

Financial Services Briefing: Special Edition on Cryptos

Legal framework for cryptos in Greece: just over a year left to register with the HCMC.

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A. Before MiCA's Application on 30 December 2024

1. The provision of crypto-related services is currently for the most part unregulated in Greece. In certain limited cases, cryptos are categorised as financial instruments, triggering the application of the Greek MiFID II Law. Due to the lack of precedence, the steps for this assessment are not always clear and no regulatory guidance has been provided so far.
2. Irrespective of whether a crypto asset qualifies as a financial instrument, entities wishing to provide exchange services between virtual currencies and fiat currencies or provide custody services in relation to virtual currencies in from Greece should register with the Hellenic Capital Market Commission (HCMC) prior to the providing these services. A decision on the registration is issued within 2 months from the submission of a complete application. Firms must also comply with the Greek AML Law, which notably imposes customer due diligence measures, a centralised ultimate

beneficial owner register and the requirement to appoint an AML Compliance Officer.

3. Bernitsas has advised crypto service providers on the Greek regime and guided them through successful application processes.

B. After MiCA's Application

1. The Markets in Crypto Assets Regulation (MiCA, Regulation (EU) 2023/1114), changes the legal treatment of crypto assets. With a few exceptions which provide for an earlier application, MiCA's provisions will apply on 30 December 2024. This new regime includes:
 - a. Breaking down cryptos into categories: asset-referenced tokens, e-money tokens, utility tokens;
 - b. specific requirements for the admission to trading and the public offering of crypto assets e.g. the publication of a crypto-asset white paper;
 - c. certain investor protection rules-mainly the implementation of transparency rules as well as a right of withdrawal from investment within a specified period;
 - d. market abuse prevention rules-public disclosure of inside information, prohibition of insider dealing, prohibition of market manipulation;
 - e. minimum supervisory powers granted to competent regulators; and

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- f. authorisation requirements for crypto asset service providers.
2. The authorisation requirement is a key change imposed by MiCA on crypto-asset service providers whose business activities take place in Europe. They will now be required to apply for authorisation in the Member State where they carry out at least part of their crypto-asset services. In line with other European financial services regulation, authorised crypto-asset service providers will then have the right to provide services throughout Europe on a cross border basis via a passport. Unauthorised third country firms providing crypto services in Europe will only be allowed to continue to do so on a reverse solicitation basis. ESMA's anticipated guidelines will provide more clarity on the various circumstances where crypto services are deemed to be provided on the client's initiative.

C. Priorities for Crypto Custody or Exchange Service Providers

1. **Until 30 December 2024:** if not already registered with the HCMC, firms shall apply for registration.

Registering with the HCMC during this time period may enable firms to provide services without authorisation until 1 July 2026 (see below).

2. **Between 30 December 2024 and 1 July 2026:** As a general rule, firms will have to be authorised in Greece or another Member State in order to lawfully continue providing the envisaged services. The exception to this is that already registered firms may benefit from certain transitional measures in MiCA and be able to continue providing these services in Greece until 1 July 2026 without authorisation provided they are registered with the HCMC. However, whether Greece will elect to adopt this transitional measure remains to be confirmed.
3. **After 1 July 2026:** Firms will have to be authorised in Greece or another Member State in order to lawfully continue providing the envisaged services.

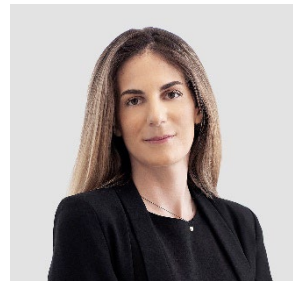
D. Priority for Firms Providing Other Crypto-Asset Services

1. Firms wishing to establish a regulated presence in Greece or, alternatively, in another EU jurisdiction and passport into Greece, will need to assess the impact of MiCA and prepare well ahead of the 2024 deadline.

Contacts



Maria Nefeli Bernitsa
Counsel
E mnbarnitsa@bernitsaslaw.com



Kelly Hatzigaki
Associate
E khatzigaki@bernitsaslaw.com

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