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Digital Asset Capital Market Law: A New Discipline of Private Law[2]

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Abstract

The research objective of the publication is expressed in its content devoted to the general analysis of the solutions adopted in the draft regulation of the European Union on the digital asset market. The entry of this legal act into force will fill the so-called 'regulatory gap' as the digital asset sector is not regulated in the EU. The research approach has been determined by the subject of the legal analysis, namely the provisions of the proposed new EU regulation on the digital asset market. The study describes the proposed legal regulation and its systemic importance, as well as indicates the similarity of the proposed solutions to well-known legal institutions in the area of the capital market. The main theses are as follows: the proposed legal act will order the digital asset market in terms of law (firstly); the proposed legal act in terms of content is based on solutions provided for in the capital market law (secondly); the proposed legal act provides for legal institutions ensuring the so-called safety of trading (thirdly). The results should be considered original because the publication constitutes a pioneering study on the proposed legal act. With its entry into force (the date is unknown), a discussion on specific topics will begin in the science of law. Therefore, it is worth speaking up and evaluating the proposed regulation before the new law is passed. The cognitive value of the publication results from its pioneering nature, and the impact on social relations is significant. The digital asset market is developing extremely dynamically, and the interest in this sector is very high.

Keywords: MiCA Regulation, bitcoin, cryptocurrency, crypto-assets, capital market, crypto-asset capital market.

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Prawo rynku kapitałowego aktywów cyfrowych – nowa dyscyplina prawa prywatnego[3]

Streszczenie

Cel badawczy publikacji wyrażono w jej zawartości, poświęconej ogólnej analizie rozwiązań przyjętych w projekcie rozporządzenia UE w sprawie rynku aktywów cyfrowych. Wejście owego rozporządzenia w życie wypełni „lukę prawną", ponieważ sektor aktywów cyfrowych nie został jeszcze uregulowany w Unii. Podejście do badania zostało określone przez przedmiot analizy prawnej, tj. przepisy nowego projektu rozporządzenia UE w sprawie rynku aktywów cyfrowych. W pracy opisano proponowaną regulację prawną i jej znaczenie systemowe, jak również wykazano jej podobieństwo do znanych instytucji prawnych w obszarze rynku kapitałowego. Główne tezy artykułu przedstawiają się następująco: po pierwsze, proponowany akt prawny uporządkuje rynek aktywów cyfrowych pod względem prawnym; po drugie, pod względem zawartości proponowany akt prawny opiera się na rozwiązaniach przewidzianych w prawie dotyczącym rynku kapitałowego; po trzecie, proponowany akt prawny uwzględnia instytucje prawne, które zapewniają tzw. bezpieczeństwo obrotu. Wyniki badania należy uznać za oryginalne, ponieważ publikacja stanowi pionierskie studium projektu aktu prawnego. Wraz z jego wejściem w życie (data nieznana) w naukach prawniczych rozpocznie się dyskusja na konkretne tematy. Dlatego też warto się wypowiedzieć i ocenić proponowany akt prawny, nim zostanie przyjęta nowa ustawa. Wartość poznawcza niniejszej publikacji wynika z jej pionierskiego charakteru i ma ona znaczny wpływ na stosunki społeczne. Rynek aktywów cyfrowych rozwija się wyjątkowo dynamicznie i jest duże zainteresowanie tym sektorem.

Słowa kluczowe: rozporządzenie w sprawie rynków kryptoaktywów, bitcoin, kryptowaluta, kryptoaktywa, rynek kapitałowy kryptoaktywów.

[3] Badanie nie jest finansowane przez żadną instytucję.

Introductory Remarks

On 24 September 2020, a draft regulation of the European Parliament and of the Council on the digital asset market was announced. Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and Amending Directive (EU) 2019/1937 has not yet been adopted as binding law. With the entry of this act into force, the legal basis for a new sector of the capital market – the digital asset market – will crystallise. This momentous legislative event will entail numerous legal effects with significant consequences. The digital asset sector, which has been developing for a decade in practical terms, mainly related to the concepts of blockchain technology and digital currencies, the provision of exchange and currency exchange services, as well as the issuance of digital tokens will obtain a permanent legal framework of universal (pan-European) significance. Therefore, it is worth devoting some attention to this juridical phenomenon, first of all, in order to initiate a discussion and present basic and introductory reflections.

The Pre-legislative Stage

The digital asset market is twelve years old. This is a conventional limit, for which the development of the technological basis of the Bitcoin (BTC) digital currency within the so-called Satoshi Nakamoto Manifesto and the creation of the first Bitcoin block in January 2009 constitute the starting point. In the initial period, lawmakers – on a global scale – did not see the need to lay the regulatory foundations for this phenomenon of economic practice. It appeared and firmly established itself only as a result of the boom and a sharp increase in the Bitcoin exchange rate in 2017. Since then, the lawmakers have become more seriously interested in shaping the legal framework of the phenomenon, which was increasingly discussed.

Attempts to legislate the digital asset sector have been recorded in almost all legal cultures. A good illustration of the state of affairs is the study prepared at the request of the Institute of Justice in July 2019, entitled *Przegląd zastosowania technologii blockchain w wymiarze sprawiedliwości w wybranych krajach* [*A Review of the Use of*

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Blockchain Technology in the Justice System in Selected Countries].[4] Even then – two years ago – legislative activity was recorded in dozens of countries around the world, and only from the point of view of creating a legal framework for the use of the blockchain technology in the justice system. However, the lawmakers did not shy away from a more universal approach towards this issue, as evidenced by comprehensive legal acts (in alphabetical order, e.g. Belarus, China, Gibraltar, Lichtenstein, Malta, Monaco, the Russian Federation, Switzerland, Thailand), amendments to civil codes (in alphabetical order, e.g. the Russian Federation, Switzerland) and numerous special acts.[5]

Also in Poland, efforts were made to shape the legislative space related to the blockchain technology and the market of digital assets (mainly digital currencies from the point of view of issuance and trading). However, they were of an expert nature and took place among the cabinet work conducted under the aegis of the then Ministry of Administration and Digitization (nowadays: Ministry of Digital Affairs) of the Republic of Poland (since 2016, at the earliest), the Financial Supervision Authority and the National Bank of Poland (subsequently).

These efforts have resulted in the published speeches of consultation groups. Above all, one should mention several pioneering studies that precede the activities of the legislature and administrative supervision authorities. These include *Minimalne Standardy Bezpieczeństwa giełd bitcoinowych* [*Minimum Security Standards for Bitcoin Exchanges*],[6] *Leksykon pojęć na temat technologii blockchain i kryptowalut* [*Lexicon of Concepts on Blockchain and Cryptocurrency Technology*],[7] *Przegląd polskiego prawa w kontekście zastosowań technologii rozproszonych rejestrów oraz walut cyfrowych* [*A Review of Polish Law in the Context of the Use of Distributed Ledger Technology and Digital Currencies*],[8] *Kanon dobrych praktyk podmiotów rynku kryptowalutowego w Polsce* [*The Canon*

4 K. Zacharzewski, M.T. Kłoda, *Przegląd zastosowania technologii blockchain w wymiarze sprawiedliwości w wybranych krajach*, Warszawa 2019, document available on the website of the Institute of Justice, https://iws.gov.pl (access: 15.02.2021).

5 For more details, see above.

6 *Minimalne Standardy Bezpieczeństwa giełd bitcoinowych. Środowiskowe zasady dla rynku giełd kryptowalutowych w Polsce* (eleventh draft of 11 September 2016); document available on the website of the Polish Bitcoin Association, https://bitcoin.org.pl/dokumenty/ (access: 15.02.2021).

7 K. Piech (ed.), *Leksykon pojęć na temat technologii blockchain i kryptowalut*, Warszawa 2016, document available at: https://bitcoin.org.pl/dokumenty (access: 15.02.2021).

8 K. Zacharzewski, K. Piech (eds.), *Przegląd polskiego prawa w kontekście zastosowań technologii rozproszonych rejestrów oraz walut cyfrowych. Stanowisko Strumienia w sprawie kierunków ewentualnych prac legislacyjnych oraz działań regulacyjnych instytucji publicznych*, Warszawa 2017, document available at: https://bitcoin.org.pl/dokumenty (access: 15.02.2021).

of Good Practices for Cryptocurrency Market Entities in Poland][9] and *Podstawy korzystania z walut cyfrowych* [*The Basics of Using Digital Currencies*].[10]

When it comes to the activity of the UKNF (Polish Financial Supervision Authority) and the NBP (National Bank of Poland), speeches of a clear warning, preventive and educational nature deserve attention. These include mainly the joint statement of the National Bank of Poland and the Polish Financial Supervision Authority of 7 July 2017,[11] two independent statements of the Polish Financial Supervision Authority of 22 November 2017[12] and of 6 June 2018,[13] the position of the Polish Financial Supervision Authority of 10 December 2020,[14] and the warning of the Polish Financial Supervision Authority of 12 January 2021.[15]

Despite the propaedeutic commitment, which was so significant from the perspective of the substantial value, the assumptions submitted for discussion of draft legal acts were not formulated in Poland, though the decision-making bodies were aware of the need to create a regulatory framework for the digital asset sector. It can be said that the Polish legislator waited for solutions to come from abroad.

The Importance of the Proposed Regulation

The announced Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and Amending Directive (EU) 2019/1937 fills

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9 K. Zacharzewski, K. Piech, L. Wilczyński (eds.), *Kanon dobrych praktyk podmiotów rynku kryptowalutowego w Polsce. Rekomendacje dla rynku*, Warszawa 2017, document available at: https://bitcoin.org.pl/dokumenty (access: 15.02.2021).

10 K. Piech (ed.), *Podstawy korzystania z walut cyfrowych*, Warszawa 2017, document available at: https://bitcoin.org.pl/dokumenty (access: 15.02.2021).

11 Announcement of the National Bank of Poland and the Polish Financial Supervision Authority on Virtual Currencies of 7 July 2017, document available at: https://www.knf.gov.pl/komunikacja/komunikaty (access: 15.02.2021).

12 Announcement of the Polish Financial Supervision Authority on Initial Token Offerings (ITOs) or Initial Coin Offerings (ICOs) of 22 November 2017, document available at: https://www.knf.gov.pl/komunikacja/komunikaty (access: 15.02.2021).

13 Announcement of the Polish Financial Supervision Authority on the Functioning of Exchanges and cryptocurrency exchange offices of 6 June 2018, document available at: https://www.knf.gov.pl/komunikacja/komunikaty (access: 15.02.2021).

14 Position of the Polish Financial Supervision Authority on the Issue and Trading of Crypto-assets of 10 December 2020, document available at: https://www.knf.gov.pl/komunikacja/komunikaty (access: 15.02.2021).

15 Warning of the Polish Financial Supervision Authority on the Risks Associated with the Acquisition and Trading of Crypto-assets (Including Virtual Currencies and Cryptocurrencies) of 12 January 2021, document available at: https://www.knf.gov.pl/komunikacja/komunikaty (access: 15.02.2021).

the so-called 'regulatory gap'. The mere fact of adopting law on digital assets will contribute to solving significant practical problems related to the tendency of Polish entrepreneurs from the digital asset sector to 'escape' beyond the scope of Polish law. Apart from the reduction of tax revenues of the State Treasury, the result of entrepreneurs choosing to have their headquarters abroad is excluding the jurisdiction of Polish courts. From the point of view of an individual 'investor' who 'invested' their money in digital currencies by using the services of an intermediary (an exchange, an exchange office or a trustee), this creates serious problems at the stage of a claim assertion.

Standard situations include, unfortunately, examples where the 'investor', after several clicks on a website, transfers funds to an account of a foreign intermediary (e.g. from Estonia), whose founder (beneficial owner) is based in another country (e.g. in Bulgaria), and the funds go through an account of a settlement agent in yet another country (e.g. in the USA) and finally go to the intermediary's bank account kept by a bank based in another country (e.g. in Malta). Such a configuration of the subject architecture of services provided in the digital asset sector is obviously the result of the pathological impact of the lack of legal regulations. The proposed EU regulation, by the mere fact of the expected entry into force and filling the 'regulatory gap', will put this sphere in order because entrepreneurs from the European Union's Member States will be able to conduct legal activity in the digital asset sector by choosing to have their headquarters in their home country.

This is because the requirements of doing business in the digital asset sector will be geographically aligned. It is therefore worth emphasising that the benefit of the perspective of regulating the digital asset sector is the unification of the law throughout the European Union. The rules for doing business in the digital asset sector and investing in digital assets will become transparent and uniform. The unification of the conceptual grid and principles of business activity conducted by entrepreneurs from the digital asset sector is one of the far-reaching advantages of this solution. The entire sector (all entrepreneurs and their customers) will obviously benefit from it because it will be subject to uniform supervision based on uniform licensing and control assumptions; the network of services will be given a uniform shape, which will entail typification of the obligatory basis for the performance of activities by entrepreneurs (professionals) for the benefit of 'investors' (consumers).

As a result, in the entire European Union, pursuing claims against entrepreneurs will be based on analogous legal grounds in the form of regulations on the provision of services provided for in the proposed EU regulation. Administrative supervision will also be unified. After the draft legal act enters into force, the supervisory authorities will obtain a normative basis for exercising administrative powers.

From the public law perspective, one of the most important consequences of implementation of the proposed law will be the – loudly postulated, also in Poland – creation of the basis for a clear distinction between legal and illegal activities.[16] Entrepreneurs who have met the requirements provided for in the proposed regulation will operate in the legal sphere. Going further, the new regulations will also enable effective prosecution of perpetrators whose *modus operandi* ranges from common fraud (keeping someone else's funds entrusted to acquire digital assets) to sophisticated acts of financial engineering (e.g. as part of a so-called financial pyramid or as part of the issuance of a digital currency wholly controlled by its issuer).

A New Sector of the Capital Market – A New Discipline of Private Law

The proposed EU regulation will be abbreviated as the 'MiCA Regulation' (Market in Crypto-assets). When transcribed into Polish, the literal wording of the title of the proposed legal act and the subject of the regulation is not very fortunate due to the negative semantic connotations of the prefix *crypto-* (suggesting associations with secrecy). In fact, it is about the 'cryptographic' element as the technological pedestal of digital currencies, which is generally clear but needs to be highlighted. In my opinion, the phrase 'digital assets' is more appropriate and justified from numerous points of view, which also should affect the title of the act, dedicated to the digital asset market. However, one will simply have to get used to the literal translation of the title word – *crypto-assets*.

In terms of its content, the proposed EU regulation is complete, internally consistent and properly formed from the point of view of the principles of legislative technique. The statutory matter covers the regulation of the subject of trade (digital assets) and legal actions performed by persons under civil law and providing for the duty to perform an obligation expressed in the form of a digital asset (issuing activities and brokerage services), as well as the sphere of public law activity in the field of licensing and sanctioning.

As a regulation laying the legislative foundation for a unified complex of legal relations, the proposed legal act, upon entry into force, will become the normative basis for a new sector of the capital market – the digital asset capital market. It will also give a name to a new legal discipline – digital asset capital market law. It results

[16] See in this respect, monitoring illegal activities by the Polish Bitcoin Association, https://bitcoin.org.pl/ (access: 15.02.2021).

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from the subject of the proposed regulation and the method of comprehensive regulation of legal relations of a certain type.

In terms of location in the legal system, the digital asset capital market will be kin of other well-known segments of this area of modern capitalism – the stock market, the bond market, the derivative rights market, the crowdfunding market (quite recently regulated at the EU level[17]), the commodity market (mainly the energy market) or the money market. The legal regulation of the equity capital market, the bond capital market, the derivative rights capital market, etc. is a model basis for the legal regulation of the digital asset capital market, as one can see when reading the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and Amending Directive (EU) 2019/1937.

Subject of the Regulation of the Draft MiCA Regulation

The subject of the proposed regulation includes definitions of basic terms, which is important from the perspective of its application because the conceptual grid covers the regulation of three basic categories of digital assets – payment tokens, investment tokens and utility tokens (Article 3(1)(3–5) and Article 4 to Article 31 of the proposed MiCA Regulation; hereinafter referred to as: the MiCA Regulation). Regulations of specific institutions are based on this classification system.

There are separate issuer-licensing and service provider-licensing requirements for each digital asset class that are consistently graded. The most stringent regulatory requirements (capital, organisational, legal, personal) will accompany the issuance and circulation of payment tokens, which is clear because they are, in fact, electronic money. Less onerous restrictions will be applied to the issue of investment tokens, equated with the phenomenon of tokenisation of equity entity rights (e.g. shares in joint-stock companies pursuant to Article 328^1 §3 of the Polish Commercial Companies Code) and shares of commercial partnerships and capital companies, including simple joint-stock companies, pursuant to Article 300^{31} §3 of the Polish Commercial Companies Code, rights of an obligatory nature (e.g. claims of a bondholder) and rights of an absolute nature (ownership and possession). The smallest load of ties was provided for the issue of utility tokens, identified – signi-

[17] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 European Crowdfunding Service Providers for Business, and Amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, Journal of the European Union of 20 October 2020, L 347, p. 1.

ficantly simplifying – with vouchers confirming the obligation to provide services (Article 921[15] of the Polish Civil Code).[18]

This is how the model was shaped. The model filled with regulation of specific legal institutions. They belong to the domain of public (administrative and criminal) law and private (civil) law. The basis for an entrepreneur's activity in the digital asset sector will be an administrative decision including a permit. Violation of the principles of conducting business activity provided for in the proposed regulation will be sanctioned at the administrative level (as an administrative tort) and at the criminal level (as a crime). The very provision of services to customers by entrepreneurs will be the subject of an obligatory relationship, the source of which will be derived from the concluded contract.

Dogmatic References

The generally positive assessment of the proposed MiCA Regulation is influenced by the noticeable degree of the use of known legal solutions by the EU legislator. This general reflection covers virtually all the detailed legal institutions provided for in the draft regulation. In essence, they are comparable with the institutions of capital market law and consumer protection law known today. Without being tempted to perform a detailed analysis of individual solutions (because the publication has a different purpose), one should pay attention to the most significant similarities of the proposed legal institutions and legal institutions well known today. The starting point for comparisons will be the provisions of the Polish law.

Firstly, licensing under the provisions of the MiCA Regulation shows clear similarities to the model of licensing activities in the organised trading of financial instruments. The MiCA Regulation, the Act on Public Offering[19] and the Act on Trading in Financial Instruments[20] share analogies.

In particular, the procedure for licensing the issuance of tokens of various normative categories and the licensing procedure for entrepreneurs providing services in digital asset trading were created identically in terms of models (though – obviously – with different details). The licensing model is based on the obligation

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18 Cf. R. Adamus, *Komentarz do art. 921(15)*, [in:] M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczególna (art. 765–921(16))*, Warszawa 2018, LEX.

19 Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and on Public Companies (Journal of Laws of 2019, item 623, as amended); hereinafter referred to: as the APO.

20 Act of 29 July 2005 on Trading in Financial instruments (Journal of Laws of 2020, item 89, as amended); hereinafter referred to as: the ATFI.

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to have a permit to perform the indicated activities, regulation of the content of the application and mandatory requirements constituting the premise for granting the permit, as well as the provisions of the procedure.

Secondly, the issuance of digital assets under the provisions of the MiCA Regulation shows clear similarities to the regulation provided for in organised trading in financial instruments. The MiCA Regulation and the Act on Public Offering share analogies.

The principle is that no issuer of asset-referenced tokens and no issuer of electronic money tokens (Article 15(1) and Article 43(1) of the MiCA Regulation) can offer such tokens to the public in the European Union or apply for admission of such assets to trading on a cryptographic asset trading platform if they fail to meet the prescribed licensing requirements.

The catalogue of the token issuance license requirements under the MiCA Regulation includes, *inter alia*, approval by the administrative supervision authority of the information document (the so-called white paper) submitted by the issuer together with the application for the permit, a public announcement (publication) of the information document by the issuer and the issuer's obligation to publish current information. The MiCA Regulation provides for liability for damages incurred by investors in connection with the token issuer's failure to fulfil the disclosure requirements (Article 22 and Article 47 of the MiCA Regulation).

Thirdly, the provision of services under the provisions of the MiCA Regulation has clear similarities to the regulation provided for in organised trading in financial instruments. The MiCA Regulation and the Act on Trading in Financial Instruments share analogies.

In fact, in the case of the provision of digital asset trading services, one is dealing with brokerage services provided by investment companies. Without going into details, it is possible to firmly confirm the structural and legal similarity of the obligation relationship in both regulatory areas. Custody and administering crypto-assets on behalf of third parties (Article 3(1)(9)(a) of the MiCA Regulation) are the equivalent of a brokerage activity consisting of storing or registering financial instruments, including maintaining securities accounts (Article 69(4)1 the ATFI). Operating a crypto-assets trading platform (Article 3(1)(9)(b) of the MiCA Regulation) is the equivalent of a brokerage activity consisting of running an ATS or running an OTF (Article 69(2)(8–9) of the ATFI). Execution of orders on behalf of third parties (Article 3(1)(9)(e) of the MiCA Regulation) is the equivalent of a brokerage activity consisting of the execution of orders on behalf of the principal (Article 69(2)(1) of the ATFI), while accepting and transmitting orders on behalf of third parties (Article 3(1)(9)(g) of the MiCA Regulation) is the equivalent of a brokerage activity consisting of accepting and transmitting orders to buy or sell

financial instruments (Article 69(2)(1) of the ATFI). In addition, the service of providing advice on cryptographic assets (Article 3(1)(9)(h) of the MiCA Regulation) is the equivalent of a brokerage activity consisting of investment advice (Article 69(2)(5) of the ATFI).

Fourthly, the regime of protection of the buyer of digital assets (consumer, 'investor') under the provisions of the MiCA Regulation is unquestionably similar to the regulation provided for in organised trading in financial instruments. The MiCA Regulation and the Act on Trading in Financial Instruments and – interestingly – the Act on Consumer Rights share analogies.[21]

The protection regime of the buyer of digital assets includes, *inter alia*, detailed disclosure requirements for issuers (e.g. Article 5(5)(d) of the MiCA Regulation), prevention requirements for issuers provided for in Article 23 of the MiCA Regulation (the so-called MiFID requirements) and the normative prohibition of issuers and service providers from using a conflict of their own interests with the interests of token buyers (Article 28 and Article 65 of the MiCA Regulation). The unequivocally emphasised pro-consumer element also includes the right of the 'investor' (consumer) to withdraw from the contract for the purchase of tokens within 14 days without incurring costs and giving a reason (Article 12 of the MiCA Regulation), which suggests a direct association with the regulation on withdrawal from the contract concluded remotely within 14 days, as provided for in Article 27 of the Act on Consumer Rights.

Fifthly, the proposed MiCA Regulation also provides for a regulation to prevent abuse on the digital asset market. In this case, there are analogies between the MiCA Regulation and the MAR Regulation.[22]

The preventive regime in this respect consists mainly of the obligation to disclose confidential information immediately (Article 77 of the MiCA Regulation), the prohibition of using confidential information before it is made public (Article 78 of the MiCA Regulation), the prohibition of unlawful disclosure of confidential information (Article 79 of the MiCA Regulation) and the prohibition of crypto-asset market manipulation (Article 80 of the MiCA Regulation).

The prohibition of using confidential information by persons who have privileged information, which is regulated in the draft MiCA Regulation, is an equivalent of the legal institution of the prohibition of using confidential information by

21 Act of 30 May 2014 on Consumer Rights (i.e. Journal of Laws of 2020, item 287 as amended).

22 Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on Market Abuse (Market Abuse Regulation) and Repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directive 2003/124/EC, 2003/125/EC and 2004/72/EC, Official Journal of the European Union of 12 June 2014, L 173, p. 1.

persons who have privileged information, which is provided for in Articles 7–10 of the MAR Regulation. On the other hand, the legal institution of prohibiting manipulating the exchange rate of tokens is equivalent to the legal institution of prohibiting manipulating the exchange rate of financial instruments provided for in Article 10 of the MAR Regulation.

The Meaning of the MiCA Regulation in the System of the Polish Law

With the entry of the proposed EU regulations into force, the phase of hesitation accompanying the circles deciding on the shape of the Polish digital asset law will end. Government circles (mainly ministries responsible for digitisation and finance), supervisory authorities (Polish Financial Supervision Authority, Office of Competition and Consumer Protection), central banking (NBP) and more active parliamentary groups will be able to abandon styled as serious (declarative) attempts to create original Polish law on legal relations with the blockchain technology element and digital assets. Expectations for solutions from abroad will be put to an end when the digital asset law becomes a legislative fact.

Due to the comprehensive systemic anchors of the European regulation on the digital asset market law among national regulations of the capital market law, it will be possible – on a pan-European scale – to rely on the current achievements of particular legal systems. This applies equally to the doctrinal achievements and the assessment of the legal effects of legal actions performed by the judicial authorities. In the case of the Polish law, in relation to the digital asset capital market law, the current rich legacy of capital market law (stock market law) will remain valid to a large extent – in the field of licensing,[23] issuing activities,[24] conducting

[23] See e.g.: P. Wajda, *Komentarz do art. 25 Ustawy o obrocie instrumentami finansowymi*, [in:] M. Wierzbowski, L. Sobolewski, P. Wajda (eds.), *Prawo rynku kapitałowego. Komentarz*, Warszawa 2019, pp. 675 et seq.; T. Sójka, *Komentarz do art. 25 Ustawy o obrocie instrumentami finansowymi*, [in:] idem (ed.), *Prawo rynku kapitałowego. Komentarz*, Warszawa 2015, LEX.

[24] See e.g.: M. Kuźnicka, M. Marczuk, *Komentarz do art. 27 Ustawy o ofercie publicznej*, [in:] M. Wierzbowski, L. Sobolewski, P. Wajda (eds.), op. cit., pp. 71 et seq.; A. Chłopecki, M. Dyl, *Ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych. Komentarz*, Warszawa 2014, LEX.

brokerage activities[25] and imposing sanctions.[26] From this point of view, the interpretation and application of the provisions of the MiCA Regulation should not pose a major conceptual problem.

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