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Critical assessment of regulatory options to prevent abuse on the crypto-asset market

Abstract

The aim of Regulation (EU) 2023/1114 on Markets in Crypto-assets (MiCA) is, inter alia, to ensure market integrity and protect investors from market abuse, such as manipulation and insider trading. The provisions of Title VI of MiCA form the foundation of the EU regime for counteracting abuse in the crypto-asset market, defining key concepts and regulatory obligations. The article attempts to assess the adequacy, effectiveness, and proportionality of anti-abuse mechanisms in light of the specific nature of the market in question. A formal-dogmatic research method was applied, consisting of an analysis of the legal text in the context of academic literature and the guidelines of international institutions. The results of the study indicate that although the regulation includes provisions prohibiting abuse in the crypto-asset market, significant concerns may arise due to the lack of direct reference to abuses involving derivatives not traded on an organised market, as well as the omission of detailed rules on investment recommendations. The absence of a duty to report managerial transactions on the crypto-assets market can, in turn, be considered a proportionate solution.

Keywords: MiCA, MAR, cryptoassets, market abuse, inside information, market manipulation, investment recommendations, managerial transactions

JEL codes: K22 (Business and Securities Law), K42 (Illegal Behavior and the Enforcement of Law)

Introduction

Modern financial markets play a fundamental role in the economy, enabling effective interaction between the demand and supply of money and the transfer of risk. They serve both private and public interests, allowing cash to flow from surplus entities that dispose of savings to deficit entities that obtain funds necessary for further

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operations (Blicharz et al. 2021, p. 15). Through the free formation of the price of traded securities, the financial market allocates available resources, moving capital to where it is most useful.

As „renouncing current consumption in favor of future uncertain benefits" (Jajuga 2011, p. 15), each investment activity is undertaken under conditions of risk and lack of full access to information. The essence of risk is the possibility of not achieving the expected effect, or more broadly, achieving an effect other than intended (Czerwińska, Jajuga 2016, p. 28).

In this light, institutions and legal regulations on combating abuse in the financial market are essential for the effective development of the market (Woźniak 2023, nb. 1) and for the protection of investor confidence. Investors allocating their financial resources and taking risks have the right to expect to be engaged in a , *level playing field*', in which the success or failure of an investment depends on individual skills, the right decisions and the prevailing economic environment, rather than on the fraudulent actions of other market participants.

A key condition for the smooth functioning of the market is to ensure transparency and equality in access to information. Information asymmetry, resulting from unequal access to knowledge by market participants, is an important source of distortion of price-setting mechanisms (Commission 1977; Explanatory Memorandum 11B). Information relevant to investment decisions should be publicly available, reliable, understandable, precise and timely reported. Their absence, illegibility, misinterpretation or deliberate distortion can lead to artificial price formation, which undermines the market's ability to allocate resources efficiently and threatens the public interest.

What is more, permanent information asymmetry may lead to the disappearance of reliable turnover and the phenomenon of "*race to the bottom*". As George Akerlof (Akerlof 1970) aptly noted, under conditions of asymmetry, " *dishonest dealings tend to drive honest dealings out of the market*," leading to its erosion. Reliable entities may be discouraged from entering a market where financing is more expensive, as investors demand a discount in response to the uncertainty surrounding the information provided.

The broad recognition of the validity of the above principles, namely information transparency, investor protection, the "level playing field," and the pursuit of market efficiency and integrity, entails an obligation for public authorities to implement legal regulations aimed at preventing market abuse, including insider trading, the unlawful disclosure of inside information, and market manipulation (MAR, Recital 7).

With regard to crypto-assets markets, the relevant provisions are contained in Title VI of MiCA. The provisions of this title define inside information (MiCA, Article 87) and prohibit its use (MiCA, Article 89) and unlawful disclosure (MiCA, Article 90), define and prohibit market manipulation (MiCA, Article 91), require immediate, non-discriminatory disclosure of inside information directly relating to the issuer of crypto-assets (MiCA, Article 88) and oblige crypto-asset professionals to prevent, detect and report cases of abuse (MiCA, Article 92).

1. Characteristics of the crypto-asset market

Crypto-assets are a relatively young group of financial assets whose spectrum of applications is not yet fully developed (MiCA, recital 1). In the light of Article 3(1)(5) of MiCA, a crypto-asset means a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology. MiCA refers only to such assets, with significant exceptions to its scope, as the regulation does not specifically apply to crypto-assets that are financial instruments (MiCA, Article 2(4)(a)) or *non-fungible tokens (*NFTs) (MiCA, Article 2(3)).

The history of crypto-assets begins in 2008, when a person or group of persons under the pseudonym Satoshi Nakamoto published an article titled *Bitcoin: A Peer-to-Peer Electronic Cash System* (Nakamoto 2008), which was the theoretical basis for the issuance of the first cryptocurrency – Bitcoin.

Bitcoin debuted as a digital asset that enables *peer-to-peer* transactions based on *distributed ledger technology* (DLT), without the intermediation of a central clearing institution. In the Bitcoin architecture, the trusted third party has been replaced by a *proof of work* mechanism, in which "nodes", i.e. computing devices connected to the system, validate individual transactions, which make up blocks that make up a chain (Nakamoto 2008, p. 3).

This requires public access to information about all transactions in the history of the blockchain, with the anonymity of users being cryptographically secured through the use of public and private key mechanisms. Anyone can see that someone is transferring a certain amount to someone else, but without knowing the identity of the public key holder, it is impossible to link that transaction to a specific person (Nakamoto 2008, p. 6).

Since Bitcoin's inception, thousands of other crypto-assets have debuted on the market. While there is no central issuer for the original cryptocurrency, a large proportion of other crypto-assets are issued by a specific entity, often used to fund its business activities, through a process called ICO (*initial coin offering*), in which the issued crypto-assets are exchanged for investors' cash (Delivorias 2021, p. 3).

Bitcoin units do not have any objectively measurable *intrinsic value*. For this reason, the current price of this currency is determined solely on the basis of expectations about its future price (Berentsen, Schär 2018, p. 7), resulting in significant fluctuations in the exchange rate and high volatility. Similar considerations can also be made for many other crypto-assets, which are subject to sudden and extreme price fluctuations and are speculative in nature, as their price is often based solely on consumer demand (ESAs 2022, p. 2). This feature differentiates crypto-assets, in particular, from units of fiat currency, whose value is protected by monetary authorities (see NBPU, Article 3(1)).

Given the above circumstances, it is important to point out significant regulatory challenges related to the crypto-asset market, in particular in the area of anti-abuse.

The innovative nature of these instruments, their potential anonymity, the frequent lack of methodologically well-established valuation mechanisms, markedly limited intervention of public authorities and high price volatility imply an increased risk of abuse. The above factors impose on the legislator the obligation to develop adequate and – most notably, proportionate – normative solutions.

2. Reception of MAR legal institutions

An in-depth, critical analysis of the provisions contained in Title VI of MiCA requires prior reference to the typology of regulatory instruments used to prevent market abuse developed in the EU legal system, in particular as developed on the basis of MAR. The starting point for such a list should be the observation that the EU legislator, in formulating the MiCA framework, consciously and systemically referred to many years of legislative experience collected in the course of MARs application (Rycerski 2025, p. 33). This is indicated by the obvious linguistic similarity of individual formulations and their similar structure.

The impact of the legislative acquis to date is noticeable even at the initial stage of comparative analysis, in particular within the normative solutions relating to the definition of basic concepts (e.g. confidential information, market manipulation), disclosure obligations and the principles of transparency of market participants. As ESMA points out, referring in turn to the similarities between MiCA and MIFID II, similar concepts should be interpreted in a consistent manner (ESMA 2025). The linguistic similarity between MiCA and MAR is therefore the first important argument for the application of a similar set of criteria to the assessment and interpretation of both regulations, in accordance with the principle prohibiting homonymous interpretation.

Secondly, it should be noted that both the financial instruments market and the crypto-asset market, although structurally and technologically different, perform partially similar functions in terms of capital mobilization and support for investment activities. This functional parallel is highlighted by the EU legislator itself in recital 2 of the MiCA preamble, pointing out that crypto-asset markets play an increasingly important role in financing the economy, including, most notably, SMEs. As a consequence, the *ratio legis* of the regulations contained in MAR and MiCA turns out to be convergent – both legal acts aim to ensure market integrity and an adequate level of investor protection, taking full account of the specifics of the crypto-asset market described above.

It should be emphasized that the explicitly stated objective of anti-market abuse regulation, both in the context of financial instruments and crypto-assets, is to prevent market participants from exploiting information asymmetry, irrespective of the financial tools or structures employed to do so. The essence of market abuse lies in the violation of the principles of fair trading for the purpose of rapidly obtaining above-average profits (Dybiński 2016, pp. 1331–1332), while the agent or instrument involved serves merely as a vehicle for the underlying economic intent.

Regardless of the means used to commit abuse, the ethical justification for its prohibition remains right – abusive transactions, in particular in the form of *insider dealing*, are perceived as “*immoral, unscrupulous, unfair, and vicious attack on the market and investors* “ (Macey 1999, p. 269), and This view, which is almost universally[1] accepted in both legal literature and practice, remains decades ahead of contemporary classifications of financial instruments and their technological implementation.

Therefore, also from a teleological perspective, it is justified and methodologically justified to refer to the achievements developed on the basis of MAR, when interpreting and applying the provisions of MiCA. The transposition of this content not only supports the interpretation process, but also promotes the systemic coherence of EU financial markets law, in line with the principle of technology neutrality, which obliges the legislator to treat ICT equally and create conditions for their fair competition (see IDPRZP, Article 3(19)). In the context of financial market law, technological neutrality should imply that regulatory instruments are tailored to the socio-economic nature of the activity, irrespective of the underlying technology employed.

EU legislative acts on financial services should be guided by the principle of ‘*same activities, same risks, same rules*’, as confirmed by recital 9 of the MiCA. From the systemic point of view, MiCA and MAR should therefore constitute, cumulatively, a complete regulation, aimed at preventing market abuse regardless of the technology used for the transfer of capital or risk and regardless of the technical or organizational conditions in which the transfer takes place. However, one cannot disregard the specific characteristics of the crypto-assets market, which, due to its relatively early stage of development and high degree of dynamism, constitutes an environment inherently suitable for investors with an elevated risk tolerance and expectations of above-average returns. In this context, excessive regulatory intervention may pose a threat comparable in its adverse effects to that arising from an insufficient level of regulation.

3. The principles of proportionality, equality and consistency of the legal system

As part of the assessment of the MiCA regulations, considered in light of the existing EU acquis on market abuse and the relevant academic literature, it is essential to examine the application of the principle of proportionality. Given that the entities subject to the new regulatory regime – such as issuers of crypto-assets or crypto-asset service providers – are often micro, small and medium-sized enterprises, the implementation of solutions similar to those adopted in the financial instruments sector could lead to an excessive regulatory burden (MiCA, recital 95).

[1] See. discussed by Macey 1999; opposing views.

In this context, there is a significant tension between, on the one hand, the need to ensure *a level playing field* and coherent and effective mechanisms to prevent market abuse, and, on the other hand, the need to implement a *bespoke regulatory framework* that will not hamper the development of this still emerging market. This requires particular attention in view of the stated objective of MiCA by the EU legislator to promote innovation, growth and job creation (MiCA, recital 1).

Excessive regulatory complexity and overregulation are among the key barriers to investment and development in the European Union (European Commission 2024, p. 18). Excessive regulatory burdens may, in addition to effectively suppressing sound economic initiative, at the same time create an environment conducive to corruption and the development of activities in the shadow economy (OECD 2011, p. 20), which is a particularly significant threat in the context of distributed ledger technology and the anonymity of transactions.

The waiver of the application of some of the principles described in the MAR to the crypto-asset market should therefore be based on the principle of proportionality. This does not mean that the MiCA regulatory framework is arbitrary – proportionality and market development must not violate the principles of technological neutrality, a level playing field, as well as the necessary investor protection mechanisms and market integrity, as described above.

It becomes necessary to define precisely how the principle of proportionality is to be understood in this context. It should be noted that this principle is explicitly expressed in the primary law of the European Union. Indeed, as stated in Article 5(4) of the Treaty on European Union, '*Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties*'.

The principle of proportionality, as a fundamental legal norm, is grounded in the premise that state authorities, when exercising their conferred powers, must refrain from imposing excessive limitations on the exercise of individuals' fundamental rights and freedoms (Lipniewicz 2015, p. 91). This implies that regulations must be designed to achieve their intended objectives while imposing the least possible burden on entities, and that the obligations imposed should be proportionate to the level of risk generated, that is itself a function of the size and nature of the activity in question.

At the same time, the adopted regulations should ensure a level playing field for entities exposed to comparable risks, irrespective of their legal status (Szpringer, Kasiewicz, Kurkliński 2013, p. 2). Therefore, alongside proportionality, consistency within the legal system is essential, understood as the requirement to avoid unwarranted discrepancies in the treatment of identical or legally comparable situations (Szczucki 2021, Art. 6, nb. 2). The same legal interests as regards the merits should not be treated differently by the legal system due to legally irrelevant criteria. The principle of equality before the law requires the prohibition of unjustified or arbitrary distinctions in legal treatment (Garlicki, Zubik 2016, art. 32, nb. 13).

In other words, the coherence of the legal system requires that legal loopholes cannot be exploited to circumvent the rules and benefit from unfair practices. In this context, a legal loophole refers to a regulatory gap that can reasonably be understood as unintended by the legislator (Supreme Court 2001). It should be noted that the assessment of whether we are dealing with a legally neutral issue or a loophole in the law depends on the knowledge of positive law and the axiological and teleological assumptions of the legislator.

Applying the above considerations to the market abuse law, it should be stated that the departure from the rules known from MAR under MiCA should be based on the principle of proportionality, i.e. it should be justified, generally speaking, by comparing the socio-economic costs of introducing the regulation to the benefits for market integrity and investor protection resulting from it. At the same time, the regulation may not be contrary to the principles of equality of legal entities in the substantive sense and the coherence of the legal system.

In the above context, three selected issues will be considered in turn – the material scope of MiCA and MAR, with particular emphasis on derivatives based on crypto-assets, the abandonment of the regulation of investment recommendations relating to crypto-assets, and the abandonment of the obligation to report transactions of persons performing supervisory functions (PDMR) within the structure of crypto-asset issuers.

4. Subject matter of MiCA and MAR

As previously indicated, MiCA applies exclusively to crypto-assets that do not qualify as financial instruments within the meaning of MIFID II. As a rule, only such value carriers fall within the scope of this regulation, and Title VI of MiCA does not provide any exception to this principle. They relate only to activities relating to crypto-assets admitted to trading or for which an application for admission to trading has been submitted (MiCA, Article 86(1)). Although the regulation covers transactions, orders and behaviours relating to crypto-assets regardless of whether they take place on a trading platform (MiCA, Article 86(2)), it does not, in principle and explicitly, cover financial instruments.

This interpretation is supported by recital 97 of the MiCA, according to which derivatives that qualify as financial instruments under MIFID II and whose underlying asset is a crypto-asset are subject to MAR when traded on a regulated market, MTF or OTF. On the other hand, crypto-assets within the scope of MICA, which are the underlying assets of those derivatives, should be subject to MiCA's market abuse rules. It is clear from the recital that financial instruments within the meaning of MIFID II are subject to the provisions of the MAR on the terms set out therein and are not subject to the MiCA regulation.

Pursuant to Article 2 of MAR, the material scope of this regulation has been indicated by reference to the concept of financial instruments and the place or admission to trading of them. MAR covers financial instruments that are traded on a regulated market, MTFs or OTFs, and in the case of the first two platforms – also instruments that are the subject of an application for admission to trading. MAR does not differentiate financial instruments by their type – its scope includes equity, debt and derivative instruments (Dybiński 2016, 1339). With respect to derivatives, MAR also applies when the security (e.g. CFD or CDS) is based on an underlying instrument that is the subject of organised trading or is subject to an application for admission to such trading (Article 2(1)(d) of MAR).

Therefore, it is reasonable to emphasize that a derivative instrument traded over the counter (i.e. an OTC instrument) does not fall within the scope of MAR unless it is linked to clearly defined underlying assets. These, in turn, in order to be considered for admission to trading on a regulated market, MTF or OTF, must meet the definition of financial instruments within the meaning of MIFID II (see MIFID II, Article 4(1)(21)–(23)).

5. OTC derivatives

Derivatives not traded on a regulated market, in an MTF or an OTF, the underlying of which are crypto-assets that are not financial instruments, are therefore not subject to MAR. Such a conclusion can be drawn from Article 2 of the MAR and follows, *a contrario*, from the wording of recital 97 of the MiCA.

To fully grasp the systemic and practical relevance of this thesis, it is necessary to return to the provisions of MiCA, with a narrowed focus on abuses involving the use of inside information. The prohibition of such conduct in the crypto-asset market is set out in Article 89(1) of MiCA. However, the scope of this provision is determined by the subject matter of the regulation set out in Article 2, as well as by the subject matter of its Title VI defined in Article 86. Consequently, this prohibition does not extend to conduct or instruments that fall outside the scope of MiCA.

A literal interpretation of Article 89(1) of the MiCA leads to an unequivocal conclusion that the submission, modification or cancellation of orders relating to financial instruments (including OTC derivatives) does not fall within the scope of this provision either. It only refers to the "acquisition" or "disposal", "direct" or "indirect" – of crypto-assets. Cancellation or modification of orders also applies only to these assets. Activities involving financial instruments, even if their underlying is a crypto-asset, are not covered by MiCA regulations.

On the basis of the above considerations, it should be concluded that investment behaviour related to OTC derivatives with crypto-assets as an underlying is not covered by either MiCA or MAR.

An entity holding inside information on crypto-assets may, without violating applicable regulations, enter into a transaction on OTC derivatives (e.g. open a position in a CFD contract), obtaining a profit resulting from the information asymmetry in relation to the other party to the transaction and, more broadly, other market participants. With regard to financial instruments, this situation is described in Recital 10, sentence 3 of MAR, according to which: " *Examples of where such instruments can be used for market abuse include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index the value of which depends on that share or bond".*

From the perspective of the *ratio legis* underpinning European financial market law, such a situation is unacceptable. The purpose of market abuse regulations is to ensure equality among all market participants, to eliminate information asymmetry, and to safeguard market integrity against practices whereby privileged access to information results in unfair, above-average gains. In the scenario at hand, an entity possessing inside information may knowingly exploit its privileged position to derive economic benefit.

Moreover, the literature on the basis of MAR indicates that the purpose of Article 2(1)(d) of this regulation is to counteract circumvention of the provisions (Mucha 2023, Article 2, nb. 15). The scope of application of this regulation is defined in the doctrine as "*broad, watertight and covering essentially all fields of possible market abuse*" (Stokłosa 2021, art. 2, nb. 2). In this context, it cannot be assumed that the lack of application of analogous rules in the crypto-asset market is justified in any way. From an economic point of view, there is an obvious analogy between profiting from abuse in this market and in the financial instruments market.

In particular, it must be emphasized that the exclusion of OTC derivatives – whose underlying asset is a crypto-asset – from the scope of the market abuse prohibition cannot be justified by reference to the principle of proportionality set out in Recital 95 of MiCA. Such an omission constitutes a direct violation of the principles of legal equality and systemic coherence.

The prohibition of insider trading is explicitly enshrined in the text of MiCA and, as such, does not represent a norm that is disproportionate to the specific characteristics of the crypto-assets market. Extending this prohibition to include OTC derivatives merely reinforces and complements the existing framework, rather than establishing a new legal construct, imposing an additional obligation, or introducing a more onerous requirement. On this basis alone, invoking the principle of proportionality to justify the exclusion of such instruments cannot be sustained.

Moreover, it should be emphasized that entities providing services related to OTC derivatives are required to hold the status of an investment firm (MIFID II, Article 5). As professional market participants, investment firms are obliged to implement technical and organisational measures for the detection and prevention of market abuse, as stipulated in Article 16 of MAR. Similarly, Article 92 of MiCA imposes analogous obligations on persons who professionally execute or facilitate

transactions involving crypto-assets. Accordingly, there is no basis for asserting that the absence of sanctions for the type of abuse in question reflects a legitimate application of the principle of proportionality.

In this context, the violation of the principle of equality lies in permitting insiders in the crypto-asset market to exploit inside information by taking positions in OTC derivatives. In contrast, entities engaging directly in transactions involving the underlying crypto-assets, thereby producing a comparable economic effect, are subject to legal sanctions. This unequal treatment is further evident when comparing insiders possessing information about crypto-assets with those holding inside information related to financial instruments, who are clearly subject to stricter regulatory constraints.

The nature of derivative instruments implies that the profit gained by an insider typically corresponds to a loss incurred by the counterparty to the transaction. In the case of many commonly used instruments, such as contracts for difference (CFDs), the counterparty is often the investment firm issuing the instrument, operating under the market maker model (KNF 2023). Lacking access to inside information, the investment firm permits the insider to enter into a transaction at a market price that appears appropriate at the time, but is in fact misaligned in light of the undisclosed information. This creates a clear information asymmetry, ultimately resulting in a financial loss for the investment firm once the information becomes public and the insider closes the position.

If the company hedges its exposure or uses other forms of execution of orders relating to OTC derivatives (e.g. *straight-through-processing*, STP), only the loss-incurring entity may change, but in each case the insider's profit must mean the loss of another market participant. This undermines the integrity of the legal system and poses a threat to the integrity and protection of investors for the financial market.

6. Lack of regulation of investment recommendations

Title VI of the MiCA Regulation does not provide for a separate regulation on investment recommendations in relation to crypto-assets, analogous to that contained in Article 20 of the MAR and the implementing regulations set out in RTS 2016/958. As a consequence, the publication of investment recommendations for crypto-assets is not subject to formal requirements, such as the obligation to disclose conflicts of interest, or substantive requirements, such as the general requirement to maintain the objectivity of the recommendations.

In light of MAR and RTS 2016/958, these obligations are justified by the information asymmetry faced by investors in the capital market, which creates a potential risk of abuse in the area of investment recommendations (Weber 2023, Article 20, nb. 4 and the literature cited therein). An investor relying on a recommendation does not have access to information about the circumstances of its author, and therefore

cannot properly assess their credibility or potential conflicts of interest. Owing to the authority or public recognition of the person issuing the recommendation, the investor may make decisions that they would not have otherwise made, potentially including the acceptance of a higher level of risk. For this reason, authors of recommendations are required to ensure their objectivity, clarity, and precision (RTS 2016/958, Recital 1).

In the context of crypto-assets, particular attention is paid to the role of social media in the dissemination of investment recommendations. This role is significantly more prominent than in the case of traditional financial instruments, which creates additional risks of abuse (ESMA 2025b, p. 6). Market practice concerning financial instruments has already demonstrated the need to issue a separate warning directed at entities publishing recommendations on social media (ESMA 2024), which confirms the significance of the problem in this area as well. However, the absence of equivalent requirements in MiCA makes it impossible to effectively address undesirable phenomena, such as non-transparent recommendations.

In the empirical literature, particular attention is given to the use of automated accounts (bots) in the dissemination of manipulative investment recommendations, especially as a component of *pump and dump* schemes (Nizzoli 2020). These accounts, often created *en masse* on social media platforms such as X and Telegram, are designed to artificially amplify investor interest and create the illusion of widespread popularity surrounding a given crypto-asset project.

The absence of specific requirements governing the content of investment recommendations – such as the obligation to disclose the identity of the author (RTS 2016/958, Article 2(1)) or the duty to distinguish facts from opinions and to indicate sources of information (RTS 2016/958, Article 3(1)) – significantly hampers efforts to prevent the dissemination of unreliable recommendations. In light of these existing rules applicable to financial instruments, the use of fictitious accounts to distribute purportedly authored recommendations misleads recipients regarding the identity of the author and may constitute unlawful conduct.

The only, albeit narrowly defined, limitation on the freedom to issue investment recommendations concerning crypto-assets is set out in Article 91(2)(c) of MiCA, supplemented by the example provided in Article 91(3)(c). These provisions address the dissemination of false or misleading signals regarding crypto-assets, including the publication of opinions in mass media following the acquisition of a position in those assets and profiting from the recommendation's impact without adequately disclosing a conflict of interest. It can be assumed that the normative scope of these regulations is generally confined to the most egregious forms of abuse – namely, deliberate falsehoods or manipulative conduct concerning crypto-assets.

In particular, the example set out in Article 91(3)(c) of MiCA does not encompass situations where a recommendation is made by a person acting on behalf of the asset holder but who does not personally hold a position in the crypto-asset concerned. This marks a key distinction from Article 20 of MAR, which adopts

a broader regulatory approach – the disclosure of a conflict of interest constitutes a positive obligation, irrespective of the legal or factual basis of the relationship. Where the entity issuing a recommendation concerning a crypto-asset is neither the issuer nor subject to specific obligations to shape the marketing message (see, for example, MiCA Article 7(1)(b)), a recommendation that does not fall under the prohibition in Article 91(2)(c) – i.e., it does not convey false or misleading signals – remains beyond the reach of regulatory scrutiny.

Given the difficulties identified in the literature with regard to determining the intrinsic value of many crypto-assets – which often fail to generate any predictable stream of cash flows – there is a significant risk that conduct highly problematic from the standpoint of investor protection and market integrity may fall outside the scope of market manipulation as defined in Article 91(2)(c) of MiCA. Extreme opinions expressed about crypto-assets, including those disseminated through automated means such as bots, will not be subject to sanctions unless they are demonstrably false or misleading. In light of the subjective and speculative nature of these assets – whose value is determined solely by supply and demand – there may be serious challenges in effectively operationalizing the relevant provision.

To conclude, the absence of comprehensive regulation regarding positive obligations related to investment recommendations for crypto-assets warrants critical assessment. The principle of proportionality cannot be invoked in this context – the provisions of Article 20 of MAR, together with RTS 2016/958, which apply to all investment recommendations (regardless of whether they are issued by professionals within the meaning of Article 3(1)(34)(i) of MAR), provide adequate and proportionate solutions. On the one hand, they offer effective safeguards against the widespread dissemination of unreliable recommendations via social media; on the other, they avoid imposing excessive administrative burdens on market participants. The absence of analogous provisions in MiCA is therefore unjustified.

7. Absence of Regulation on the Disclosure of Managerial Transactions

In the area of financial instrument trading, the obligation to report managerial transactions is governed by Article 19 of MAR. This provision applies to two categories of persons: those discharging managerial responsibilities within the issuer's structure and persons closely associated with them (MAR, Article 19(1)). These individuals are required to report transactions involving the issuer's shares or debt instruments, as well as, in particular, investments in other financial instruments that result in a comparable economic exposure (see RTS 2016/522, Article 10(2)).

The *ratio legis* of Article 19 of MAR is to ensure transparency in the activities of persons performing managerial functions. This provision serves as a preventive tool against market abuse, particularly insider trading (MAR, Recital 58). At the same

time, disclosed managerial transactions constitute a valuable source of information for market participants, offering insight into how the issuer's situation is perceived by its management. In this context, Article 19 functions as a mechanism for reducing information asymmetry (Kalss et al. 2021, p. 348). The aim of the regulation is to enable investors to make independent assessments of the significance of such transactions – particularly as to whether they may be interpreted as buy or sell signals.

In the context of the crypto-asset market, there are analogous grounds for introducing regulations governing the transactions of individuals holding managerial positions within the structures of crypto-asset issuers. Such individuals may possess inside information, and a reporting obligation could function as a form of social oversight over managerial activity. At the same time, this would align with the principles of transparency and accountability – values that constitute a kind of *idée fixe* within communities centered around distributed ledger technology.

This issue is particularly important given the widespread occurrence of *pump and dump* manipulation in the crypto-asset market, in which individuals holding key functions within the issuer's structure may be involved. The literature highlights that the anonymity characteristic of this market heightens investor vulnerability to such forms of abuse (Mirtaheri et al. 2021, p. 607). It can therefore be *prima facie* assumed that increased transparency in managerial transactions could help mitigate such practices. In particular, a sudden sell-off of crypto-assets by the issuer's executives may be perceived by market participants as a warning signal, suggesting that those with privileged information consider the asset to be overvalued and anticipate the onset of a "dump" phase.

On the other hand, it should be acknowledged that classic *pump and dump* schemes orchestrated via social media are often unrelated to any actions taken by the issuer of the crypto-asset. These schemes typically involve the artificial promotion of a selected asset by a coordinated group of individuals (Mirtaheri et al. 2021, p. 607), whose sole aim is to trigger a short-term, abrupt price movement, without any intention of pursuing a sustained strategy or long-term involvement with the asset. Notably, a common practice involves the organizer of the "pump" creating a group in an encrypted messaging application and notifying participants of the impending operation, initially without even revealing which asset the campaign targets (Constantino 2022, p. 3).

Attention should also be drawn to the temporal dimension of disclosure – specifically, the interval between the execution of a transaction and its public announcement. Under MAR, there is a considerable delay between these two events. The person subject to the reporting obligation must notify both the issuer and the competent authority without delay, but no later than three business days following the transaction (MAR, Article 19(1)). The issuer, in turn, has two additional business days from the date of receipt of the notification to make the information public (MAR, Article 19(3)). This mechanism – effectively a compromise between reducing information asymmetry and avoiding excessive administrative burdens – is

justifiable within the financial instruments market. However, it may be inadequate in the context of the crypto-asset market, which is marked by high volatility and rapid trading dynamics. In such a setting, disclosure received five business days after the transaction may lose its practical relevance. At the same time, significantly shortening this period could risk breaching the principle of proportionality by imposing unduly burdensome obligations on crypto-asset issuers.

Moreover, in the crypto-asset market, the signaling function is often performed by analytical tools that enable the monitoring of individual participants' holdings – an outcome made possible by the transparent and decentralized nature of distributed ledger technology. In this context, public keys assigned to individual wallets serve as identifiers. By analyzing the transaction history associated with a given key, it is possible to estimate the value of the assets held and, consequently, to identify market participants of significant influence (commonly referred to as "whales") whose investment decisions can have a measurable impact on market dynamics (Chernoff, Jagtiani 2024, p. 3). These entities may have no formal relationship with the issuer of a particular crypto-asset. Nonetheless, the observation of their investment activity carries an important signaling function for other market participants.

With respect to transactions conducted outside the main register of a given crypto-asset (i.e. off-chain transactions), such as those recorded in the internal books of custody service providers, MiCA imposes an obligation to implement mechanisms for the prevention, detection, and reporting of market abuse – specifically through the STOR (Suspicious Transactions and Orders Reporting) procedure (MiCA, Article 92(1)). While these obligations do not substitute for the traditional signaling function associated with the reporting of managerial transactions, they serve as an important complementary tool in the prevention of insider trading and market manipulation.

To conclude, imposing obligations on crypto-asset issuers and their management analogous to those set out in Article 19 of the MAR Regulation appears disproportionate. While such instruments may serve a specific signaling and preventive function, their effectiveness in light of the unique characteristics of the crypto-asset market is subject to legitimate doubt. These regulatory objectives could be pursued through alternative, less burdensome measures – an especially important consideration given that issuers of crypto-assets are often SMEs.

Summary

Title VI of MiCA constitutes a regulation of fundamental importance for establishing a stable and transparent legal framework governing the functioning of the crypto-asset market. Undoubtedly, the introduction of prohibitions on insider trading, the unlawful disclosure of inside information, and measures to counter market manipulation represent essential steps toward safeguarding investor interests and upholding market integrity.

While it is reasonable to acknowledge that not all mechanisms provided under MAR should be automatically extended to the crypto-asset market – given the distinct structure, dynamics, and composition of crypto-assets – it must be strongly emphasized that the omission of certain key areas significantly undermines the effectiveness of the adopted regulatory model. In particular, the absence of regulation concerning the OTC derivatives market based on crypto-assets appears to be an unacceptable oversight in light of the objectives pursued by anti-market abuse legislation.

An equally significant shortcoming is the absence of detailed regulations governing investment recommendations related to crypto-assets – an area which, as market practice demonstrates, can be exploited as a tool for manipulation, particularly within social media environments.

For these reasons, it should be concluded that although Title VI of MiCA represents a significant step toward establishing the legal legitimacy of the crypto-asset market, its selective and fragmented approach to specific market segments and communication practices risks undermining the effectiveness of the overall regulatory regime. A consistent and comprehensive implementation of anti-abuse objectives will require future revision and expansion of the framework – particularly in areas most susceptible to abuse.

It is necessary to bear in mind the risks associated with the potential overregulation of this nascent market, a concern explicitly acknowledged in selected recitals of MiCA. The adoption of an excessively restrictive approach, in particular through the full application of comprehensive normative frameworks analogous to those applicable to financial instruments (MIFID II, MAR) is unjustified. Regardless of the final shape of the regulatory framework, particular importance should be attached to investor education and to ensuring that investors are fully aware of the scale of risks they may face. While investors should retain the right to undertake risk, such a right must be preceded by reliable and adequate warnings regarding the potential threats involved.

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