

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Italy: Crypto-asset regulation

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Few areas of finance are developing faster than crypto-assets, a category that includes cryptocurrencies, securities tokens and utility tokens, whose common feature is use of distributed ledger technology (DLT). Their rise has led to calls for better regulation due to potential investor protection, money laundering and market integrity risks.

Several European governments have enacted or proposed legislation affecting crypto-assets. Regulatory differences can also arise when EU member states transpose directives into national law.

The EU's proposed [Markets in Crypto-Assets Regulation](#) (MiCA) would establish a framework for issuing crypto-assets and providing services relating to them. This includes stablecoins: crypto-assets purporting to maintain value by reference to another asset or assets.

This article provides an outline of EU legislation followed by an overview of crypto-asset regulation in Italy by [Fabrizio Dotti](#), partner, of law firm [K&L Gates – Studio Legale Associato](#).

Principal existing EU legislation:

Money Laundering Directives [EU 2015/849](#) and [EU 2018/843](#)

The Fifth Anti-Money Laundering Directive (5MLD) extended the Fourth Anti-Money Laundering Directive (4MLD) regime to "providers engaged in exchange services between virtual and fiat currencies" and to "custodian wallet providers".

Second Electronic Money Directive [EU 2009/110](#) (EMD2)

Article 2(2) of EMD2 defines electronic money as "electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions ... and which is accepted by a natural or legal person other than the electronic money issuer".

Some stablecoins can be "electronic money tokens" under this definition.

Revised Markets in Financial Instruments Directive [EU 2014/65](#) (MiFID 2)

Some crypto-assets qualify as "financial instruments" under MiFID 2, art 4(1) point 15 and the associated list in section C of annex 1.

Proposed MiCA regulation ([COM 2020/593](#))

MiCA would apply to persons engaged in the issuance or provision of services related to crypto-assets not within scope of existing EU regulation.

It distinguishes between stablecoins and other crypto-assets. Stablecoins are divided into "asset-referenced tokens" and "electronic money tokens". Any that pass threshold conditions would be classified as "significant" by the European Banking Authority (EBA).

Crypto-asset regulation in Italy**1. Which body regulates crypto-assets and related services?**

It has to be said that Italian regulation of crypto-assets is very limited, such circumstance also affecting the other questions.

There are no specific authorities regulating crypto-assets and related services.

For the purpose of anti-money laundering and for registration of operators, Italian law only defines: (i) virtual currencies, (ii) providers of services relating to the use of virtual currency and (iii) providers of digital wallet services.

Providers are subject to registration in a specific register, which will be implemented in the next months, held by the Organismo per la gestione degli elenchi degli agenti in attività finanziaria e dei mediatori creditizi (Organismo or OAM) and must comply with the Italian anti-money laundering legislation.



Apart from that, provisions of crypto-assets services are subject to the general rules and regulations, and may become subject to sector regulations and to the relevant authorities, depending on the actual content of the activity performed.

2. Does any non-EU-derived law regulate crypto-assets or crypto-asset service providers such as exchanges?

There is no Italian law applicable to crypto-asset which is purely domestic.

3. Has a national law or regulation defined "crypto-asset" and/or "cryptocurrency"?

Yes. Italian anti-money laundering law (Legislative Decree no. 231 of 2007 - AML Law) defines "virtual currency", "providers of services relating to the use of virtual currency" and "providers of digital wallet services". The Italian law providing for the registration of providers (Legislative Decree no. 141 of 2010) cross refers to the same definitions.

By "virtual currency" the AML Law means the digital representation of value, neither issued nor guaranteed by a central bank or another public authority and not necessarily tied to a legal currency, which is used as a means of exchange for the purchase of goods or services or for the purpose of investment, and which is transferred, held and traded electronically.

A "provider of services relating to the use of virtual currency" is anyone (entity or individual) providing professionally: (i) services instrumental to the use, trade, storage or exchange (in currencies, virtual currencies or other digital assets) of virtual currencies, or (ii) services for issue, offering, transfer, netting or any other services, instrumental to the acquisition, trading or brokerage of virtual currencies.

A "provider of digital wallet services" is anyone (entity or individual) providing professionally custody or maintenance services of private encryption keys aimed at holding, saving and transferring virtual currencies.

4. What money laundering regulations, including any due diligence requirements, apply to crypto-assets?

Providers of crypto currency services falling within the two above-mentioned definitions of law ("providers") are included in the list of "non-financial" entities and professionals, subject to compliance with the provisions of AML Law.

Given the extension and the level of details of such provisions, and having in mind that Italian AML Law implemented the relevant EU Directives, it is worth noting that the main categories of duties applicable to providers, are (i) "Adequate vetting", (ii) "Maintenance of information and documents" and (iii) "Reporting of suspicious transactions".

As regards the "adequate vetting", providers must comply with the obligation to identify the client and his/her/its ultimate beneficial owner and carry out a vetting procedure on the client, the relevant activity and the transaction which is in many respect an actual client profiling task for anti-money laundering purposes. Such profiling must be carried out at the beginning of the business relationship or on execution of transactions exceeding certain thresholds.

The extension of such vetting procedure and the information to collect and evaluate may vary depending on a number of factors (i.e. simplified procedures can be adopted in case of certain indicators of low risk or, viceversa, strengthened procedures must be followed, if high risk factors listed by the AML Law occur). If a proper vetting cannot be completed, a provider must refrain from establishing or continuing the client relationship.

Maintenance obligations essentially consist in keeping and making accessible to authorities all records regarding client vetting and client's activities, in compliance with the applicable security and data protection standards.

Suspicious transactions, i.e. transaction which may be or may dissimulate or be part of money-laundering, terrorism support or use of illegal funds must be reported to the specialised AML unit of Bank of Italy (UIF).

5. What rules apply to the promotion of crypto-assets?

There is no specific regulation applicable to the promotion of crypto-assets.

There is a number of precedents, involving the Italian securities authority (CONSOB) and Italian courts, where the promotion of crypto-assets was qualified as an offer of investment or financial services and the relevant provider was sanctioned for abusive activity.

In particular, the authority and the courts have given attention to the way the promotion is carried out and the message which is conveyed to the public.

For instance, the promotion of "trading accounts" to operate in crypto-currencies was regarded by CONSOB as an offer of investment services, hence requiring authorisation and compliance with the relevant laws for this type of restricted activity (which the exchanger did not have, in the specific case). Generally speaking, the promotion of services emphasizing the gains which can be obtained with the use of funds converted in crypto-assets, has been often put under the spotlight and qualified as promotion of investment activity, with the need to comply with licensing requirements to avoid incurring in the applicable sanctions for abusive activity.

In this respect, also a 2020 judgement by the Italian Supreme Court ruled that the application of the provisions of law regarding financial intermediation (and the civil and criminal sanctions in case of lack of relevant license) was triggered by the way a provider advertised the offer of crypto-currency services.



In that case, the court held that the trading of crypto-currency was advertised as an actual investment proposal to clients, as the exchanger apparently emphasized the high returns which could be obtained by trading crypto-currencies and was proactive in advising and suggesting investment strategies.

In conclusion, while the offer of crypto-currency services is subject to registration in the specific register held by OAM, specific attention should be devoted to the way the activity is carried out, as that may cause the activity to qualify as promotion of investment and financial services, triggering the application of the relevant sanctions, in case of lack of license.

It has to be said that many known crypto-currency trading platforms active in Italy are EU registered financial brokers or otherwise licensed to carry out financial activity.

6. Do different crypto-asset rules apply to wholesale and retail markets, for example, on the sale of derivatives?

Given that the provisions of law specifically applicable to crypto-assets are very limited and that a structured legislation generally applicable to consumers exists, the point should be assessed on a case-by-case basis. It is worth noting, as described above, that authorities and courts, depending on the actual asset, have occasionally categorised crypto-assets within regulated categories, hence hypothetically triggering the application of the relevant existing rules and restrictions for the category identified.

7. Does any existing or proposed national law impose requirements on issuers of stablecoin?

In Italy there is no specific legal definition of stablecoins. To the extent they fall within the legal definition of "virtual currency", the relevant rules should apply to them and the same issues may arise.

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