issuance control, the assessment may in turn consider intervention powers: the ability to authorize, prevent, or interrupt issuance processes. Functions such as pause mechanisms, emergency circuit breakers, or whitelist/blacklist capabilities provide notable indirect control over the

[13] Recital 22, MiCA.

token's distribution and circulation. The examination could identify all such intervention capabilities, their scope, the conditions under which they can be exercised, and which persons have authority to activate them.

Governance influence represents another important dimension, particularly for systems employing governance voting mechanisms. The assessment could examine whether a person can exert significant influence over governance decisions related to issuance, even without direct technical control. This includes reviewing voting power concentration, proposal privileges, and informal influence through reputation or information advantages. When governance mechanisms exist, the assessment could determine whether they represent genuine diffusion of control or merely formalize processes still dominated by founding teams or major token holders.

Temporal aspects of control tend to require more nuanced attention, and are arguably the most difficult to discern. The assessment could distinguish between temporary control limited to initial creation versus ongoing control throughout the crypto-asset's lifecycle. Some systems implement progressive decentralization, where control transitions from centralized to distributed governance over time. In such cases, the assessment may determine whether meaningful decentralization has actually occurred or remains merely aspirational, examining the current state of control rather than relying on roadmap promises.

When examining potentially decentralized systems, the assessment could apply specific criteria to determine whether control is genuinely diffused. For systems employing a DALGS, factors can include high governance voting thresholds and quorum requirements, implementation of governance mechanics in immutable smart contracts without overriding capabilities, genuine distribution of voting power across many independent participants, and built-in transparency requirements. The evolution of DALGS governance beyond founding team influence can be carefully evaluated to determine whether control has truly shifted from identifiable persons to the governance system itself.

Such an assessment should ideally employ a substance-over-form approach, examining actual technical capabilities and governance practices rather than formal designations or claims. Entities that claim to be "decentralized" while maintaining significant *de facto* control could be classified based on their actual control capacities rather than their self-description. The assessment framework could be applied with particular attention to technical mechanisms that create ongoing control relationships, such as retained administrative keys, as these mechanisms tend to establish the type of issuer-holder relationship that MiCA is designed to regulate.

By applying this comprehensive assessment framework, regulators and market participants can potentially identify persons with meaningful control over the creation of crypto-assets. This determination could provide a technically informed basis for applying the appropriate regulatory requirements to those persons most capable of affecting token holder interests, while possibly avoiding inappropriate application of issuer obligations to persons that lack meaningful control.

3. Offerors and offers to the public

An "offeror" is defined as "*a natural or legal person, or other undertaking, or the issuer, who offers crypto-assets to the public*".[14]

In turn, an offer to the public is defined as "*a communication to persons in any form, and by any means, presenting* ***sufficient information on the terms of the offer and the crypto-assets to be offered*** *so as to enable prospective holders to decide whether to* ***purchase*** *those crypto-assets*".[15]

This definition can be broken down into the following constitutive elements:

1) A communication to persons in any form;

[14] Article 3(1)(13), MiCA.
[15] Article 3(1)(12), MiCA.

2) Presenting sufficient information on:

   i) the terms of the offer, and
   ii) the crypto-assets to be offered; and

3) Enabling prospective holders to decide whether to purchase those crypto-assets.

An offer to the public can therefore be interpreted as the presentation of **terms for the sale of crypto-assets**, by an offeror, to a prospective **buyer** of crypto-assets. While the prospective buyer does not need to act on or accept the terms in order for an offer to the public to be fulfilled, the communication should be sufficiently detailed so as to provide the prospective buyer with sufficient information to decide whether to proceed with the purchase of a crypto-asset or otherwise.

We expect that such an offer would consist of a solicitation, or a proposal, on the part of the offeror intended to result in **a contract of sale** if the other party accepts it, and contains sufficiently definite terms to form a contract if the terms of the offer are accepted.[16] The proposal should be in the form of a 'public advertisement', which is to be construed in a wide manner as a public communication in any form and by any means, inviting **a prospective holder to purchase the crypto-asset** in question.

It logically follows, on the basis of the definition set out in MiCA itself, that **an offer to the public cannot subsist if the communication involved does not consist of the presentation of terms of an offer to purchase crypto-assets**, regardless of how widespread the communication is. There must be both sufficient information on the terms of the offer **and** the crypto-asset itself.

3.1. Defining "Terms of Offer"

Let us take a moment to delve further into the concept of 'terms of the offer' which is multi-faceted. 'Terms of the offer' typically are the domain of civil, commercial, and consumer protection laws. EU laws do not appear to define this term anywhere; however, academia has provided a workable definition vis-à-vis European private law (albeit in a document that is still marked as a 'draft'), defining it as follows:

(1) A proposal amounts to an offer if:
   a) it is intended to result in a contract if the other party accepts it; and
   b) it contains sufficiently definite terms to form a contract.
(2) An offer may be made to one or more specific persons or to the public.
(3) A proposal to supply goods or services at stated prices made by a business in a public advertisement or a catalogue or by a display of goods, is treated, unless the circumstances indicate otherwise, as an offer to sell or supply at that price until the stock of goods, or the business's capacity to supply the service, is exhausted.[17]

Point 3 above could be applied *mutatis mutandis* to the offering of crypto-assets; a possible interpretation could refer to offers to the public being either time-limited or perpetual. MiCA refers to 'time-limited' offers as one form of public offers,[18] meaning that perpetual public offers are also possible.

Point 1 is most relevant for the purpose of analysing the words "terms of the offer", as it contains material information on when a proposal amounts to an offer. Point 1(a) of the definition being proposed by the Acquis Group[19] highlights the importance of the *intention* behind a proposal. If the intention is *not* for a contract to result between the offeror and the prospective holder, but the

[16] Principles, definitions and model rules of European Private Law – Draft Common Frame of Reference', *Study Group on a European Civil Code and Research Group on the Existing EC Private Law (Acquis Group)* < https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/EN_EPL_20100107_Principles__definitions_and_model_rules_of_European_private_law_-_Draft_Common_Frame_of_Reference__DCFR_.pdf>
[17] Ibid.
[18] Article 10(1), MiCA.
[19] The Acquis Group is a study group on a European Civil Code, and the European research group on existing EC private law.

information/proposal being presented is simply of an educational nature without an intention to form a contract, then it is difficult to state that a proposal amounting to an offer is being made.

Point 1(b) is complementary to point (a) – if there are sufficiently definite terms to form a contract, then it can safely be said that the intention for the proposal to result in a contract is confirmed. While the authors of the quoted paper stop short of defining 'sufficiently definite terms', criteria such as the consideration, terms and mode of payment, and the mode of delivery of the crypto-asset can all be deemed to be essential criteria for the terms to be sufficiently defined. If the only information shown, for example, consists of the price of a crypto-asset, its name, and its identifier/ticker, then it is likely that such information would not constitute sufficient information on the crypto-asset itself.

The definition suggested above by the Acquis Group is substantively supported by Unidroit in their commentary[20] on the Principles of International Commercial Contracts published in 2016 (the "***Principles***")[21]. Article 2.1.2. of the Principles states that "a proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance".

Of particular interest is the explicit mention of a contract; the offer must be intended to result in a contract if it is accepted by the person to who the offer is addressed. The commentary on the Principles fleshes out the definition further by laying down two requirements for an offer to subsist:

"*The proposal must:*

(i) *be sufficiently definite to permit the conclusion of the contract by mere acceptance; and*
(ii) *indicate the intention of the offeror to be bound in case of acceptance*."[22]

For the requirement listed in point (i) above, Unidroit further comments that "the terms of the future agreement must already be indicated with sufficient definiteness in the offer itself"[23]. Interestingly, it states that "even essential terms, such as the precise description of the goods or the services to be delivered or rendered, the price to be paid for them, the time or place of performance, etc., may be left undetermined in the offer without necessarily rendering it insufficiently definite: **all depends on whether or not the offeror by making the offer, and the offeree by accepting it, intend to enter into a binding agreement, and whether or not the missing terms can be determined by interpreting the language of the agreement**"[24].

For the requirement listed in point (ii), Unidroit adds that the intention may either be declared expressly, or may be inferred from the circumstances of each individual case. The way in which the proposal is presented is the first indicator; however, Unidroit states that "of even greater importance are the content and the addressees of the proposal. Generally speaking, the more detailed and definite the proposal, the more likely it is to be construed as an offer"[25]. This is very much aligned with the definition of an offer to the public under MiCA, which requires sufficient information on both the crypto-asset and the terms of the offer, to the point that a prospective holder can decide whether to purchase that crypto-asset or otherwise.

We are now going a step further, and referring to laws that are actively applicable in two of the jurisdictions considered to be stalwarts of European civil law: the Italian *Codice Civile,*[26] and the French *Code Civil*.[27]

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[20] https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-2-section-1/#1623694323415-30641944-9988, accessed April 24 2025.
[21] Unidroit Principles of International Commercial Contracts 2016, Unidroit (https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf)
[22] https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-2-section-1/#1623694323415-30641944-9988, accessed April 24 2025.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Italian Civil Code <https://www.trans-lex.org/601300>
[27] French Civil Code <https://www.trans-lex.org/601101/_/french-civil-code-2016/>

3.2. Italy's *Code Civile* on offers to the public

Article 1336 of the Italian Civil Code governs "*Offerta al pubblico*" (public offers), establishing that a public communication constitutes a binding proposal when it contains all essential elements of the intended contract. This presumption of binding effect applies unless specific circumstances or established customs indicate otherwise. For a public offer to be validly revoked, the revocation must be made in the same form as the original offer or in an equivalent manner, and such revocation is effective even against those unaware of it.

3.2.1. Essential Elements Requirement

The required essential elements derive from Article 1325, which establishes four fundamental requirements for any contract: a) agreement of the parties; b) cause (legal purpose); c) object (subject matter); and d) form when legally prescribed under penalty of nullity. For sales contracts, these translate into specific details about the goods or services offered, pricing or determination criteria, and any fundamental conditions of sale.

3.2.2. Contract Formation Process

According to Article 1326, a contract is concluded at the moment when the proposer gains knowledge of the counterparty's acceptance. This is complemented by Articles 1334 and 1335, which establish that unilateral acts (including offers) take effect when they reach the knowledge of the addressee, with a legal presumption that communications are known when they arrive at the recipient's address.

3.2.3. Constitutive Elements for a Solicitation of Sale

Based on these provisions, for a solicitation of sale to legally subsist as a binding offer under Italian law, it must:

a) contain sufficient specificity regarding the goods or services, price details, and essential conditions;
b) demonstrate clear intent to be bound upon acceptance rather than merely inviting negotiations;
c) provide terms specific enough that simple acceptance would create a complete contract;
d) comply with any legally required form for the specific transaction type; and
e) be appropriately communicated to potential counterparties in an accessible manner.

The key distinction in Italian law is between a true "*offerta al pubblico*" (binding public offer) under Article 1336 and an "*invito a offrire*" (invitation to make offers), which is not binding. This latter concept is implicitly derived from Article 1336, which states that a public offer is a binding proposal "when it contains the essential elements of the contract" and "unless circumstances or customs indicate otherwise."

By logical implication, a communication that either lacks the essential elements of the contract, or is made in circumstances where customs indicate it is not meant to be binding, would be considered merely an invitation to offer rather than a binding proposal.

3.3. France

3.3.1. Definition and Essential Components

Under Article 1114 of the French Civil Code, a binding offer requires two fundamental elements: it must contain all essential elements of the intended contract and clearly express the offeror's

willingness to be bound upon acceptance. When either element is missing, the communication is merely an invitation to negotiate, similar to the Italian concept of "*invito a offrire*."

3.3.2. Withdrawal and Duration Provisions

The French Civil Code establishes clear rules regarding an offer's lifecycle. Article 1115 permits free withdrawal before the offer reaches the offeree. Once received, Article 1116 prohibits withdrawal during either the period specified by the offeror or a reasonable timeframe if unspecified. According to Article 1117, offers terminate upon expiration of the stated period, after a reasonable time if no period was fixed, or upon the offeror's death or incapacity.

3.3.3. Acceptance Mechanisms

The Code defines acceptance in Article 1118 as a clear manifestation of the offeree's willingness to be bound by the offer's exact terms. Article 1120 specifically addresses silence, which cannot constitute acceptance unless established by law, usage, prior business dealings, or specific circumstances. Article 1121 conclusively establishes that contract formation occurs at the moment the acceptance reaches the offeror.

3.4. Comparative analysis between Italian and French Law

The French Civil Code is more explicit than the Italian Code in defining what constitutes a binding offer versus an invitation to negotiate. While the Italian Code requires interpretation of Article 1336 to understand the concept of "*invito a offrire*," the French Code directly states in Article 1114 that an incomplete communication that lacks essential elements or the intention to be bound is "only an invitation to enter into negotiations."

Both legal systems share the fundamental requirement that a binding offer must contain the essential elements of the contract and the intention to be bound. However, interestingly the French Code provides additional clarity on offers conducted through electronic means.

Under the French Civil Code, electronic offers must contain all essential contract elements and express the offeror's intent to be bound. When made electronically, these offers must allow recipients to store and reproduce the contractual terms, and remain binding as long as they're accessible online.[28]

3.5. A legally reasonable interpretation of offers to the public

The definition under MiCA requires a communication that presents "sufficient information on the terms of the offer and the crypto-assets". Drawing from established European civil law traditions as outlined above, we are of the view that there are good arguments that this should be interpreted as requiring the following elements:

1. **Contractual Intent**: The communication must demonstrate a clear intention to enter into a binding contractual relationship upon acceptance, not merely provide information or education about crypto-assets.
2. **Sufficiently Definite Terms**: The offer must contain terms specific enough to form a complete contract through simple acceptance without further negotiation. This includes:

    - Consideration (price or exchange value);
    - Payment methods and terms;
    - Delivery mechanism for the crypto-asset; and

[28] Article 1127(1), Code Civil.

- Essential conditions of the transaction.

3. **Complete Asset Information**: Beyond basic identifiers like name and ticker, the communication should provide substantive information about the crypto-asset's nature, functionality, and characteristics.

However, as there has been no formal interpretation yet by a European supervisory authority, it is important to consult counsel about any particular facts and circumstances before taking action.

3.5.1. Distinguishing Offers from Mere Information

Following both French and Italian civil law principles, as well as the internationally recognized UNIDROIT Principles, there seems to be a crucial distinction between:

a) A binding "offer to the public" that presents complete contractual terms with an intention to be bound; and
b) A mere "invitation to negotiate" or "invitation to make offers" that lacks either definite terms or the intention to create immediate binding obligations.

The mere display of crypto-asset prices or basic information, without specific terms of purchase that could be immediately accepted to form a contract, should not constitute an “offer to the public” under MiCA for several compelling reasons as follows.

MiCA's definition explicitly requires "sufficient information on the terms of the offer" to enable a purchase decision. Price information alone lacks crucial contractual elements such as delivery mechanisms, payment methods, and other essential conditions that would make the offer capable of immediate acceptance without further negotiation.

Indeed, both Italian and French civil codes recognize that communications lacking "essential elements of the contract" fall short of binding offers. In the Italian legal tradition, such communications constitute merely an "invito a offrire" (invitation to make offers), while French law explicitly classifies them as "invitations to enter into negotiations" under Article 1114 of the French Civil Code.

This interpretation is further supported by the UNIDROIT Principles. Article 2.1.2 of the Principles states that "a proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance." As the commentary on these Principles notes,[29] a communication must demonstrate both "sufficiently definite" terms and "the intention of the offeror to be bound" to qualify as an offer. The mere display of crypto-asset prices or basic information typically lacks both these essential characteristics.

Moreover, the UNIDROIT commentary further clarifies that "the more detailed and definite the proposal, the more likely it is to be construed as an offer," reinforcing that simple price displays or basic asset information fall short of the specificity required for binding offers under established commercial principles.

From a pragmatic point of view, we also note that interpreting mere price displays as offers to the public would create significant practical difficulties in applying MiCA. Simple informational content about crypto-assets and their current market values serves an essential function in creating market transparency, which should be distinguished from active solicitation of purchases. Such an expansive interpretation would extend MiCA's regulatory requirements to persons engaged in purely informational activities, potentially creating disproportionate compliance burdens that could stifle legitimate information sharing and price discovery mechanisms in the crypto-asset ecosystem.

[29] https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-2-section-1/#1623694323415-30641944-9988, accessed April 24 2025.

This is also supported by MiCA's Recital 28, which states the following:

"The mere admission to trading ***or the publication of bid and offer prices should not, in and of itself, be regarded as an offer to the public of crypto-assets****. Such admission or publication should only constitute an offer to the public of crypto-assets where it includes a communication constituting an offer to the public under this Regulation."*

For these reasons, we are of the view that a balanced interpretation of MiCA should recognize that for crypto-asset communications to constitute "offers to the public," they must go beyond mere informational content and contain sufficient contractual terms to form a binding agreement upon acceptance, consistent with both European civil law traditions and internationally recognized commercial principles.

3.5.2. Practical Application

The foregoing analysis permits the extrapolation of several constitutive elements necessary for a communication to qualify as an "offer to the public" under MiCA. These elements derive from established principles of European civil law traditions and internationally recognized commercial doctrines, and serve to delineate the boundaries of regulatory application.

3.5.2.1. The Necessity of Purchase Capability

A *sine qua non* condition for any valid and actionable offer to the public is the actual capability of the purported offeror to effectuate the sale of the crypto-assets in question. This requirement stems from fundamental principles of contract formation:

a) It is worth referring to the "Impossibility Doctrine" (*Impossibilium nulla obligatio est*) – there can be no obligation to do the impossible. The impossibility of contracting negates the existence of a genuine offer. Where the person disseminating information about crypto-assets lacks the capacity to transfer or control such assets, the essential contractual relationship that MiCA seeks to regulate cannot materialize. There could, however, be the subsistence of a crypto-asset *service* rather than a direct offering of the crypto-asset itself; an example of this would be the placing of crypto-assets as a service, which consists of "the marketing, on behalf of or for the account of the offeror or a party related to the offeror, of crypto-assets to purchasers"[30].

b) Both the Italian Codice Civile (Article 1326) and the French Code Civil (Article 1121) establish that contract formation occurs through the acceptance of an offer. Where no mechanism exists for the offeree to signify acceptance and consummate a transaction directly with the purported offeror, the essential criterion for contract formation is absent, thereby negating the existence of a valid offer. Moreover, where a person disseminates information about crypto-assets without the capacity to deliver such assets, the performance element required for a valid offer is fundamentally lacking.

c) The legislative intent of MiCA, which aims to regulate concrete economic and legal relationships rather than mere information dissemination, seems to support this interpretation. The regulation's focus on offerors and issuers presupposes entities capable of transferring crypto-assets in exchange for consideration.

3.5.2.2. Formal Criteria for Identifying Genuine Offers

Beyond the capability requirement, a systematic evaluation of legitimate offers to the public under MiCA may involve the following formal criteria:

[30] Article 3(1)(22), MiCA.

(a) **Substantive Completeness**: The communication contains sufficiently definite terms to permit the immediate formation of a binding agreement, including:
   i) Precise consideration;
   ii) Definite object of the transaction (ergo sufficient information on the crypto-asset); and
   iii) Any material conditions affecting the transaction.
(b) **Manifestation of Intention**: The communication demonstrates an objective intention to be bound upon acceptance, rather than merely stimulating interest or facilitating information dissemination.
(c) **Direct Transactional Pathway**: The communication establishes a clear mechanism through which the prospective holder can consummate a purchase directly from the purported offeror without requiring intermediation or additional negotiation.
(d) **Immediate Actionability**: The terms presented are sufficiently concrete to enable a prospective holder to make an informed purchase decision without requiring further material clarification.

It is worth noting that while delivery mechanisms and timing traditionally contribute to the completeness of an offer, established principles of contract law, as reflected in the UNIDROIT Principles, recognize that "even essential terms... may be left undetermined in the offer without necessarily rendering it insufficiently definite"[31]. The degree to which delivery specifics must be articulated depends on the nature of the transaction and applicable trade practices in the relevant market. For crypto-assets, which often transfer instantaneously upon transaction execution through blockchain protocols, extensive detailing of delivery mechanics may be less crucial than in traditional commerce.

4. Fifty shades of issuers, and offerors: a conclusion

Through this detailed exploration of the intricacies of issuances and offers to the public of crypto-assets, three critical findings emerge from our examination of MiCA's approach to issuers and offerors.

First, the control-based definition of "issuer" seemingly creates a functional boundary that focuses regulatory attention on persons with meaningful influence over crypto-asset creation. Persons who do not exercise control over the creation of crypto-assets should not qualify as issuers, marking the first significant boundary of MiCA's scope. This control-based approach respects the technical reality of distributed systems while ensuring that persons with genuine ability to affect token holder interests remain subject to appropriate oversight.

Crypto-assets that lack identifiable issuers due to genuinely decentralized creation and governance mechanisms are exempted from the requirements under Titles II to IV, establishing the second boundary of MiCA's scope. It is important to clarify that while persons without control over the creation of the crypto-asset cannot qualify as an issuer, non-identifiable issuers may *still qualify* as issuers – but Recital 22 of MiCA indicates the intention of the legislator to exclude non-identifiable issuers from MiCA's scope.

Indeed, rather than the act of mere technical issuance, MiCA focuses its substantive requirements on concrete economic activities, being offers to the public and seeking admission to trading. By requiring "sufficient information on the terms of the offer" to enable purchase decisions, we view this as meaning that simple informational communications about crypto-assets do not trigger regulatory requirements absent actual contractual solicitation. This contractual approach to defining offers, drawing from established European civil law traditions, creates the third boundary of MiCA's regulatory perimeter.

The essential distinction between issuers and offerors reinforces this balanced approach. While an issuer's role centers on creating and controlling crypto-assets, an offeror's role involves actively

[31] https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-2-section-1/#1623694323415-30641944-9988, accessed April 28 2025.

soliciting purchases through definite contractual terms. A single person may occupy both roles, but the roles remain conceptually and legally distinct. This distinction is crucial because **MiCA primarily imposes obligations on persons offering crypto-assets to the public or seeking their admission to trading, rather than on mere issuers who do not engage in such activities**.

The MiCA regulatory framework thus creates a coherent governance structure tailored to the specific characteristics of each crypto-asset category. For other crypto-assets (OCAs) falling under Title II, offerors must provide comprehensive disclosure through crypto-asset whitepapers but face no prior authorization requirement. For ARTs (Title III) and EMTs (Title IV), which typically involve ongoing control over both issuance and redemption mechanisms, issuers must obtain authorization and comply with prudential requirements before offering these assets to the public or seeking their admission to trading.

In final thoughts, MiCA seemingly establishes a filtered approach to regulation that respects technical innovation while ensuring appropriate market safeguards. It excludes persons without control over crypto-asset creation from the definition of "issuer" entirely, excludes crypto-assets without identifiable issuers from the scope of Titles II, III, and IV, and imposes graduated requirements on identifiable issuers based on asset characteristics and market activities.

The nuanced interpretation of "offers to the public" advocated in this article further reinforces this balanced approach, casting regulatory attention on genuine contractual solicitations while preserving the free flow of market information and analysis. In this way, MiCA rightly casts a net over persons that are truly engaged in activities that should be subject to regulatory oversight – without inadvertently catching the fish that make the crypto ocean flourish.