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The Revised Supervisory Architecture under the Markets in Crypto-Assets Regulation: The Next Step in the Evolution of the EU Financial Sector

Dimitar Stanchev

PhD Candidate in Financial Law
Department of Administrative Law
Faculty of Law, Sofia University "St. Kliment Ohridski"
https://ror.org/02jv3k292
15 Tsar Osvoboditel Blvd., 1504 Sofia, Bulgaria
E-mail: (Official) drstanchev@uni-sofia.bg
(Preferred) drstancheff@gmail.com

The Revised Supervisory Architecture under the Markets in Crypto-Assets Regulation: The Next Step in the Evolution of the EU Financial Sector

Dimitar Stanchev

(Sofia University "St. Kliment Ohridski" (Bulgaria))

In May 2023, the European financial sector underwent a significant change, notably with the adoption of the *Markets in Crypto-Assets Regulation* (MiCAR), making the EU the first major jurisdiction to regulate crypto-assets. The Regulation aims to boost competitiveness and innovation in the financial industry, potentially positioning the Union as a global leader in crypto-asset standards.

The study highlights that, beyond its immediate impact, MiCAR marks a major step in enhancing the Union's financial supervision structure since the creation of the European System of Financial Supervision back in 2010. Based on its key division of crypto-assets into significant and 'non-significant' (a classification-based supervisory model), MiCAR expands the role of the European Supervisory Authorities, especially the *European Banking Authority* (EBA). For the first time, the EBA is given direct supervisory powers, including the competence to establish and chair certain advisory structures.

The article concludes that this development represents a considerable shift in the EU approach to financial supervision and is likely to raise many practical challenges, particularly in managing the relations between supervised entities and the EBA. The change requires a thorough analysis due to its long-term implications.

Keywords: financial sector, Markets in Crypto-Assets Regulation, MiCAR, significant tokens, supervision, European Banking Authority, EBA, powers.

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Pagal Kriptoturto rinkų reglamentą peržiūrėta priežiūros struktūra: kitas žingsnis ES finansų sektoriaus raidoje

Dimitar Stanchev

(Šv. Klimento Ohridskio Sofijos universitetas (Bulgarija))

2023 m. gegužę Europos finansų sektorius patyrė reikšmingą pokytį – buvo priimtas ES Reglamentas dėl kriptoturto rinkų – vadinamas MiCAR (angl. Markets in Crypto-Assets Regulation (ES) 2023/1114). Kriptoaktyvų rinkų reglamentas (KRR), kuris pavertė ES pirmąja didele jurisdikcija, reglamentuojančia kriptoaktyvus. Šiuo reglamentu siekiama stiprinti finansų sektoriaus konkurencingumą ir inovacijas, potencialiai įtvirtinant Sąjungą kaip pasaulinę kriptoaktyvų standartų lyderę.

Tyrime pabrėžiama, kad KRR ne tik turės tiesioginį poveikį rinkai, bet ir žymi reikšmingą žingsnį tobulinant Sąjungos finansų priežiūros struktūrą nuo pat Europos finansų priežiūros sistemos sukūrimo 2010 m. Remiantis pagrindiniu kriptoaktyvų skirstymu į reikšmingus ir „nereikšmingus“ (priežiūros modelį pagal klasifikaciją), KRR išplečia Europos priežiūros institucijų, ypač Europos bankininkystės institucijos (EBI), vaidmenį. Pirmą kartą EBI suteikiami tiesioginiai priežiūros įgaliojimai, įskaitant kompetenciją steigti ir pirmininkauti tam tikroms patariamoms struktūroms.

Straipsnyje daroma išvada, kad šis pokytis žymi reikšmingą ES finansų priežiūros modelio transformaciją ir greičiausiai sukels daugybę praktinių iššūkių, ypač valdant santykius tarp prižiūrimų subjektų ir EBI. Dėl ilgalaikių padarinių šie pokyčiai reikalauja išsamios analizės.

Pagrindiniai žodžiai: finansų sektorius, Kriptoaktyvų rinkų reglamentas, KRR, reikšmingi žetonai, priežiūra, Europos bankininkystės institucija, EBI, įgaliojimai.

Introduction

The topic of crypto-assets in their diversity has been of particular interest at many levels in society for some time, and there are no signs that this trend is slowing down. Naturally, like many other processes that have developed in the financial sector as a result of crises, and in this particular case, the COVID-19 pandemic has only appeared as a catalyst for the reaction of institutions to pay close attention to the growing risks associated with the emergence and the exchange of crypto-assets. As a result, on 24 September 2020, the Commission adopted the so-called *Digital Finance Package*, including a digital finance strategy for the EU (COM(2020) 591 final), a Union retail payments strategy (COM(2020) 592 final), as well as four legislative proposals, including a Proposal for a Regulation on Markets in Crypto-assets (COM(2020) 593 final)[1]. Taken as a whole, the package aims to boost competitiveness and innovation in the financial sector, paving the way for the EU to become an innovator and a global player in terms of standards in the sector. On the other hand, the package is expected to provide consumers with greater choice and options in financial services and modern payments, while ensuring protection and financial stability. Moreover, through the Digital Finance Package, and in particular through the Proposal for a Regulation on Markets in Crypto-assets, the Union has demonstrated its readiness to become the first significant jurisdiction to regulate crypto-assets. The Proposal, which later became current legislation, codified key issues of the legal regime of crypto-assets, including those regarding the supervision of issuers of *Asset-Referenced Tokens* (ARTs) and issuers of *E-Money Tokens* (EMTs).

[1] Outside the scope of the Proposal remained the matter of the so-called “central bank digital currencies” issued by central banks acting in their capacity as monetary policy authorities. Therefore, the Proposal, and subsequently the Regulation itself, only use the term ‘crypto-asset’, which comes to distinguish this form of digital representation of value or right from the central bank digital currencies. Regarding the establishment of the digital euro, including regarding its legal tender status, see COM(2023) 369 final.

Given the nature of the tasks set, the adoption process of Regulation (EU) 2023/1114 on markets in crypto-assets[2] undoubtedly revealed certain specifics, dictated mainly by the Union's intention to regulate a new, incompletely researched matter, the actual existence of which significantly precedes the actions for its regulation. As the moment when crypto-assets, including the technologies behind them, gained popularity, theory and practice consistently point to the year 2009, associated with the emergence of *Bitcoin* – one of the many modern crypto-assets (Lessambo, 2023, p. 15). On the other hand, the topic of the financial stability of the Union or individual Member States has always been on the agenda. Thus, from the moment of publication of the Proposal for a regulation to the date of publication of the legislative act in the Official Journal of the EU – 9 June 2023, nearly 3 years passed. MiCAR entered into force 20 days later, on 29 June 2023, and, as of 30 June 2024, the second – and perhaps more significant – partial application of it began – that of Titles III and IV of the Regulation (see Article 149 MiCAR regarding the terms of entry into force and application of the Regulation).

Regulation (EU) 2023/1114 does not reveal specifics in relation to the legislative procedure used, insofar as it was adopted on the basis of Article 114 of the *Treaty on the Functioning of the EU* (TFEU) within the ordinary legislative procedure – a text which, in recent years, has already been the basis for the adoption of the Union acts in the field of finance. In addition, the provision is an invariable part of the constant practice of the Court of Justice of the EU (CJEU), according to which Article 114 TFEU is used as a legal basis when it is actually and objectively apparent from the legal act that its purpose is to improve the conditions for the establishment and functioning of the internal market of the Union (The Queen v Secretary of State for Health, *ex parte* British American Tobacco (Investments) and Imperial Tobacco, C-491/01, para. 60; United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, C-217/04, para. 42). Moreover, the CJEU has repeatedly pointed out that Article 114 TFEU can be used as a legal basis in cases of existing or potential disparities between national laws, as a result of which, fundamental freedoms are hindered, or competition is distorted. Thus, the absence or presence of isolated legislation at the level of individual EU Member States is undoubtedly recognised by the legislator as a real risk of a significant scale. That was the case with crypto-assets until recently.

Given the above and especially the novelty of the legal framework concerned, the existing literature only briefly touches upon the topic of regulating the supervision of crypto-assets in the EU and how it affects the current structure of European financial supervision. In this regard, the majority of studies in the field are primarily a product of practice, not academia. Stepping on the doctrinal legal research method and referring to scientific literature examining crypto-assets as a phenomenon in general, the present work aims to carry out one of the earliest comprehensive reviews of certain specifics of the supervisory regime under MiCAR. Specifically, having the supervisory framework established under MiCAR as its object of research, the article attempts to trace how the latter reshapes the distribution of roles in the implementation of financial supervision in the Union.

1. The Foundations

Before getting to the heart of the matter, it is appropriate to briefly clarify the reasons why we are talking about the next step in the development of the financial supervision of the Union, insofar as the introduction of a complex regulatory framework of crypto-assets represents an evolution in the financial

[2] It should be noted that Regulation (EU) 2023/1114 has acquired recognition under the abbreviation 'MiCAR'. Therefore, in places in the text, for brevity, we will adhere to this way of spelling.

sector in itself. More specifically, it is necessary to outline the foundations on which the renovation in question in the structure of financial supervision in the EU is based. In this regard, going back to the financial crisis of 2007, the crisis highlighted significant weaknesses in financial supervision in the Union, both in terms of specific cases and in relation to the financial system as a whole. The supervisory models established at the level of individual EU Member States were not able to adequately adapt to progressive financial globalisation and the integrated and interconnected European financial markets in which many financial institutions operate cross-border. Once again, the crisis exposed shortcomings in cooperation, coordination, consistent application of the Union law and trust between individual national supervisors – factors that are proving to be key both in preventing a financial crisis from occurring and in managing one that has already occurred. As a result, the Union responded to the crisis primarily through a large-scale institutional package containing an entirely new supervisory architecture.

Presented on 23 September 2009, the Commission's legislative package, proposing the much-sought reform of the supervisory framework in the Union, was approved as a matter of priority and published in the Official Journal of the EU in December 2010. The three structurally similar *European Supervisory Authorities* (ESAs), in close cooperation with a network of national competent authorities, the Joint Committee of the ESAs and the European Systemic Risk Board, formed the European System of Financial Supervision. A central idea behind the creation of the ESAs is to establish enhanced cooperation and exchange of information between the national competent authorities, support decision-making by the EU in countering cross-border problems, and make progress towards a harmonised interpretation and application of the Union law[3]. One of these ESAs is the *European Banking Authority* (EBA). The latter, founded on 1 January 2011 under Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), carried out its tasks for a long period without undergoing any particular changes. However, MiCAR introduced a qualitative change in them, which resulted, if not in the creation of a new one, then in a significant renewal of the existing system of financial supervision in the Union. If, at the time of the establishment of the EBA, the extent to which the Union body was able to influence the internal market of the EU[4] was openly questioned, Regulation (EU) 2023/1114 went considerably further by granting the EBA supervisory powers (see Article 144 MiCAR, which amends Article 1(2), first subparagraph of Regulation (EU) No 1093/2010 on the scope of the authority's activities).

2. Classification of Crypto-Assets under MiCAR

It is of essential importance to emphasise that Regulation (EU) 2023/1114 primarily introduces a framework of supervision of crypto-assets themselves, and not so much supervision of their issuers; the model is based on the classification of crypto-assets laid down in the Regulation. In particular, MiCAR defines three types of crypto-assets, which are distinguished from one another and subject to

[3] According to the provisions of the founding regulations of the ESAs, the Commission was obliged to publish at the beginning of 2014 a general report that would cover the experience acquired as a result of the operations of the bodies and from the procedures laid down in the regulations. In this regard, similar to the above-mentioned arguments for the creation of the ESAs, justification can also be found in COM (2014) 509 final, p. 3.

[4] Even then, authors pointed out that the problems that have arisen on a global scale and in the Pan-European finance and banking are actually significantly more complex and profound than the functioning of the Union's internal market. Recognising the internal market within the scope of the EBA's activities was defined as difficult, and the body's connection to free movement – as tenuous at best. Additionally, the authority was cited as a clear example of Pan-European cooperation and exchange of information at a high level with executive powers at a low level (Fahey, 2011, p. 588–589).

different requirements depending on the risks associated with each type. The classification is based on whether crypto-assets seek to stabilise their value by reference to other assets – in other words, whether they represent stablecoins or not. The term 'stablecoins' has no legal definition in MiCAR. However, the Regulation uses the term, indirectly indicating which types of crypto-assets regulated therein fall under the *category of stablecoins* (see recital 41 of MiCAR). At the same time, there are well-established understandings in theory and practice. In short, stablecoins are crypto-assets that aim to maintain a stable value relative to a specified asset or a pool or basket of assets. To achieve stability, assets backing stablecoins are usually held. These can be fiat currencies, bank deposits, short-term market instruments, and even other crypto assets (Bains *et al.*, 2022, p. 6).

Considering the above, the first type of crypto-assets under MiCAR consists of crypto-assets that aim to stabilise their value by referencing only one official currency. The function of such crypto-assets is very similar to the function of e-money, as defined in Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions. Like e-money, such crypto-assets are electronic surrogates for coins and banknotes and are likely to be used for making payments. This category of crypto-assets is defined as EMTs. Issuers of EMTs may be either e-money institutions or credit institutions, i.e., the Regulation does not provide dedicated authorisation for issuers of EMTs. The second type of crypto-assets under MiCAR concerns ARTs, which aim to stabilise their value by referencing another value or right, or a combination thereof, including one or several official currencies. It covers all other crypto-assets, other than EMTs, whose value is backed by assets, so as to avoid circumvention and to make Regulation (EU) 2023/1114 future-proof. Generally speaking, the Regulation stipulates that issuers of this type of crypto-assets are legal persons or other undertakings that have been authorised as an issuer of ARTs or a credit institution. Finally, the third type of crypto-assets under MiCAR consists of crypto-assets other than ARTs and EMTs, and covers a wide range of crypto-assets, including utility tokens. This category of crypto-assets is often informally referred to as 'general crypto-assets', while falling outside the scope of stablecoins given that they are not referenced to any value or right.

As repeatedly noted, stablecoins are a specific category of crypto-assets that have the potential to improve the efficiency of financial service delivery, but can also generate financial stability risks, especially if adopted on a significant scale. While such risks to financial stability are currently limited by the relatively small scale of these mechanisms, this could change in the future (FSB, 2020, p. 1). Furthermore, stablecoins have the potential to bring efficiencies to payments (including cross-border payments), and to promote financial inclusion. On the other hand, at the level of individual market participants, stablecoin issuers are exposed to sources of instability that, similarly to the traditional banking system, could result in runs and bankruptcy (Castren *et al.*, 2024, p. 11). Guided by this understanding, the Union quite logically paid particular attention to stablecoins (EMTs and ARTs, according to the classification under Regulation (EU) 2023/1114), in respect of which far more comprehensive rules were created, including in relation to the regime of supervision of these types of tokens.

Next, Regulation (EU) 2023/1114 introduced the categories of so-called 'significant ARTs' and 'significant EMTs'. ARTs and EMTs should be deemed significant when they meet or are likely to meet certain criteria, including a large customer base, high market capitalisation, or a large number of transactions. As such, they could be used by a large number of holders, and their use could pose specific challenges to financial stability, monetary policy transmission, or monetary sovereignty. Even though the categorisation of crypto-assets underwent some changes with the adoption of the final provisions of MiCAR, the categories of significant ARTs and significant EMTs still appeared in the proposal for a regulation. Thus, in order to simplify the otherwise complex nature of the significant

tokens, the latter were defined simply as 'very large' (Tomczak, 2022, p. 377). In this regard, these tokens should be subject to more stringent requirements than ARTs or EMTs that are not considered significant. In particular, issuers of significant ARTs should be subject to higher capital requirements as well as to interoperability requirements, and these issuers should also establish a liquidity management policy. Therefore, for the application of stricter control over a given issuer, the leading factor appears to be the classification of a token as significant – i.e., there is supervision based on the merits of the token being issued, and not of its issuer. The criteria for classifying ARTs and EMTs are specified, respectively, in Articles 43 and 56 Regulation (EU) 2023/1114, and, more specifically, in the first of the two texts. However, to the extent that the specific content of the criteria in question appears to be irrelevant to the subject under consideration, it is sufficient to point out that, in addition to MiCAR, by virtue of the powers conferred on it, the Commission adopted a delegated act supplementing MiCAR by specifying criteria for classifying ARTs and EMTs as significant (see Article 43(11) Regulation (EU) 2023/1114).

Further, MiCAR sets out two regimes for classifying ARTs and EMTs as significant – *mandatory* when at least three of the criteria specified in Article 43(1) of the Regulation are met, and a *voluntary* one, at the request of the issuer of the token. In relation to the mandatory classification regime, at least twice a year the competent authorities of the home Member State of the issuer[5] provide the EBA and the *European Central Bank* (ECB) with information relevant to the assessment of the fulfilment of the criteria contained in Article 43(1) MiCAR, including, if applicable, the information received pursuant to the reporting under Article 22 of the Regulation. Where an issuer is established in a Member State whose official currency is not the euro, or where the token is referenced to an official currency of a Member State other than the euro, the competent authorities should also transmit the information to the central bank of that Member State. On the other hand, in the case of voluntary classification, after the issuer has indicated that it wishes its token to be classified as significant, the competent authority immediately notifies the EBA, the ECB, and, in certain cases, the central bank of the respective Member State of the request. For the purposes of voluntary classification, there must be a probability that at least three of the criteria under Article 43(1) MiCAR are likely to be met. In all cases, the classification of a token as significant is carried out on the basis of a decision of the EBA (see, respectively, Articles 43(6) and 44(3), and Articles 56(5) and 57(3) Regulation (EU) 2023/1114). Where a given token is classified as significant by a decision of the EBA, the supervisory responsibilities regarding the issuer of the significant token are transferred from the competent authority of the home Member State of the issuer to the EBA. Although the exact moment of transfer varies depending on different circumstances, such as whether the classification has been requested by the applicant issuer of the token within a procedure for granting an authorisation required under the Regulation, the result is a transfer of the supervision function to the EBA. Thus briefly described, the transfer mechanism of supervisory tasks should be noted as a milestone in revealing the essence of the renewal of the financial supervision system in the Union[6].

[5] The matter of designating the national competent authority differs with respect to the two categories of stablecoins under MiCAR. In contrast to the supervision of ARTs, the Regulation explicitly states that the competent authorities responsible for supervision under Directive 2009/110/EC should supervise the issuers of EMTs (see recital 103 and Article 3(1), point (35)(b) Regulation (EU) 2023/1114).

[6] As a general rule, the EBA and the national competent authorities should cooperate in order to ensure a smooth transition in the transfer of supervisory competencies. The process is bound by adherence to strict deadlines.

3. Supervisory Powers of the EBA

As implied by the above, the revision of the Union's financial supervision framework is evident in the new tasks assigned to the EBA, directly related to the categorisation of crypto-assets under Regulation (EU) 2023/1114. In this regard, in order to outline the specific marks of the change, it is necessary, as far as the current format allows, to highlight some of the main powers granted to the EBA in connection with the implementation of direct supervision of certain issuers of crypto-assets.

Once an ART has been classified as significant in accordance with Articles 43 or 44 Regulation (EU) 2023/1114, the issuer of this ART conducts its activity under the supervision of the EBA. On the other hand, where an EMT issued by an e-money institution is classified as significant in accordance with Articles 56 or 57 Regulation (EU) 2023/1114, the EBA supervises compliance with Articles 55 and 58 MiCAR of the issuer of this significant EMT, namely, to supervise compliance with the requirements in relation to recovery and redemption plans, as well as the specific additional obligations for issuers of EMTs. Thus, in relation to e-money institutions that are issuers of significant EMTs, dual supervision by both the national competent authorities and the EBA is emerging. Since the special additional requirements apply only to e-money institutions issuing significant EMTs, credit institutions issuing significant EMTs, to which these requirements are not applicable, remain under the supervision of national competent authorities (see recital 103 of MiCAR).

In connection with the transfer of supervisory responsibilities to the EBA, the latter should, within 30 calendar days after the decision to classify a token as significant, establish, manage and chair a college of supervisors for each issuer of significant ARTs and significant EMTs. In view of the fact that issuers of significant ARTs and significant EMTs are usually at the centre of a network of entities that ensure the issuance, transfer and distribution of such crypto-assets, the members of the college of supervisors for each issuer should therefore include the competent authorities responsible for the supervision of the given entities[7]. It should be borne in mind that the provision of such structures does not constitute a precedent. To address the risk that the regulators' powers do not extend beyond national borders, global standard-setting bodies are pushing for consistency and alignment of regulation, including the legal classification of activities, and strengthening cross-border cooperation and information-sharing among authorities in different jurisdictions (CCAF, 2024, p. 66).

In order to establish the supervisory college in a timely manner and determine its composition, by virtue of Decision of the EBA EBA/DC/558, the issuers of tokens classified as significant are required to submit information regarding the entities most relevant to the token within 10 calendar days of the date of notification of the EBA's final decision on significance assessment. Each college of supervisors should facilitate cooperation and exchange of information between its members and should issue non-binding opinions on, among other things, changes to the authorisation or supervisory measures with respect to these issuers, as provided for in Article 120 MiCAR. Therefore, colleges of supervisors could be defined as advisory structures supporting the work of the EBA.

For the fulfilment of its supervisory responsibilities under Article 117 Regulation (EU) 2023/1114, the EBA has a particularly wide range of powers, including requiring information by simple request or by decision (see Article 122 MiCAR), general investigative powers (see Article 123 MiCAR), on-site inspections – access to the business premises of the persons to whom the investigation decision adopted by the EBA applies (see Article 124 MiCAR), exchange of information, including between the EBA

[7] For the specific composition of the college of supervisors, see Article 119(2) Regulation (EU) 2023/1114. In addition, the EBA may invite other authorities to be members of the college when the entities they are supervising are relevant to the work of the college.

and third countries under administrative agreements (see Articles 125 and 126 MiCAR). In the cases under Articles 123 and 124 Regulation (EU) 2023/1114, the authority should notify the relevant college of supervisors without undue delay of any findings made that might be relevant for the execution of its tasks. An additional specificity regarding the tasks assigned to the EBA is the possibility, wherever necessary, for the proper performance of a supervisory task in relation to issuers of significant ARTs or significant EMTs, for the EBA to delegate specific supervisory tasks to a national competent authority. While the review interval for the delegation of tasks is not explicitly specified, the Regulation provides that such delegation may be revoked by the EBA at any time.

Next, with regard to the possibility of imposing supervisory measures by the EBA, including the types of infringements that result in a measure being taken, the Regulation makes a clear differentiation between an issuer of a significant ART and an issuer of a significant EMT. Thus, when the EBA finds that an issuer of a significant ART has committed an infringement listed in Annex V to Regulation (EU) 2023/1114, the authority may take one or more of the supervisory measures specified in Article 130(1) MiCAR. Similarly, when the EBA finds that an issuer of a significant EMT has committed any of the infringements listed in Annex VI to MiCAR, the authority may take one or more of the measures under Article 130(2) of the Regulation. However, a number of the measures envisaged, which have a markedly universal validity, are applicable to both issuers of significant ARTs and issuers of significant EMTs. Such are, for example, requiring the issuer of a significant token to cease the conduct constituting the infringement; prohibiting trading a significant token on a trading platform for crypto-assets where the EBA finds that the Regulation has been infringed; issuing a warning that the issuer of a significant token fails to fulfil its obligations under the Regulation, etc.

The line of demarcation between issuers of significant ARTs and issuers of significant EMTs, and, in this case, also in relation to the members of their governing bodies, the Regulation continues, and, in relation to the powers of the EBA, it is allowed to impose fines for a committed infringement, intentional or due to negligence, as provided for in Article 131 MiCAR. For issuers of significant ARTs, the maximum amount of the fine imposed should not exceed 12.5% of the annual turnover for the preceding business year, or twice the amount of the profits gained or losses avoided because of the infringement – where those can be determined, while, for the issuers of significant EMTs, the amount of the fine imposed in relation to the issuer's annual turnover should not be greater than 10% (see respectively Article 131(3) and (4) Regulation (EU) 2023/1114). Based on the file containing the investigation officer's findings and, when requested by the investigated persons, after their hearing, the EBA decides whether the issuer of the significant token under investigation has committed an infringement listed in Annex V or Annex VI to MiCAR, and, if so, the EBA takes a supervisory measure or imposes a fine in accordance with Articles 130 or 131 MiCAR. Apart from this, the EBA has the power to adopt decisions imposing periodic penalty payments for the purpose of compulsion. The same are imposed for a maximum period of six months following the notification of the decision taken by the EBA. At the end of that period, the EBA should review the measure.

Finally, as a consequence of the expansion of the scope of the EBA's competences, the Regulation provides that the CJEU will have unlimited jurisdiction to exercise control over decisions by which the EBA, in accordance with MiCAR, has imposed a fine, a periodic penalty payment or any administrative penalty or any other measure. It may annul, reduce, or increase the amount of the imposed fine or periodic pecuniary payment (see Article 136 Regulation (EU) 2023/1114). In addition, the Regulation provides for cases of explicit indication of the available legal remedies, as pursuant to Article 122(3), point (g) MiCAR, when requiring the provision of information by decision, the EBA indicates to the interested parties their right to appeal the decision before the Board of Appeal of the EBA, as well as their right to

have the decision subjected to review by the CJEU in accordance with Articles 60 and 61 Regulation (EU) No 1093/2010. A similar example is also available in relation to the public disclosure of a decision on a supervisory measure taken by the EBA against an issuer of a significant token (see Article 130(7) MiCAR).

4. On Some Side Matters

It cannot be denied that the revision of the EU's supervisory architecture has manifested itself to a certain extent with regard to the *European Securities and Markets Authority* (ESMA) – the next of the three ESAs founded by virtue of Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority). In addition to similar tasks performed so far, such as establishing a register of crypto-assets white papers, of issuers of ARTs and EMTs and of crypto-asset service providers (see Article 109 MiCAR), MiCAR grants the ESMA temporary intervention powers in accordance with Regulation (EU) No 1095/2010, resulting in the possibility for the authority to impose a temporal prohibition or restriction when certain conditions are met. They should in all cases concern crypto-assets other than ARTs or EMTs – i.e., those crypto-assets that do not fall within the scope of the EBA's intervention powers.

However, despite the above, we should note that the ESMA already has powers to impose identical measures in accordance with its founding regulation in relation to the marketing, distribution or sale of certain financial products, instruments, or activities. Therefore, we should talk about expanding the current legal framework by covering crypto-assets, including empowering the ESMA to use its powers in relation to significant crypto-asset service providers (see Article 85 MiCAR), but not about a general evolution in the authority's competence, as we see with the EBA.

We observe a simultaneous effect on the powers of the three ESAs[8] in another legislative act of the Union, part of the Digital Finance Package – Regulation 2022/2554 on digital operational resilience for the financial sector, known as *Digital Operational Resilience Act* (DORA). The supervisory framework under DORA assigns one of the three ESAs the role of the Lead Overseer, as the case may be, to ensure that "critical information and communication technology third-party service providers" are adequately monitored on a Pan-European scale for the risks they may pose to the EU financial sector. Nevertheless, DORA does not regulate new phenomena in the financial sector, nor does it create new types of financial service providers, respectively, new types of entities subject to financial supervision, such as the so-called 'crypto-asset service providers'. It mainly aims to adequately address certain risks by consolidating and upgrading the existing requirements in the field.

Conclusions

1. The end of May 2023 marked a turning point in the European financial sector for a number of reasons, some of which received considerable attention, whereas others not so much. On the one hand, by adopting Regulation (EU) 2023/1114, the Union has arguably become the first significant jurisdiction to regulate crypto-assets. Seen from this perspective, MiCAR is expected to increase competitiveness and innovation in the financial sector, paving the way for the EU to become an innovator and a global factor in terms of standards in the field. Next, the Regulation outlines the different categories of crypto-assets subject to regulation, taking into account the risks that each poses to the financial stability.

[8] The third and last ESA is the European Insurance and Occupational Pensions Authority.

2. Beyond the standard reading, however, MiCAR appears to be the next evolutionary stage in the development of the Union's financial supervisory structure after the creation of the ESFS in 2010. Based on its key division of tokens into significant and non-significant, Regulation (EU) 2023/1114 oversteps the bounds of the permanently established, with some amendments, functions of the ESAs, and especially those of the EBA.
3. The EBA's tasks, which, until now, were mainly limited to coordinating and improving the quality of regulatory and supervisory work in order to strengthen the financial services market and improve consumer protection, are now being put on a new level. For the first time since its establishment, the EBA has been empowered to perform supervisory functions in relation to the significant crypto-asset tokens, including establishing, managing, and chairing colleges of supervisors.
4. In any case, the change under consideration represents a remarkable evolution in the previous understanding of the Union authorities, while, at the same time, it is a topic that certainly deserves its due study. Last, but not least, it is expected to generate numerous practical cases, including in connection to the relationship between the supervised entities and the EBA in the process of implementing the powers granted to the authority.

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Dimitar Stanchev is a PhD Candidate in Financial Law at Sofia University "St. Kliment Ohridski". His doctoral thesis, *Legal Regime of Specialised Payment Supervision*, examines the regulatory framework for non-bank payment service providers. His recent work focuses on the interplay between crypto-asset services and payment services, reflecting the evolving EU legal landscape. While his academic contributions are developing, they include publications in legal journals and participation in international conferences, demonstrating a growing presence in discussions on fintech regulations.

Dimitar Stanchev – finansų teisės doktorantas Sofijos „Šv. Klimento Ochridskio" universitete. Rengiamoje daktaro disertacijoje „Specializuotos mokėjimų priežiūros teisinis režimas" nagrinėjama nebankinių mokėjimo paslaugų teikėjų reguliavimo sistema. Savo naujausiuose tyrimuose daugiausia dėmesio skiria kriptoaktyvų ir mokėjimo paslaugų sąveikai, atspindint besikeičiantį ES teisinį kontekstą. Nors jo akademinė veikla dar tik įgauna pagreitį, jis jau yra paskelbęs straipsnių teisės žurnaluose ir dalyvavęs tarptautinėse konferencijose, taip stiprindamas savo indėlį į finansinių technologijų reguliavimo diskusijas.