Eric: [00:00:00] So this is the second of our MICA series. Today we'll be covering issuances. Now the MICA series individual episodes are run on the long side, but there's a lot to cover. I hope the content more than makes up for it. I'm going to be covering just before we begin a little bit about the US in a way that I didn't cover during the episode, I think it would be helpful to get a sense of the US or think about the US as we, talk about issuances in the eu.

So, the disclosure regime for registered securities is largely incompatible with digital asset entity structures and putting aside whether they're sufficiently decentralized or not disclosure regimes contemplate highly centralized structures, shareholders, directors, c-suite management structures.

If you are a lawyer advising somebody on a mini public or a reggae plus, Or a public S one filing. You gotta make sure that there's c proper corporate forms, governance, supporting [00:01:00] infrastructure. You gotta look at the roles and where the fiduciary duties are placed. It doesn't align with the decentralized structures that projects have.

And putting aside this notion of even sufficient decentralization that we talked about in previous episodes under the Hinman test, the framework for qualifying financial statements with auditors forces pigeonholing reframing of various balance sheet income statements. The notes there too, it's incompatible with digital asset projects and it requires supporting infrastructures, which forces centralization and intermediation, which is just counter intuitive to.

Decentralized protocols generally trying to accomplish. So furthermore, because the registration has to be filed with the s e C and every significant update or change needs to go through an approval process. It's challenging for projects to quote unquote launch, measure and iterate their projects. And this is actually what this quote is what the props founder noted last year when they closed their reg A plus props [00:02:00] vertical.

Due to those reasons, disclosures align with the SEC's disclosure and approval standards. And it also, they also have to use plain English, which. Doesn't necessarily comport with a tie, the technology for a lot of these projects. And when you consider that these have to be approved by the staff, you run the risk that there's slippage between what was said and what the technology does, and there are legal ramifications with that.

Box stack, for example, which later became hero took nine months to get qualified, and then two years or so roughly, they were in the whole thing for about two years. And then they decided we're no longer a security. We no longer need to be registered and we're going to be decentralized.

But can you imagine the, that the board, which is you're in a structure that forces the centralization and you have to make a determination, the, or. Trying to make a determination that you're decentralized. It's like counter forces. Just a sort of a bizarre scenario. And we talked about this with Julia [00:03:00] CEVA on a prior podcast.

Now we, we have different initiatives in the US in 2021. There is Hester Peirce commissioner Hester Peirce s e c propose a safe Harbor exemption in 2022. Last year it,

there was the obviously the Lewis Gillibrand bill, which I'll talk about in a second. Also Lex Punk published Reg X, which I actually liked because it tries to address disclosure for hall disclosure shortfalls.
Head on, and it creates a happier medium. It's more compatible with how decentralized projects actually operate in the hope that this sort of stops those issues. But the Responsible Financial Innovation Act had a sensible approach of constructing a disclosure regime, meeting the project where it was, and endeavoring, versus trying to force the incompatible.
The problem with a lot of these legislations, and this is something we'll, we're gonna be talking about in a subsequent issue a subsequent episode. [00:04:00] Is just, where they stand in the approval process in committees and Congress or what have you. There's a lot of bills floating around, a lot of ideas.
It just doesn't seem like there's the momentum. Hopefully maybe there's something gets passed this year, whether disclosure regime is part of it remains to be seen. So, with that backdrop as I noted, this is the second in our series on MiCA. The next one will be on crypto asset service providers.
So our esteem panelists today similar to last time, one edition Alexandru Stanescu partner of Slv Legal in Romania. Alireza Siadat partner of Annerton, Francesco Patti, professor of Private Law at the University of Bacconi, jonathan Galea, chief Executive Officer of B C A S Solutions, which is an advisory firm.
Marina Markezic is the co-founder and executive director of the European Crypto Initiative, and William O'Rorke, who is a co-founder and partner of O R W [00:05:00] L ACOs in France. So, with that I'm going to kick it off to the panel. Hope you enjoy it.
Welcome to the Encrypted Economy, a podcast exploring the business laws, regulation, security, and technologies relating to digital assets and data.
I am Eric Hess, founder of Hess Legal Counsel and your host. Join me on this journey exploring the reach of these transformative technologies.
So excited to have to bring you the second part of our panel discussions on MiCA. And I have the same group assembled as in part one. And today we hope to cover in greater depth issuances and casts and just a lot of in between on that.
Certainly, very exciting areas to cover. Now, last at panel episode we covered the scope of MICA and also addressed the [00:06:00] variant, various asset classes, asset reference tokens, utility tokens, e-money tokens and touching on staple coins and algorithmic staple coins. But on this one we're gonna lead.
Really covering the role of the issuer and issuances. I have the same panelists who we will introduce from last time. And we also have Alireza Siadat from Annerton in Germany. But I'll let him introduce himself as we, we go around before we start the discussion. I guess maybe we'll start off with you Alireza
great.

Alireza: Yes. Thank you for having me today and I'm happy to join to today's podcast. So I'm Alireza I'm a German lawyer, German based lawyer. I work with banks, fintech's, and other crypto players. And besides being a lawyer in Germany, I'm also quite active when it comes to law and law making. I'm with associations, different associations such as a think block tank in Luxembourg.
And I was also with the [00:07:00] European Commission's blockchain Association called Ink, where I was a board member and helping with the first draft of the market and crypto assets regulations. So, I have some insights I like to share. Yeah. And besides that, I'm also regularly publishing with different journals.
And I'm quite active there as
Eric: well. I'll ask Francisco to start by starting us with the journey of the issuer under MiCA.
Francesco: Yes, definitely. So, I think that in this case it's important to start from the definitions as many like pieces of legislation in Europe.
MiCA has a very long list of definitions, which in this case is contained in Article three, and the willingness is then basically as it happens in a sale purchase agreement to define everything at the beginning and then have the same terminology used within the entire piece of legislation.
This is something that we didn't know, like in the civil codes state, we don't find definitions. It's something which is really [00:08:00] paramount of the European Union law and. We have two different definition, one for the issuer and one for the offerer. I think that this was different at the very initial draft of MiCA.
Now we have two, and this is something which brings some legal consequences primarily because it means that the issuer is not necessarily also the offerer. And there are obligations that are on the issuers and obligations that are on the offerer. So, let's see what this definition, say. The issuer of crypto assets is the natural or legal person or other undertaking who issues the crypto assets.
And so it means really like creating the crypto assets and the definition of offerer is different natural legal persons or undertaking, or also the issuer which offers crypto assets to the public. And it's important also to couple these definitions with another definition, which is the [00:09:00] one of offer to the public, which is also defined, which means 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 potential holders to decide whether to purchase those crypto.
So basically you need to have the element of an offer to conclude a contract of sale concerning this crypto assets. And there are some problems in these definitions. I would say like the first one is trying to understand what an undertaking is because we have natural and legal persons.
That's the common parlance in in private law. Undertaking is not so clear. It's not, I would say like a legal terminology. And so, one can a bit speculate what it means. Some people

tend to enlarge a bit. This definition to encompass within this definition. Also [00:10:00] constructs for instance, decentralized autonomous organization.
I would say that this is wrong because. Do, were within the MiCA, one of the previous drafts. And so I think that we see here the political will of excluding the DAOs also in the light of this re of the recital that we've mentioned in a previous episode, the fact that like fully decentralized organization should not fall within the scope of application of MICA and therefore would not say that this is an indication that Taos are also within the scope.
I would say more that this is parlance, which is already, was already adopted by the European Union's law. And so it's just a way of representing the same terminology here. And another aspect is the fact that like the issuer can be an issuer and that's it. Or it can be an issue that offers the [00:11:00] tokens.
And this is important because. I think it distinguishes a bit the sphere also, or spheres also of risks. There could be issues that create the technology and which do not offer the crypto assets to the public. Whereas for mica, things become really relevant from the legislative point of view when it comes to an offer to the public.
And so, I think that these are basically the provisions on which we can start our discussion and the point of reference that we have to use in in indicating which are the obligations that, that the issuer and that the offer offerer needs to fulfill. I've indicated that issuer and the offerer can be two different, two different, right?
Can be the same person. And so, like now I think we, we can talk about the different obligations and the implications in terms of liability. I think this would be the next topic.
Eric: Yeah, [00:12:00] maybe we start off with talking about the contents of the white paper. What needs to go into the white paper and start to address some of those terms.
Marina: Maybe I can do a very short intro about whitepaper because I'm just like, have it try
Jonathan: here. Just want to
add something in duration to issue a, the difference between issuer of crypto assistant offer and offerers. Because effectively the obligations are being imposed on offerers are much more than those that are being imposed on the issuers.
So, the scope of the legislators is effectively to protect the general public when an offer is being made to them for the purchasing of crypto assets. So I think there's a very important point needs to be highlighted. And there's also, of course, the importance to be given to the term offered to the public, which
is, I would say the crux of what would constitute an offerer or
otherwise.
And I believe that. [00:13:00] The main question when it comes offer the public is what constitutes sufficient information on the terms of the offer. And one would potentially again be advised to take a look at case to pertain to the prospect's directive to see what effectively sufficient information has been interpreted to mean through various case law.

Since we'll be looking at pretty much the same definitions granted to selfish sufficient information in relation to the prospects. I would say that we can draw a tangent over here. Apparel and effectively sufficient information then can also be interpreted as meaning the same thing when it comes
offers to the public under
MiCA as well.
So, this is just by way of a side note but I think it's quite important cause we don't want to give the impression that just by issuing a crypto asset you would. And fall under the full purview of MiCA. The only exception to that is if you [00:14:00] are issuing an Iman token cause the mere issuance of an Iman Token constitutions offers to the public.
So that is the only exception that one would need to watch out for whenever issuing assets. ,
Marina: I think that's very interesting. And maybe we can speak a little bit about what is a white paper and how why it is so important. In a way it's interesting that the terminology used is the one that we're used to from the initial ICOs again.
But in a way, MiCA in general was looking into MiFi a lot. So basically, the directive that is regulating financial instruments and financial assets and in this regard, I would say in a very. Very general perspective, general gen really generalizing it a lot. It's similar to what the other financial regulation is, but with less obligations.
So when we look at the white paper very similar as it was mentioned before, it is a small perspective. [00:15:00] It's a document where the holders of crypto assets, especially in in cases, there is an offering of crypto assets, would be informed of specific information of this project, but also about the token, so about the crypto asset in general.
There is information about the offer, the issue about all the. The rights and obligation of this specific crypto asset. And there is many more specific obligations there. There was also a part that was discussed quite a lot and also added in the last part of the negotiations of MiCA, where there was a disclosure of the energy efficiency of this specific technology.
So, there is a part where the white paper needs to contain an information on how much energy is consumed by this specific technology on top of which the crypto asset is built.
And I think this is [00:16:00] also very interesting and quite unique until at least to what we understand until now comparing to other regulations.
And it just shows that there is a really important I think understanding of the European Union, that energy consumption is in a way something that they are observing and it is also a part of the broader I would say financial making finances green in general and could be, I would say partially also an outcome of the international political situation that we have in Europe right now.
And the shortage of gas and energy of course linked to, to climate change fight. So of course I think this obligations in a way by reflecting also in some parts of MiCA that does describe how this specific. White [00:17:00] paper would need to be marketed and also about marketing in general.

But of course, the risks that could not be predicted in the future we need to be in a way realistic and they do not need to be described in a white paper. So that's very shortly. Just as an introduction,

Eric: Alexandria you wanted to add something?

Alexandru: Yes. On the that's, I think that's one of the first regulations where energy consumption is linked to globally speaking is linked to the blockchains.

However, I don't think we have sanctions related or an authority who can say, because you are, let's say, more energy efficient. You should, rank be ranked better. Or if you, let's say use the Bitcoin technology for your specific token you will have lesser points you or you'll [00:18:00] not be licensed or approved by any competent authority.

It doesn't have let's say the, the sanctions embedded. However, I think that is mostly related to the fact that is expected that to tokens will be also bought by institutional players and banks, investment funds based in Europe. They will need to comply with policies related to E EC G.

So, I think that would be a sort of an information that would be very useful. Positively or negatively, depending on the energy consumption, when you want to embark institutional investors as your, the buyers of the tokens that you're going to issue on the. Consumers, it'll not make a big difference.

Just a parenthesis on this point. I'm hoping

Eric: on the energy consumption [00:19:00] that it's a, it's an estimate because outside of proof of work, you start to get into some of the other proof mechanisms. Are you gonna start requiring that any issuer of equities has to also say if you're gonna trade me on the stock exchange, it's gonna take up this much energy.

It's like how much is involved in my processing and all the paperwork and all the additional pages I had to print out in regards to my prospectus that I was doing on paper. You could, it's a new asset class so you can impose that on it. But on some level, outside of a high consumption proof mechanism hopefully it's a very light hopefully that the intent is really to make the distinction between high consumption and something that's really not all that notable.

Marina: Yeah, and I think that was very well said. In a way it was, which will more be linked to some other regulations directives that might be in a way [00:20:00] finalized in the future. And that probably would have similar consequences as mentioned before. In, in the future maybe we could imagine some very energy consumptive technologies and applications being taxed more when it comes to investors or similar outcomes.

Eric: Interesting. And in terms of the types of disclosures that need to be made in the white paper certainly in the us there's been a lot of concerns about the, just the prospectuses that you would have to, or the registration statement that you would have to get approved by the s e c as part of the registration, or even the ongoing disclosures just aren't well suited to digital asset companies.

But it definitely in MiCA, I think they took care not to fall into the same traps. Anybody want to comment on that?

Francesco: Yeah, I think that one of the particularities [00:21:00] concerning this type of regulation is the fact that you don't have the approval phase of the white paper.

There is a duty to notify the white paper to the competent authority, but basically you don't need an approval for the public offer. And this is something which is made for many reasons. First of all, like the fact that it was held that perhaps it was too much work for the authorities.

Secondly, it could be done because of the willingness, like not to burden too much the projects and therefore, like you can notify and start. But at the same time, it's a mechanism which involves I think a lot of risk for the author because like if you look at what is this notification like you have to provide explanation also from a legal point of view of why these tokens are not e tokens or [00:22:00] securities.

And this is an explanation. Obviously requires the work of a lawyer. And so I imagine that the phase of notification cannot be done by people that are not aware about the law.

There must be some legal assistance to do it. And plus, like in looking also other jurisdictions as for instance like Switzerland, like normally you, you notify the issuance, the willingness to offer tokens to the public, to the authority.

But you do this in order to have a kind of confirmation that, okay, your token is. It's not a security, it's a, for instance, a utility token. And so you are sure that you're doing the right thing. Whereas here we don't have this this certainty is not given by the authority. And so basically you notify and perhaps you start with the offering, but you can also encounter better prizes in a second step if you find out that perhaps your legal arguments to argue that the token is not a utility token are not correct.

And [00:23:00] so it's something that on the one side should help the offering party on the other side. In cases in which you have some, let's say, tricky qualification of tokens is something which might harm the issuer or the offerer because you're not sure on the qualification. And here I also want to stress like a difference with the US because we had this conversations many times with us colleagues, like the practice of providing.

Legal opinions on the qualification of a token. And I know that's really something which is heavily discussed in the US and a lot of colleagues say that it's basically impossible to get a legal opinion on the token because it's. Too risky. Not to say that it's a security many times. So, nobody wants really to give these opinions. Whereas here you will see that the system brings basically the legal expert to [00:24:00] indicate if the token is not a security. Because basically you have to explain from a legal point of view why that's the case. And therefore I'm very curious to see like how the legal experts will behave in this case, because of course it's a very gray area.

And so, we are waiting for the guidelines. We tell it all the time of asthma, but I assume that they will not be like 100% precise. And here I see like lawyers that take the responsibility to advise which is the right path. And of course, if it will not be certain 100. I

think that it will be very risky, like to embark in a public offering without being like sure that's the, that's the that it's not a token that falls within a category which is differently regulated.
William?
William: Yeah. Very interesting what you just saying about the legal opinion and the [00:25:00] difficulties, especially in the US if I ever understand well, to issue a legal opinion as a lawyer because yeah, there, there was basically, there was too much risk and not enough certainty.
But I think we, MiCA is supposed to give to the legal expert like a framework to issue this kind of legal opinion. And that's why I found, I found out that this this I don't know, like this regulatory strategy of the Mica author to, to say, okay, you just have to notify the white paper.
It's not a, a preliminary approval. So, it's not something too hard. Fally, even if we know that you will need a legal opinion, you will need to be assisted by your lawyer. Your token will be found. The, you're the qualification of the token will be reviewed by both the regulators, but also by all the stakeholders in the market.
Because, for instance exchange platform will have a [00:26:00] responsibility to assess your white paper and the legal opinion. At the end of the day, it's approximately the same thing as a preliminary approval for me. Like it is just the regulators that take less risk. But the end of the story is the same.
I don't know if you have something to say about it.
Eric: William, on while you're on that point, for those with the own law, with their own law firms here, working in a law firm I know it's hard to project, but what would be your concerns as a law firm? Issuing a legal opinion as to whether an is issuances of security or not?
I'll start with what
William: From a European lawyer perspective issuing a legal opinion on a utility token is not so fine. It's less risky. I think that that that from a US law perspective, because in, in the European Union, we have a written [00:27:00] definition of what is a financial instrument and what is not.
And with My Care, we'll have a European definition of what is a crypto asset and a utility token. So, it's, of course, it's not perfect. There is still some. Part of the definition and can be gray, but I'm quite I'm quite glad. As a legal opinion issuer, I'm quite glad to have to can rely on this kind of regulation.
I don't know what you think about it. Alexandro or the other lawyer in the room?
Alexandru: No, I will, I agree with you. The difference from the US is that in general, legal opinions requested by exchanges when you are, listing some of some tokens based on US law. And we've seen this also based on Singaporean law and, other jurisdiction where this is a utility token.

And you had, the analysis that this is [00:28:00] not a security token and that was, that's about it. The way is presented in MiCA, it's a sort of vice versa is it says that you are not an art. You are not an iani token, and hence you're a utility token. So when you'll be doing the analysis, you'll have at least two, three tests to pass.
And then you'll get to the conclusion that this is a utility token, hence you can issue it. And you are within the scope of the, the provisions related to white paper. So most probably they are going to be analysis, which are going to be more extensive. And okay. What is not clear for me, you will notify the authority.
But what if this is a flawed legal opinion? At the end of the day, you'll not have an authority to scrutinize your white paper. [00:29:00] It's only for notification purposes. So most probably the scrutiny will come from private enforcement. And here I think we have a lot to learn from, the type of litigations that we've seen on the US from shareholders when you are like providing misleading placement memoranda, for example, or from Europe when you are like drafting misleading or sharing misleading prospects I do expect that the idea behind this, that once you have your white paper, In case you, you did not act correctly, fair and without sharing, visiting information, you will have private enforcement meaning more litigation against issuers.
Eric: So, what question on that. And on, so with regards to the op, the opinion though [00:30:00] are you saying that your greater concern is for the lawyer? Isn't so much going to be the legal opinion? It's going to be more the con like it's gonna be the white paper itself. That's, I think that's the point that you're making, that the, that you don't see the legal opinion as being a big issue, unless, of course, I guess they use some sort of schlock law firm.
They issue just something that's, on its face problematic. Again, I'm not even sure in that case. I think that's the law firm's issue, potentially, possibly less so the issuer. But is that sort of your point that the opinion doesn't really concern you as much? Meaning,
Alexandru: obviously your opinion doesn't seem to be public.
So, it's part of the application for the competitive authority. So the public will not see it, first of all. The second point is that the legal opinion will be slightly more complex because you'll have at least two, three tests to show. So basically you are [00:31:00] showing that again, you are not an art token, you're not a e token, hence you are a utility token.
It's a, it's a more complex legal opinion that is going to be requested. But
So sorry
Jonathan: to inter to interrupt, but I did not exclude that issuer, especially though seeking admission to trading will require two legal opinions, a legal opinion drafted under my car, but also legal opinion drafted under the laws of the jurisdiction where the service providers located.
Why? Because since we still have MiFi in effect and the remain in effect for the foreseeable future, you have to see how MiFi has been promulgated under the laws of the jurisdiction word service providers located. Cause it might well be the case that although the token

gets a green light under me, cut itself potentially under the laws of the jurisdiction where service providers [00:32:00] located, that token may be seen as a financial instrument.
So I, as I said, it is quite likely that in order to be. Issuers or those of course exchanges. Sorry. When such issuers are seeing trading, they will potentially require to legal up means
Francesco: accordingly.
Eric: Risa, you have anything to add to that?
Alireza: Yes, I would like to add that what we are now talking is about how the MiCA latest from the 5th of October is looking we have to note that in a versions before we had, it was not just a simple notification of the regulator.
The regulator actually had at least 20 working days' time to stop the publication of the whitepaper. And this has been changed. So, what we know so far also from the securities law is that the notification is not just a simple notification, but the regulator has [00:33:00] 20 days' time to check the white paper for plausibility check.
And if everything is fine, this was excluded. Intentionally in the latest version of MiCA. So it is, as Francesco says, it is a simple notification and the regulator is not anymore supposed to interfere if the regulator is not fine with the white paper. And what I believe I did not really find the clue or the point in the white paper, but as I remember the last version of the of the Mica it says that you cannot limit your liability inside the white paper.
And I think this is a big thing because now the burden, the liability burden lies with the. With the issuer of the offerer and maybe with the lawyer who gives its legal opinion on the white paper. And maybe this is the reason why. The final version of MiCA says the [00:34:00] regulator actually is not really checking anymore the white paper, you just notify the regulator and then you just publish you publish it, and then you start offering. And I think it's because of the liability part, that you cannot exclude your liability. And if something is wrong inside the white paper, you yourself as an offerer or as an issuer is liable and maybe your lawyer who gave the legal opinion on that white paper.
So, this is my personal yeah, understanding.
Francesco: Yes. That's why I was saying I'm sorry. Why? It's very delicate, like to make then you don't have basically to, to notify the legal opinion, to notify an explanation of why the token does not fall within another category. And this of course, requires a legal scrutiny and imagine that this explanation based on a legal opinion.
And so that's a bit like I think that this system might work only if there is a kind of collaboration between the authorities and the relevance stakeholders so that people are [00:35:00] aware not to encounter, let's say, be better prices once they make the notification. Because, yeah, it's true. There's private enforcement, but also the authorities. Once there is the public offering, like there is a kinda register of issuance that are offerings that are notified. And so there could be a check also by the authorities and looking inside this this, the elements of this white paper. And then if they find out that it's not a utility token, there might be problems.

And basically you put over yourself a kind of light and therefore it could work. But it could also, it depends a bit on the, let's say, inclination of the authorities. What I also wanted to say about Alexandros Inca Alexandros in indication about the way of drafting this this opinion. And here I also totally agree with what he's.
If we compare to United States, we have this very broad concept of investment contracts, and we are used, [00:36:00] I'm not used, but the American lawyers are used basically to assess the token on the basis of the caseload cases, how we and the other cases, et cetera, like what a European person normally does.
It takes all the definitions that we have of financial instruments. And in MiCA we have a very good list in in article I'm sorry, article two, paragraph three. There is the indication of all the cases in which MiCA does not apply and basically all the kinds of financial instruments, deposits, funds, securitization positions.
And so I think that the opinion will look like a kind of scrutiny of every item to state to check. Okay. It's not, and it's, if it's nothing, then basically, It could fall within mic. And here really you see the willingness of creating a kind of residual [00:37:00] legislation, which on the one side is nice because at least legislation on the other side, we have always to be aware of about the fact that it could be a very small scope of application.
So, it's something which we really need to assess and to protect, I would say, because otherwise all this art does not make so much sense. But like the lawyer that wants to provide a good legal opinion needs basically to assess all the different kinds of financial instruments and arrive at the conclusion that it's not one of them otherwise, MiCA will not.
Eric: And I predict that the white papers will get significantly longer in length as the process continues. They'll probably end up looking more like a traditional prospectus at the end with pages and pages of disclaimer. He'd be like, I thought this was a white paper , I was like, di thick of disclaimers.
But and to John's point, it's an, it is, it's an [00:38:00] it does it's not the white paper in the way we traditionally view it today. It's a white paper that probably draws I think to John's point, I think he was saying that draws from some of the prospectus requirements in terms of sufficiency and also needing to account for two separate opinions.
Yeah.
Jonathan: And effectively also when talking about prospects effectively going to a case code relating to prospects in order to determine what constitutes and offer to the public. I also just wanted to make a side note to what France convention about potentially there being, let's
Francesco: say law
Jonathan: firms, which may let's say not end up living to the expectations, let's say that, of producing accurately good advice, regular opinions under MiCA.
The way we try to solve this in Malta is by introducing a role called a Virtual Financial Assets, an agent, which is effectively an approved [00:39:00] lawyer or the professional or law firm, which is authorized by the financial service authority to provide the services initial

crypto assets. So even if you know him, if you're not a vfa agent, your services to pledge cause you need to have a certain level of technical knowledge in order to offer your services accordingly.
And this role, of course, is not found under MiCA. Now. It'll be a bit of a free for all. However from what we've seen over the years, whenever there's a law firm which gets the reputation, that's not very offering accurate advice, it tends to be shun to that site by the industry. There will be inevitably some cases where unfortunately there will be some disgruntled clients or token teams.
But unless there's some kind of centralized intervention to determine who's adequate or who's not, then the market will end up choosing
Francesco: as time goes by. [00:40:00]
Eric: One item that I wanted to cover, and there's still a number of items to cover as it relates to issuances are risk management properties should probably reframe that. But so, like from a transparency and governance perspective. So some of the things that are referenced when I was reviewing that stood out was one, like the org structure, the risk management processes, the internal controls re accounting, it's on the, it's on the outline. So I wanted to cover those elements as well before moving on to like getting into marketing and how it's presented to the public.
Francesco: Yeah, I think that like of course all what we've see said requires you mean like risk from a legal point of view or like risk, the legal team, let's say, and the technical team in order to understand exactly which r g the elements of risk.
It's, the risk is primarily [00:41:00] related to the qualification and also on the, some characteristics of the tokens. Because, for instance, if the service or the goods of the unique token is not available, that triggers another set of compliance measures and informations that you have to give.
And so one has to need, needs to have 100% clarity on all the different issues. And yes, this is I think a very important element. Plus, you have also to consider that. There are some a lot of indications concerning the risks that also the person as such can encounter.
And these are mandatory, but they need also to be understood, like the risk that the token goes to zero and this, the risk concerning the technology. And also there, I think that there must be like an understanding. And then [00:42:00] as to the risk management, one has also to remember that this this piece of legislation is not an a standing alone piece of legislation.
There is all the, there are all the others legislations in the eu I'm referring, for instance to the privacy GDPR regulation, but also the rules on cybersecurity data storage. And so if you do an offering and you, I don't know, collect Data, personal data of the buyers, then of course you have to make clear that you need to comply also with GDPR law if you deal with European customers.
And it would be naive to think that you do this and it's fine. Like within the white paper, there are some obligations that need to be fulfilled that require a certain amount of

compliance. But then there is the rest, which also apply. And like first items [00:43:00] are privacy, cyber security, and of course like A M

Alexandru: L K Y C.

Just to follow up on Francesco's point we have, article 13 where we have some clarifications on what the applications of will be the, of offers and person seeking admission to trading of crypto two assets. And apart from communication, there is a point related to risks where it says that you should maintain.

All the systems and security access protocols to appropriate union standards. So what we expect here is, as Francesco was saying, we will put together for internal procedures. Of course we will be waiting for instructions from E B A and ESMA on this specific point later on. But it is going to be a sort of, again, you need [00:44:00] a sort of a multidisciplinary team because, it's the way it's written now, it's pretty broad.

So, it'll encompass all sorts of risks. So a sort of risk mapping will need to be done if you're going to trade on a centralized the exchange platform. I'm pretty sure. Exchanges will be helping or providing this sort of information that they would need from you. So in a way, the regulation on this type of risk mapping and mitigation will come from the ecosystem players.

I expect a lot from exchanges and, the, what they will impose as risks there. A second note on the. On this article 13 related to obligations and risks is the fact for the first time you have the concept of acting in the best interest of token [00:45:00] holders. If you look of the old, the old ways of the ICOs, nobody was, everybody was talking about consumer protection.

Consumer protection, but we have this new concept, and it's interesting how this will unfold in terms of caseload European level because you are getting as, as near as possible to the shareholder protections when you have, you, you are a company, you acted the best interest of your shareholders.

MiCA is creating this analogy unless you made some specific dis carve outs in your white paper. What does it mean? Because here I think we have a gap. We've all seen topic in white papers a lot in the topic. It's related to scarcity on how the whole [00:46:00] amount of tokens will be shared between team investors and users, which doesn't look.

So when we look at all the elements that the white paper needs to contain, these specific economic terms are not mentioned. There is a line saying that you need to describe the rights and obligations of token holders, but this is far more. , it's the way the dynamics of the token ecosystem will look into it.

Most probably esma will be covering this in the instructions, but this I see as a gap. In scarcity is not, clearly delineated or basically are not obliged to write there. How you are going to split the total amount of tokens. It's not written if you, if the if you are going to have [00:47:00] halving or not.

The economy model. So, I think that's one of the gaps in a white paper as we see it now. It's also true that buyers and consumers are becoming hopefully more sophisticated in the

crypto world than those will be LMS that will be requested. By the market or by your, institutional investors if they want to invest in your talkers.
But the way it's now presented in mica there's still to be, more information will be needed. What Mica offers is a sort of high-level approach. I would expect more information to be there. Yeah, we could get as Eric was saying, in a, a long 200 pages white paper, unfortunately.
Eric: And then as it relates to cybersecurity certainly the issues presented by issuers [00:48:00] as it relates to cybersecurity, and maybe even more like certain kinds of protocols they're very different than a rise in maybe your traditional perspectives. But nonetheless, if you're doing if you're making disclosure as true risks, they're, you still would have to address them.
How do you see cybersecurity concerns impacting what needs to be disclosed in the white paper? Coming in from other regulations? How do you think, because it seems what you're describing is like the white paper. Is your opportunity as an issuer to ensure that you're complying with all your other disclosures?
I guess theoretically you could find some other ways to disclose some of these things, but I think I would imagine the issuers if I'm putting a privacy policy on my website, , maybe I wanna make sure that it's end to end with what I'm disclosing in my white paper. If I'm making certain other disclosures, that I'm required to do, maybe I want to be safe and ensure that's in my white paper so that I don't, [00:49:00] why take the risk, but curious as to thoughts on
Francesco: that.
Yeah. I think that all this European regulations, GDPR and cybersecurity, and like there is a way of complying, which is very formal in the sense privacy policy or indicating which are the measures, et cetera. And then there is a substantive way, which involves really the organization that you've set in place and the safeguards that, that you really have.
And it's kinda front and then back end. And you arrive at the back end only if there is an issue going on. So, a control or some signaling. And I have to say that my, my feeling is that many do not do not have this this substantive compliance set in place in this moment.
But I think that here, like if you look at the European law, all the indications are very generic in the sense of having safeguards storage, which [00:50:00] is secured.
So you don't have like technical solutions of course, in the law. And I think that best practices are important. And also, the fact. You can show a solid audit concerning, for instance, the technology that you have created is something which might put you on the safest on the safest part.
And so I think that in the end what will happen is simply that you are going to follow best practices, but you will have a kind of standardized scheme to indicate what you've done. And like this is a bit the goal of European Union, that basically for people that want to know, that want to have the information, they can't find this information and they know

that this information must be there, then it's only a minority that looks and that reads and that understands.
But at least like you, you create a kind of structure which should bring the issuer and the offer. To comply with all this in [00:51:00] indications then like I wanted to, because we talked about accountability and potential liability. And there is an article that deals with these matters, which is Article 14.
And I'm very curious also to hear my colleague. This article is somehow interesting. It is I would say a private enforcement article in the sense that it's made basically for persons that are affected by the token, in the sense that the token is not what was promised.
The wording that it's used is in my opinion, very like a technical the white paper information, which is not complete, fair or clear. This is the indication that is given. And basically, if you have one of this cases like un unfairness ambiguity, or you have gaps within. Basically you can sue the [00:52:00] offer and ask for compensation, but you have also demonstrate, this seems to indicate paragraph two, that all this ambiguities have brought you to buy the token.
Basically a kind of council nexus between the wrong information that is within the white paper and the damage that you have encountered. I think it's difficult to basically satisfy this burden of proof. Because if you read in the white paper, the token can go to zero, then I mean you have to live with it.
And then, sir, I was trying really to understand in reality, I think that the, we would have here our only cases in which you say the token is not a utility, it is a security because you created some sort of expectation of profit. Would be a case, I dunno, similar to the compound case, which is filed right now, or the cases that were made against American [00:53:00] exchanges that like assuming that they were dealing with securities in which you try to demonstrate that the token is not a utility because saying that information is not clear, that it's that it has gaps and that therefore you bought the token.
I think it's something which is very difficult to encounter in in caseload. But I'm curious also to hear what the others. My feeling is that given also that, like in Europe, we don't have this club which are made in the United States we're basically, you have the class and people that jump in and are part something, which is beginning to in, in Europe.
But it's really a different completely different. My feeling is that the level of deterrence of this article 14 is almost zero. So it's more on the authorities than on the persons that are rocked. Excuse me, Sorry. For the terminology
Jonathan: on the you've raised a very [00:54:00] interesting example and the incident because, I think this may well lead to potentially there being two camps being set up.
And I'm going back to the definition of offer to the public. Cause effectively there has to be the presentation of sufficient information on terms of the offer. So, you'll find those offerers, which will

somehow craftly try not to include sufficient information, so enable potential buyers to purchase those crypto assets so that they can argue that they fall outside the scope of MiCA.
But then you have the other camp which will be presented with sufficient information and as France explained just now, those, those terms then inevitably need to be clear enough those to effectively exclude any liability or most of the liability in case things go south. So ultimately the decision should be sort.
The information should be sufficient to enable the potential holders to decide s to purchase [00:55:00] those crypto assets or not, but then there has, there, there has to be sufficient car valves in order to effectively try and limit liability as much as possible. Even though I believe Art three 13 or Article, article 14 as specifically stipulates that if the carve valves are too, let's say explicit or too flagrant they will not be, they will not have any effect. So effectively the offer or service providers the case may be, may still be found liable. In terms of potential civil liability, though it will be interesting to see how this will play out in terms of which car vaults will be, let's say, accepted and may potentially exclude liability and
which ones will not.
Alireza: This is exactly what I was talking about before. . I heard you both and I agree with you both. However, I think exactly this Article 14, [00:56:00] the exclusion of limitation on liability is very broad. Cause exactly the paragraph you said it reads. With regard to civil liability as referred to in the previous subparagraph, any contractual exclusion thereof shall be deprived of any legal effect.
So in Germany, at least we prefer to have in terms and conditions a limitation of liability for negligence. So we cannot exclude intentional actions and cross negligence, but minor negligence we can exclude and. And so what is, what I think is very interesting the MiCA, the MiCA is a is a law, is a framework which is actually regulatory law, and now it interferes with civil law.
So it does not allow civil law to limit the liability, even though you are absolutely right, Francesco. It says any, anything which is in [00:57:00] relation. , the I, I gonna read it out, out loud because the wording is very interesting. So anything in the whitepaper information, which is not complete, fair or clear, all by providing information which is misleading.
, do we, we can talk about the completeness because the list of the white paper, what the white paper has to cover is very broad. So if anything of that is missing or if you update the white paper and you forgot to change anything, and it's misleading, it could cause the liability of the offer of the issuer.
However, as you said, Francesco, the holder has to prove it. The holder has to prove the evidence that that this, yeah, this misleading or this error caused a damage with the holder. But what I really find interesting is that regulatory framework is not allowing civil law clauses any longer, which is very much common I think also in the US and in England,

[00:58:00] but in Germany, definitely to limit your liability for, yeah, for actions which are intentionally or cross nitrogen.
So minor like negligence is normally excluded. However, this is not working any longer with the micro text. Yeah.
Alexandru: If I may. So just, to make a comparison with the US civil law in Europe is still a matter of each member state jurisdiction. You might have a conflict of supremacy here because MiCA is coming, it's getting with this clause within the national jurisdictions where civil law, it's still within the borders of each country.
So, they, I it's very problematic. You, it, I don't think that the German courts or the Romanian courts will take this for granted and [00:59:00] my expectation also on the fair complete, which by the way, complete. The document is never complete. There's always something you can, bring further.
So, in a way, this could be a probe doll as the la would say it's very difficult to say that something is complete for, closing the parenthesis. But my guess is that these concepts will get in front of the European Court of Justice if the, if MiCA will pass like it is.
Because even if we receive instructions from aba, from esma, Those are not directly applicable. They will be a sort of a light law or, some practices. So in order to have a sort of a cause of action, unless this is clarified in MiCA regulation nobody else apart from the European Court of Justice [01:00:00] would be able to interpret the, this language.
And then it'll be, the decisions of the European Court of Justice are, directly applicable in all member states. So that's my guess with the, with this language.
Marina: I think what's very interesting is when we are expecting the reports or feedback from ESMA and eba, we do have guidelines and regulatory standards, and so the guidelines are the ones that are very much like a.
Something that can be taken. It probably will be taken into account, but the regulatory standards are the ones that will almost be very similar to a law. And there, there is a whole list of all the things that we're still expecting from EBA and ESMA to understand to understand MiCA better Mica better.
And maybe thinking about the future, as was mentioned last time and this time too, there would need to be updates or if there's new let's say offers done, there [01:01:00] would need to be new white papers issued and also sent to potential authorities. So what's interesting is that besides the laws that we have today in the EU at the moment, A lot of I would say work done on different directives and regulations that might also impact the risks.
And of course the obligations that we can see written in the white paper. For example, we are now finalizing the whole A M L package That is going to be definitely the one that is going to impact those projects a lot. We also are discussing the New Data Act that has a specific article that is this defining how the smart contracts need to be designed in order to be co compliant with the data act.

So this is definitely going to be something that those projects will need to take into consideration. And also some additional parts is the Cyber resilience Act and product [01:02:00] Liability Directive. They're going to be updated and they're going to be very important in terms of what is the responsibility of specific project, but also and the end of a programmer that might be the one that is programming this specific smart contract that is then used in this part.

I think there's going to be a lot of work. And at the same time I know we had we'll have the discussion about crypto as a service providers, but what's also happening in some of the laws that we see now being discussed is that we will not have one definition of a crypto as a service provider in Europe, but there will be different definitions in different let's say regulations, if there's regulations or directives.

And that just shows that of course, all these lawyers working in on this matters there, there's going to be a lot of education needed and of course updates from all this [01:03:00] laws in the future.

Jonathan: No just wanted to add. But because as Alex right pointed out, some of this language over here and also harking battle, first episode due, for example, the term food decentralization it is very odd to see this kind of language being used in such an important native instrument. Which begs the question are European not authorities rushing ahead with this regulation as a knee jerk reaction to what they are perceiving that is happening in the crypto asset space.

And it may well be that effectively and this regulation will be issued. And then all these problems, all these issues growing up, leading back to the question, have we rushed this regulation or not? Just wanted to make this point because in my opinion, this regulation is just being rushed ahead of its time without giving the considerations to all these important points, which are not being, of course which, which are not [01:04:00] cropping up.

even at social servicing discussions.

Eric: So certainly you make you, you raised a controversial point there. Speaking from the US perspective, I guess to juxtapose, in the context of MiCA, there isn't an effort to start to put a framework in place, however, imperfect, and I do want to circle back on this liability point because I think it is, it's something that, that bears even more discussion.

But if you contrast that with the alternative the us, in the US we're still using terms like investment contracts that described these things, which, really doesn't make sense when you're extending into the secondary market or app in its application or trying to enforce a disclosure regime.

And again, this is not really just a reign on the us, it's really just to say, Th this business is happening today. The legal system in the US is poorly designed for it. It's largely being a lot of the policy is being dictated by the s e [01:05:00] c without sufficient guidance from Congress. It's really becoming almost like an agency, and I would say it's a very small group of people that are really driving these interpretations fundamentally.

Others may disagree with the size of that group, but I guess, to, to the US the MiCA seems like in an effort to set a framework to suggest that it's premature. The, I guess it's an open question. We don't have to debate the esoteric nature or the existential nature of it, but, the perfect can often be the enemy of the good enough or the good.
I don't know, thoughts. We could spend a little bit of time and then hit on the liability point.
Francesco: Yes I agree with this with the statements and it is something which, for instance, another element which war was not mentioned until now, is the fact that this first part of the legislation takes into consideration [01:06:00] possible changes in the nature of the token. And I think that's also an interesting point because like in the US we had this discussion of the morphing, like the token that wants a security, and it's not anymore a security.
There is the idea that basically the token can start as a utility token, but then can become something different. And it points to the offer and basically stating, look, if the token changes nature, it could be the case. Because, for instance, I don't know the lead is taken by the governance in order to change some characteristics and make it, I don't know, a token which creates a revenue for the token holders.
Like in this case, in theory, there is a duty of notification and like you have to modify the white paper. And what is not so clear is what happens if the token stops to be a UT token and becomes something different. And in my ca I think that in this case, basically you should reveal the true nature of the token.
[01:07:00] And so it's like you see also here that it's an incomplete legislation because it cannot it does not solve all the problems. But nonetheless, there is like the capacity to determine that the token is not something which remains the same in his entire life, in its entire life.
It can change because it's something to which basically functionalities are. And then I wanted to retake, even though it was a bit of time ago, but Arisa appointed to an interesting aspect, which he basically stated it's not only regulatory, this first piece of mica, there are also elements of private law.
This is something which is very continental Europe focused because like we, we are used to basically create partitions within the law. And I totally agree with him. I think that we find a lot of elements which are private law plus also consumer law in some cases like this right of withdrawal.
[01:08:00] We have it in in financial instruments, but here it's like more related to protect the weaker party, which is an element that we have often in, in consumer law, European consumer law. And I think that this is given by the fact it, the reason is that like the European legislator really believes that there is this category of your utility token where you basically buy a service and a good.
And so that's why service and good basically is a kind of contract of sale where you're buying a service or a good, and the token is given in to, to access this service. And so it's

seen not as something which is under financial law, but under the normal private law. And we basically consider contract law as private law.
And so that's the reason why I think we have this element. And so this was an interesting methodological consideration because it's not financial law. It's like private law. And private law is [01:09:00] where we find the freedom of the citizen. And this is something which I, which I.
Marina: I think what's important to mention is that we have an article in MiCA that talks about the revision. It's the revision clause. So, the European Commission, after discussing with ESMA and eba, 18 months after the entry into force, basically it will send and write a report on all the things that might be missing and all the feedback that they will of course see and accept.
And I think that this is in way again forward looking, but most of it will be linked to defi will be linked to borrowing and some other aspects. So I think that they are already thinking about it and working on it. And again, it's going to be quite interesting to see and of course to collect all the feedback from different stakeholders.
Jonathan: I [01:10:00] also hope
that they spend less time or rather they waste less time discussing these environmental concerns, et cetera, and trust proof of world blockchains and focus on some of the other matters that, again, we're seeing cropping up and can effectively lead to such issues such as, for example Meko not working as well as originally intended, especially the issue that has been raised.
I think in the past episode, I'm not seeing how maximum harmonization can be achieved with the Method two directors still being in place. So I think there were a lot of instances where discussions were being way late by certain factions of the European Parliament. I just hope that effectively the discussions going forward are focused on, again, the, these kinds of issues, which I find quite worrying and I don't know whether I'm just per perhaps personally overthinking it.
But again, these issues do worry me quite extensively.
Francesco: Yeah, [01:11:00] I
want to
second this indication because I was really astonished how much time it was wasted in talking about proof of work, about people that don't even understand the technology. But it was really a hurdle. It was considered because it's a very easy argument that you can raise.
And of course, like it is also an argument which creates tension within the parliament because historically like artists are set in a certain way and so it was astonishing because. As like Eric was saying, it's something which affects proof of work and not the others. And also on proof of work, you can make a lot of comments on this.
Because in the end it's a, depends on the way in which you create the e energy. But even if it was stupid, I think it was a great obstacle that, that it was overcome. So I was happy from

a legitimate point of view. I think that's all this ftx stuff brought to more attention to the relevant parts.
That's my feeling because obviously this question of [01:12:00] what European law have prevented such a thing from happening Ha has really focused all the work on the path that are more relevant and not on this stuff, which is more like political debate and substance.
Eric: Talking about the liability in the context of F ftx. It raises a question particularly, once it's enforced this concern regarding liability could come to the fore as a real practical matter. And I guess question for the group is, do you see an issue like this?
Or maybe there's others that you think dwarf it. Do you see an issue like this potential liability within your jurisdiction leading to, again concerns about lack of clarity? Like we're trying to avoid with all this and also potentially even have a chilling effect where we say, okay, MiCA's phenomenal.
And then after a little bit of playing with it, all of a [01:13:00] sudden there's a realization like, wow there's a lot of potential liability that we're assuming because of this. And again, you haven't achieved your objective. And then potentially trying to address this liability issue in the face of an F T X might become.
Very challenging. So just curious as to, how you see this potential liability issue playing out once it's being, once it's implemented and even the prospects for affecting some sort of change,
Jonathan: perhaps not
answering the question directly, but regulation can never be this is her bullet to end malpractices fraudulent practices, et cetera.
So, a regulatory framework is precisely that. It sets the framework, it sets the expectations and sets out the obligations for all license entities. But to, but a regulatory framework without supervision and enforcement will effectively not be [01:14:00] effective at all. I would say. I would argue that. And if were to let's say take the FTX scenario and apply it to, let's say the hypothetical scenario and what if they were regulated under MiCA, on which Francesco also wrote an article It's so well and good to have the framework in place and at the application stage and licensing stage.
Those have been in adherence there too. But then what happens afterwards? So, I would say that the same thing can be potentially argued for let's say liability. You can have these kind of ums stating what you may actually be liable for. But if no one's checking what you're doing, then effectively the liability can be either enormous.
But if no one's checking, then you'll never be found liable for that as well. And I think the concept of supervision and enforcement should not only be focused on the entities that you are directly supervising. Speaking about MiCA, for [01:15:00] example, the crypto service providers, but also as well all the other entities that are also regulated perhaps under frameworks such as the banks for.
There were various other incidents non crypto related, where effectively those that were directly involved in some malpractice got punished, but those who were maybe ancillary to

that malpractice were never punished including the banks. Just wanted to make like that general observation, because again I'm speaking here from experience where effectively certain let's say incidents in Malta didn't lead to, let's say, perhaps a revision of how such entities were being supervised, but they resulted in even further restricted measurements in the law itself was just lead to the ST of the.
So that's what hopes we should be achieved over here. That if we see perhaps certain incidents where effectively there can, there may be service [01:16:00] providers that again for file of MiCA. I'm just hoping that a later stage is not just making the framework even more ons, but rather perhaps reviewing and seeing whether anti have been done differently.
For example, from supervision per.
Marina: Maybe one comment here is that when FTX happened from what we can see in the us there's been a huge discussion and of course a lot of reactions to that. MiCA was already finalized at the, at this stage, and so there was no changes made after what happened with FTX. But what we have seen in the last weeks is basically, The countries member states, they will need to wait for another I would say almost two years, one year and a half for MiCA to be applicable.
At the end of the day, what should they do in between? And the other thing is that we've seen also different institutions and regulators in [01:17:00] Brussels really thinking of what can we do in between, can we add something, can we do something to, in a way, improve the situation? There's been also a public hearing in the Parliament and we have seen those discussions lately.
In a way I was just recently talking to a regulator and what he says is that if MiCA would be in place more or less similar I would. At least similar regulations are in place in France, maybe Germany and some other countries. Where do they do have some sort of a crypto asset regulation, but some of the member states have zero regulations.
So if MiCA would be in place, Maybe again, the supervision would be done in a better way. And the same time as I agree with the critics what we have seen is the, for example, national competent authorities like Buffin and similar organizations or also [01:18:00] on the level in, in Brussels.
I think we need more people that are Crypton native or they really deeply understand this topic because even in the future, when we are going to talk about a m l and some other issues will need more I think brain to, to understand to understand this and how to follow up with all the potential problems that will happen in the.
William: Yeah I have a question for all of you. As you probably know, in, in front, there is a project to accelerate the timeline of MiCA for approximately one year. So is it, is the answer of the French development to your question, marina, but have you heard in other country, maybe in Malta, in Germany, if there is similar willing to, I don't know, to implement MiCA in advance or to accelerate the timeline of MiCA or to have other [01:19:00] measure based on their tax scandal?

Jonathan: I can speak from the mal time perspective. Malta, for instance, heard issued a public consultation paper to start excluding NFTs from the scope of the local bridge financial assets framework. And also I believe the Malta financial sales authority was the first authority to public land.
Knows that it will be granting the full transfer period afforded under me the article one 20. To all its national regulated service providers since it deems that the VFA framework is already quite close to MiCA framework in effect including the prudential requirements. And it also confirmed that the FMA Stein is also already undertaking work start approximately it's DVT g the blockchain act to mica as well.
So there are a actually active ongoing efforts by quite a few [01:20:00] FSAs in governments effectively
start
doing the necessary work, the approximate, the national frameworks to mica.
Alireza: So that's very interesting. I didn't know about France going to make the MICA regulation being applicable after 12 months, correct?
That's what you said. In France, the MEA regulation is going to apply not after 18 months, but after 12 months.
William: Now? No even before because, but only for the new for the new application. So, the current registered people will keep the MICA timeline. So, they will have almost 36 months if you take into an account the grandfather close.
But for the new applicant we have a National Michael license. We named the GS P license whatever. So the new applicants, they will need to ask for the GS P license will be converted to Michael license in 18 months when MiCA will [01:21:00] on 24th. And yes, for this new for this new applicant yeah, for this new applicant.
The deadline is set on October 2022 will be set approximately around October, 2022.
Francesco: As a proud Italian. I also wanted to say something about Italy and like we have now a very soft regime of registration of vasa, which it means basically nothing saying you can register, but there are two components which are important.
First of all, it is required that baa if it, it wants to offer like openly to Italian customers, needs to have a, at least an establishment in Italy, so some sort of organization in Italy, and plus it must comply to AML and Kwai if it offers to, to Italians. And so, it's a first scrutiny and I think that it's an invitation to basically be put under the scrutiny of the Italian authority for financial markets.
And like [01:22:00] in the last sim last there is this authority which basically holds the register, which has a newsletter. And it was interesting because they basically state that we had 80 application, et cetera. And there are, nonetheless, there are like 12 that are very big that did not apply even though it seems that they offer services to talent customers.
And so I think it's basically the beginning of wireless scrutiny. And there are a lot of players, but the big ones the very dangerous ones are not so much, so many in crypto. And so I think that there is the willingness of controlling them in the first place. This is my feeling.

Alireza: So what I wanted to add on that, we have the same in Germany. The German regulator and the French regulator, I would say they're competing with each other. So the German regulator and the German law, Allowed to have a crypto custody [01:23:00] license and crypto trading from the beginning of 2020.
So now we have in Germany five crypto custodians, including Coinbase and bit Panda and others. And we have some who have applied for the license like bins and by the goal to receive the license before MiCA comes or MiCA is absolutely not just effective, but applicable, that's the right word.
And in, in, in Germany you can do this Called simplified procedure according to Article 123 paragraph three of MiCA, which means if you're already regulated before, the MICA is effective, and you can just yeah, make, use your license and upgrade MiCA. And this is something I was asking the German regulator how this is possible.
And as I understand you in France, this may be possible already for the existing regulated, maybe custodians [01:24:00] 12 months after the MICA is effective in Germany. However, they said they want to wait for the entire 18 months and then there's a new law coming. We just called something like an implementing law, which is going to change the existing German crypto law and which will allow those who want to upgrade MiCA to upgrade the existing license to the MiCA license with a simplified procedure.
Eric: Interesting. Maybe. We'll rotate back to finish up on the issuances and then maybe start to talk about the Cass with the remaining time. Do we want to talk a little bit about marketing of the white paper and the issuance versus the, the disclosures themselves? That's a question. We, the, the disclosures are part of it, but the way that you market it to the public,
William: [01:25:00] I don't know what is your opinion? But I think it's a quite important topic actually because far I'm I assume it's all over the same, but at least in France, and I'm sure it's all over the same, all over Europe.
They will ha we have witnessed very hard marketing technique by the crypto asset industry. Both, both the good and the bad players in the last I don't know, two or three years, and especially since you have this new saving wallet or like her project.
And I know that in France, the regulators is more and more like more and more strict on the marketing techniques that have to be implemented for the marketing method and the limitation to this marketing method that have to be implemented by [01:26:00] the virtual asset service provider they ask virtual asset service provider to stop to stop.
How do we say? Not providing enough information about the risk that are under all of all of this project, especially the Hering wallet, all the yield product and the stable coin. Are like not so stable. If you should listen to the French Central Bank and all the central bank in Europe and yeah and it's I think it's a quite important topic.
I don't know if you have a.
Francesco: Yes. And also, this is something which recalls a bit European consumer law more in general, like with their ISA directive, which is not known obviously by US persons.

But it's a directive on misleading commercial practices. And [01:27:00] if you look at the wording of Article six, which is the wording which is the article on marketing, there are some guidelines for marketing concerning tokens.
A lot of elements are, in my view, retaken from the, from this directive and communications must not be misleading. And plus there is also like some mandatory wording that you need to use into the marketing campaigns. And basically you have always to clarify that no authority has accepted the tokens as financial instrument.
And so there is the willingness of creating. Basically a strong educational indication about what you can say and how you have to say it. And this I think is very good because it, it triggers standard, direct control of the authorities on the basis of what you say.
And here I think that the good lawyer needs also always to advise like what you can say about the token issues, what's not. And, [01:28:00] but nonetheless, like even in, in the US where people are very careful about the wordings. If you look into the com compound case, I mentioned it again, because it's interesting, like a lot of assumption concerning the nature of the tokens are made on the basis of declarations of the founders or of tweets and other declarations that are made on, on, on networks.
And so I think that really there must be an effort to, educate also on this respect, what you can say and what you cannot say. And the white paper as we said before, it's a very detailed and complex document. In the end, my feeling. Is that nobody will really read this except people that are very technical, but not the normal retail investor that buys crypto sometimes.
And so, marketing becomes more important because basically people will rely only on this. And the fact that it, that we have this this stressing of [01:29:00] the importance of marketing means that basically this will also be one of the elements that will be assessed by authorities. And if there is a misleading communication, I imagine that they will intervene.
Yeah.
Alireza: I want to add on that. From a practical perspective, I'm absolutely with your Francesco, the token issuers and the offerers, they will say, yeah, we have the white paper and no one is going to read it, so we're gonna publish it here. And it's such a lengthy document. And then they reach out to their operations and marketing department and say, go ahead and now do the marketing.
However, this is exactly what the mic is not allowing because it says clearly that the marketing communication shall be consistent with the information inside the white paper. And this is something which is very important. And I think this is something where we want, where we need to look at when we are going to see what is happening in the future of the whitepaper and the marketing, that they're both aligned.
So there is no there's [01:30:00] no com marketing saying this and the whitepaper saying something totally different. And this is going to become very interesting. I think
Eric: Alexandru?

Alexandru: On, on this one, social media. We all know the channels, discords, telegram, marketing communication should be published. I think also this type of communication is to, to be paid careful attention to, because from my experience, a lot of the sentiment on a token is built within the, the channel.
Either Thisor or Telegram, where a lot of evangelists are coming. They are saying this is going to the moon and stuff like that. So this type of Marketing practices are not clearly reflected in the mica and they are very practical. They happen all the time. [01:31:00] And, we've seen also as a co-founder of crypto projects.
And back in the days most of the marketing that we were doing in discussions with the users within the ecosystem were, was on Telegram. And we had, customer support and people helping the others to understand the better the functionality of the token and, how it could be used in the specific ecosystem.
But most of the information and the feeling and, the impetus to, to be part of the ecosystem, to buy, to sell. It's not on your blog. As a token issuer is in this type of groups. And for that MICA is not coming necessarily with a solution. It’s true that also needs to be left to the market.
If in a channel, [01:32:00] the channel owners are shielding incorrectly, unfairly, you name it, we take the language from the mica, a specific token, that information corroborated with the white paper that you have and the marketing communication could show a mismatch. But again, it'll be a matter of private enforcement.
Alireza: I want to add on what you said Alexandro. Sorry for jumping here. So if you would just imagine how this would work in the future. You have a telegram group, you have a discord, you have something else. . And someone wants to run marketing there. The MICA says that in any marketing language you have to put some mandatory.
You have to say that this is marketing. You have to say that there's a whitepaper. You have to say the address, the website where you can have access to the whitepaper. You have to put the telephone number, the email address of the contact persons. And then you have also to [01:33:00] add a sentence which says, this is crypto Asset marketing communication has not been reviewed or approved by any competent authority in any member set of the European Union.
The offer of the crypto asset is solely responsible for the content of this crypto asset marketing communication. So if you can imagine this, putting all of that language when you want to do marketing on Telegram or discord, I be, I think it's, honestly, it's impossible to do that in the future. You have to build up some different marketing channels where you have to put such disclaimer and wording at top at the bottom, and then you can continue and do your marketing.
But with this requirement, it's very
Alexandru: difficult. It's also true that, let's say once you have bought the token you publish the white paper, you have the communication, and then you have the initial offer, and you have users. Once those are into the ecosystem, of course they can create groups

on Telegram [01:34:00] and discuss on, on their common interest in the ecosystem that would be out or within the marketing obligations of an issue when they communicate with those people within, again, not solved.
Thank you very much, William for living. Living with this, parenthesis to be made.
Jonathan: Just,
Also, let's not forget that there's Article 80, which prohibits market manipulation and part of it is also authority that all these social media influencers, et cetera, which let's say try to push the price of a token to then later dump it.
This particular article should hopefully also let's say as much as possible curb any such instances where there are, for example, pumps and dumps happening, and at times, potentially the token issuers may be in their claim for, by engaging with these influencers. So hopefully this hospital also serve to cut down a bit on that abuse as.[01:35:00]
Yeah. And
Francesco: also yes, I wanted to say similar things. And also, the fact that like consultancy and crypto, if you want to give some kind of financial advice is now within the services which are regulated. Like you need to get an authorization to, to do it. And so like for the European influencer, this would be perhaps like a risk to do this.
Of course, then we have to see how effective this this rules will be. But not, there is like a, there, there is at least the attempt to also try to scrutinize this kind of behaviors.
William: But institution is very interesting because we see two very different things that that actually meet in, in crypto right now from, for the last few years.
In, in one side you have the, what you was talking about, like that we come from Complete Far West about communication related to [01:36:00] crypto asset, crypto, ico, nft, issuance everything. And I think this MiCA will not stop it from like perfectly. But MiCA will create framework and will we'll click create practice market that will like considerably restrict this kind of this kind of totally unregulated promotion of crypto asset because every players in the market will be at risk of enforcement by the regulator.
For instance, if you are doing something wrong in your telegram channel, you will have the risk to be delisted by, by basic Excel platform. For instance, if your regulator like puts you in a blacklist that is something that is more and more common right now. So I, I think the level of regulation will rise.
All over the market and it'll not be comparable to what we see now when you have [01:37:00] some exchange and some brokers that are regulated. But all the other plane in the market, it's still the far west. And the other thing is that and it's the other thing, it's like much more broad than the crypto market.
It's, we see in all of the financial industry, we see like a kind of, I don't know the name in English, but like a social network authorization of investment and social network authorization of promotion. That with Robinhood all a lot of a lot of situations like this. We see a lot of investment advice on TikTok, on every kind of financial asset actually.

And we the report right now are still not really able to, I don't know to handle this situation, but I'm sure that they will. As usual rely on the social network and on the platform to do the job because you cannot regulate people on [01:38:00] TikTok, but you can ask TikTok to try to clean the mess for on, on behalf of the financial regulator.
So this is what I expect for the next five years approximately. Maybe just
Marina: the last comment. Let's think about projects that are more collaborative. I'm not saying they're DAOs, but they might be Dao like organized. And in this part, there is no shilling of the, I don't know the price of the token, but it's really collaborative discussion within a discord, because this is in a way where those projects were coming from and what would be an implication of this.
And in a way also I would say leading to what was happening in the US or observing the. I would say laws, or at least like an idea, what would best practice be from there? A lot of already telegram groups and other social media, they're not discussing prices. There's a strict policy for not doing that, and I think that might be something that might continue. Then, of course, [01:39:00] under specific and more structured laws as MiCA.
Eric: Le let's talk a little bit about the rate of withdrawal for specifically with regards to utility tokens. Precedent do you have for this in Europe, and how do what do you see as some of the potential issues or concerns that are connected to this?
Francesco: Yes the right of patrol is really the European Pioneer for
Jonathan: Harmonization. It was one of the
Francesco: first. Harmonizing rules at the European level in 1985, like for sales that are made outside of the shops. Basically, you had this right of withdrawal and the idea was that you're surprised that you're not able to assess.
And so, you get basically surprised. And then it was added in the nineties to distance contracts, and this was a kind of invitation to European customers to buy from other countries because they [01:40:00] could then use the right of which they didn't like the item. It became very important with online sales because like every European customer is aware that even if he buys in another country, he can exercise this right.
And basically. Look at the item, and then if he doesn't like it, he can he can basically jump out of the contract. And nowadays it's very used at the European level. And so I also think that here, there was the willingness to implement this rule in a context which is different. We had the same also for financial instruments that are both outside of the location of the intermediary.
And so, it's not. And I think it's not so important. It is like an element of protection for retail investors. So, it's not for everyone, it's only for retail investors. That's the same also for in, normally in European law, like the [01:41:00] consumer can do it. So if I buy an a tablet an iPad for like playing, then if I'm acting as a consumer and I can exercise the right of withdrawal.
If it's something that I use for my profession as a lawyer, I'm acting as a professional, as a business, and I cannot use it. And we find the same and mica, because only retail investors

can exercise the right and not like institutional or people that do this as a profession. Why? Because they need to be aware about, they need to be able to assess what they're. Whereas the idea is that the rate can be basically catched by a lack of experience. And so there is the, this willingness of giving a cooling off period and the REIT from the contract. What can we say about this? First of all, it does not apply if the token is already accepted on a trading platform.
And this, in my view, limits a lot to the scope of application because if there is a [01:42:00] price, obviously the price flip trades, and you don't want that the retail investor basically abuses from the existence, right? And so, it's excluded. And so we're talking only about tokens that are not yet in commerce.
And here I think that it will be a kind of problem for the offer because you need to implement, of course, like an organization which allows to give back the money and the token. And so it's something which will need a another layer of compliance if one of organizational settings if you want to launch a token, which is not which is not a prize, but it's definitely something which continues a bit the path of European law.
So, it's not surprising. Perhaps not so bad.
Alireza: Sorry, I actually agree with you Francesco, and thank you for. For the for the [01:43:00] summary what we need to pay attention to, however, because as I'm also from Germany and we have this right withdrawal with the normal consumer goods, which you can buy online, and then you receive it, it gets delivered to you by post, and then you have at least 14 days to check the asset and then you can give it back.
And here it's different the 14 days, which the retail holder. Starts to count from the day when you, when the purchase agreement is agreed. So for instance, I go on the webpage of the issue of the offer, and I say, I want to buy this utility token. And I say, okay I wanna buy it. So this is the agreement, and then the 14 days start to count and I have 14 days to, to withdraw my, my, my offer.
Yeah. Or to withdraw. My, my attention to buy. And so what I believe is going to happen in the future is that those who offer such. Token such [01:44:00] utility token, which are not listed on an exchange already. They will only deliver the token after the 14 days because if they do it before, they will ha they will get into this mess.
What you just described, Francesco, they need to get the token back. They need to pay back the money and all of that for free. So, the retail holder is not supposed to pay for any of that. There should be no fees. And if I would be the lawyer of an offer, I would tell them, okay, do it like this. You tell them if they want to if they want to get the token now they have to make tick a box that they will not make use of the 14 days withdrawal.
Otherwise they will only get the token after 14 days because we have to wait for 14 days to see if. Making use of the right referral. And I think this is going to be the future
Francesco: that
Marina: was as you mentioned, the consumer protection laws, but also crowdfunding laws that we had previously to this aligned grant funding crowdfunding law.[01:45:00]

Had the same problems. And actually I was working in crowdfunding before going into crypto. So we had a very similar thing as was already just mentioned. And I know that there are also projects in the EU that made a token offering that was compliant with those laws. And in certain instances, I think we need to be just very careful when certain rights, especially for consumers could at least not be limited.
I think it's going to be a lot of again, innovation and legal innovation when it comes to those offerings in the future for.
Eric: Great. And one other item I wanted to cover was, and I think this connects to completeness and the need to potentially update your white paper is just the on ongoing obligations with regards to disclosure, even following the publication of the white paper and [01:46:00] the implications of those points in terms of the liability and the need to make sure it's accurate, complete, et cetera.
I don't know if anybody like, wants to, comment on what type of practices will likely be taken on by some of the issuers or even offerers on some of those disclosures in the white paper.
Francesco: So it's really required if something changes you, you need to update, which is also like common in, in European law.
And if you don't do it, it basically triggers all the consequences that we have already discussed. So, it's really pure liability. It's if you start from zero and you don't make your homework's and so on this regard, it's something which needs to be taken into consideration.
It's not that once you notify, it's finished, you have always to make clear that you need to comply [01:47:00] with a proper way of communicating the characteristics of the project. A problem that I see as perhaps it's a bit a niche, but it could happen. We see now that there is always the willingness to decentralize the protocol, decentralize the control.
And so Who will care about this duty to notify the amendments of the project within the white paper. This is something which I was asking to myself and of first year, we have to basically to, to base ourself on whom with the offerer and like if it's a cusp, then the cusp needs to take this problem into consideration.
But basically, every potential offer can be affected. And this is once you list the token, you need also to follow up with the, what the token is doing, what the community is doing. And so, if [01:48:00] it's taken seriously and an effective way this could, or. Thin be a reason to basically scrutinize all the tokens that you have listed in a, in an exchange on a continuous basis.
And we know that there are tokens that change their token omics in a way, which is immense. At the beginning a lot of tokens are mere governance tokens, and then they become something different to increase the willingness to buy them. And so, it can have some repercussions, but it's more, I would say at a compliance level from the cusps because the big elephant in the room, and we are going in the next episode, it's like what is not clear is what happens if.

For instance the exchange which is authorized in Europe says, sell something which is a security. Like what happens? Is this possible or [01:49:00] not? It's not really clarifying. The response should be no. But is it a possible response given the amount of tokens that are offered, but it's exchanges? And I think that this is basically the same problem.
Only difference is that basically we have a token that then changes nature, but the compliance measures will be the same.
Marina: I think the interesting part here is the I think it's Article 18 B that mentions when the operator of the exchange would like to still list the token, but there is no white paper written or issued.
Then they can do it themselves. And this, in this case even for the for the ins way entity that wanted to list or I think in this case, they will be responsible if, again, the information they share is misleading. And then of course, it's very interesting [01:50:00] when the exchange at the same time is going to be the one interested in, in, in listing.
Write the white paper, check the white paper, of course, because they're listing it themselves. And then make sure that they're updating the white paper over time and checking this project and following this project. And it of course, it's going to be also very interesting to understand how much information is public and how much information can they get through this specific.
It could be probably, it'll be the issuer not the offer in this case.
Eric: Anybody have anything else they want to add?
Alexandru: Maybe a quick point, again, practical on publication, on website. We have this concept in Europe related to durable medium. For example, documents, official documents.
Banking banks need to keep, information in readable manner for. 10 years, for example, in Romania, things will probably [01:51:00] change to five years, but I know that, for example, durable medium in other countries like Poland, also blockchain can be a durable medium.
Now, closing this parenthesis, what happens if you lose your domain?
Who's going to keep who's going to keep a sort of an account if your white paper is still online or not? Is it going to be a matter of the authority in your, in the host country to keep this for, I dunno, 10 years, 15 years? Because if we rely solely on the issuer after a couple of years, they might lose their domain.
Who will care? How can you ensure that the initial publicity is maintained in time because there is written until. The tokens are with the public. So, let's say if you manage to get back the whole quantity of tokens, then you don't have any publication [01:52:00] obligations anymore. But this is very unlikely in most cases.
Tokens will be out there for, for many years or
Alireza: so.
Yeah, a very interesting point. Alexandro, what I believe. What is a practice in Germany? That there will be a copy of the white paper with the regulator's database line, and also any modification to the white paper will be published with the regulator.

I think this could be the case also for the Mica White paper, because otherwise it's exactly how you're saying it. If someone is taking down his webpage and is the white paper is not any longer available, it's also very difficult for the talking holder to. To show evidence that there was something misleading or something wrong and do that.
Therefore, I think that the regulators are going to have some kind of database where they will upload the different yeah, white [01:53:00] papers and maybe even asthma is going to do
Alexandru: that. I think we'll get to the European level database with all white papers after a while.
Eric: Great. So we're about 10 minutes over.
Hopefully next week will be even better still. Thank you all and we'll pick this up next week and think enjoy your weekends.
Alireza: Bye-bye. Have a nice weekend.