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di Economia



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Delving into Non-Fungible Tokens: new legal challenges on the horizon Is Legislation Keeping up with the Pace of Digital Innovation?

Esra Kadija

MSc Student in Finance

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Abstract

Financial services nowadays are increasingly being reshaped by the rise of FinTech, becoming more customer-centric services. FinTech products do not only present unique opportunities, but they also involve new risks. These products, in particular crypto assets and currencies, have captured the attention of more and more individuals and entrepreneurs in the market. In addition, they are affecting customers, financial institutions, and the financial system as a whole. From the regulatory front, this poses rewards and challenges.

In this research we refer to the market for non-fungible tokens, transferrable and unique digital assets on public blockchains, that have received widespread attention and have experienced strong growth since 2020. We try and give a brief overview of the main legal aspects of non-fungible tokens (NFTs). We first highlight NFT features, pros and cons, benefits and limitations, before delving into the European legislative framework that might cover and regulate NFTs.

Key words: NFTs, non-fungible tokens, AMLD5, crypto-assets, EU legislators, MiCA, MiFID, digital innovation, FinTech

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Introduction

Nowadays, we cannot deny the fact that financial technology (Fintech) is a relevant reality in the financial services world since firms are using more and more technology-based systems to provide both innovative and cheaper financial services directly to clients. It is a particularly rapid growing sector and has *increased interest at political level*. Fintech products not only boost innovation and present unique opportunities, but they also involve new risks. These products, in particular crypto assets and currencies, have captured the attention of more and more individuals and entrepreneurs in the market. In addition, they are affecting customers, financial institutions, and the financial system as a whole. From the regulatory front, this poses rewards and challenges.

With this research we focus on the non-traditional financial services since they are relatively new in the sector and have gained importance in the world of digital assets. In particular, we delve into the world of crypto assets, with specific interest on **non-fungible tokens** (NFTs). Therefore, we study what steps the legislators are taking and have taken to guarantee consumer protection and financial stability with respect to the new mechanisms and opportunities that these products have introduced into the market.

Although institutions at European and International level are defining more rules in the field of financial services, many areas and subjects are left out of their scope and each Member State can choose to apply individualised or less strict rules at national level, for instance in the case of virtual currencies. This can result in either a **fragmented environment** preventing businesses from expanding across borders or creating an uneven playing field and arbitrage opportunities.¹

To this day, few research exists in the field of non-fungible tokens, and more light needs to be shed on the nature and the mechanisms of these products. But it is known that fintech is not sufficiently regulated: legislators are facing challenges, aiming to address a wide range of regulatory objectives and policy priorities to ensure a safe environment for the development of the fintech world. Thus, the question is: will regulation be able to keep up the pace of financial innovation?

First, we start introducing what non-fungible tokens are, where they come from and what are their features. We then go through the relative legislation that encompasses crypto-assets and in particular, find out whether NFTs are covered by the existing legislation (MiFID, Anti-money laundering Directive) or if they will be covered by future legislative proposals such as the MICA Regulation.

What are NFTs?

The term token can mean different things depending on the context within which it is used, but in general tokens do represent assets: a token is typically something that represents some form of value to the owner or recipient. In cryptocurrency terms, a token is used to describe all crypto assets, that run on a cryptocurrency blockchain. They can be associated to the idea of a stock exchange share: they are a certificate where the rights associated to the asset are listed, even though there exist certain tokens that do not attribute rights. NFTs, in particular, fall within the broader trend of “tokenisation”: this trend consists in digitalising assets or rights on a distributed ledger, such as a blockchain. NFTs are digital crypto assets, which are on blockchains, or more specifically they are defined as the “cryptographically encrypted form of the asset or right”, created on a distributed ledger which embodies information regarding its issuance, value and circulation. In the first place, we need to differentiate between tokens that are non-fungible and those that are fungible, explaining first the concepts of fungibility and non-fungibility. An asset is fungible when there is the possibility of replacing it with an identical one, in terms of quality and quantity, which means it is interchangeable. For instance, fungible assets are money, wheat, a barrel of oil and so on. On the other hand, an asset is non-fungible when such substitution for an identical item is not possible, given the intrinsic characteristics and individuality of the good itself. It cannot be replaced by other assets of the same type. Examples are a work of art, a house, a diamond etc. These same concepts can be applied to tokens: there are fungible tokens which are equal to every other of its kind and can be traded or exchanged for another fungible token of the same kind. The most known example of fungible token is a bitcoin: every bitcoin represents the same value and can be replaced by another bitcoin with no loss of value. At the same time, there exist also non-fungible tokens (NFTs) which are indivisible and unique, and as the name suggests, they are characterised by non-fungibility and non-interchangeability. They cannot be exchanged precisely because of their uniqueness and different features: each of them consists of information and data that cannot be replicated and that differentiate it from any other NFT, thus making it irreproducible. NFTs act as contracts which implement a certificate of authenticity and ownership associated with a certain digital or physical asset and they have been linked to digital passports thanks to the nontransferable identity to distinguish it from others. After creating an NFT, a process called “minting” ensures that the NFT cannot be duplicated or divided. As a result, the NFT remains one of a kind, and so does the corresponding underlying asset or right. Under this system, uniqueness and scarcity can be artificially created even for purely digital objects.

Table 1 – Features of NFTs

Uniqueness: NFTs are unique and/or represent a unique object (digital or physical), which can be unequivocally associated with a user
Indivisibility: They cannot be split up into parts
Non-fungibility/non-interchangeability: They are not fungible and not replicable

To this day there is no specific standard available to represent all types of non-fungible tokens: this could become a challenge (if it is not already the case) since NFTs are not tied to any specific blockchain.

In general, following the functional taxonomy identified by European Union authorities in relation to crypto assets, we define the following categories of tokens: What are NFTs

- *Asset tokens*, which represent a specific right over a tangible or intangible asset.
- *Utility tokens*, which provide the holders with a right of access to certain goods and services, thus having exclusive access to functionality within a blockchain platform.
- *Security tokens*, which represent ownership of an asset and grant to the holders similar rights to those of financial securities in terms of economic function. In fact, these tokens include bonds, shares, derivative instruments and financial instruments at large.
- *Payment tokens*, which are like cryptocurrencies meaning they have the sole function of exchange. They are not linked to underlying business projects, but they function as an accepted means of payment on a consensual basis. Examples are bitcoin, monero, tether etc.

With respect to this taxonomy, NFTs represent an evolution of the physical ownership of a specific asset. The rationale behind NFTs is not moving wealth at first place, but creating the concept of uniqueness, confer a sense of scarcity and thus of economic value, related to a specific underlying asset.

NFTs can be used to create verifiable digital ownership, authenticity, traceability and security, which can be easily exploited in different sectors and activities. We can mention crypto art, online games, patents and intellectual property rights, real estate and so on.

It is important to consider the legal status of such tokens because NFTs are traded globally since distributed ledger technology (DLT) platforms operate beyond borders, and to this day they are

subject to different regulatory frameworks and jurisdictions across different countries, giving rise to *fragmentation* in the legal framework.

The following parts of this research aim at providing a general overview on how NFTs are considered from a law perspective, particularly in the European Union.

Why are non-fungible tokens important?

Non-fungible tokens have risen rapidly since 2020 and have become one of the most popular applications in the Fintech field. The size of the NFT market remained stable until mid-2020, with an average daily trading volume of \$60,000. Since July 2020, the market has experienced rapid growth, with the total daily volume exceeding 10 million in March 2021, thus becoming 150 times larger than it was 8 months earlier (Dowling M., “Pricing non-fungible tokens”, 2021).

As we previously anticipated, NFTs represent an *evolution* over the relatively simple concept of cryptocurrencies. The most obvious benefit of NFTs is **market efficiency**: the conversion of a physical asset into a digital one removes intermediaries and makes processes run more smoothly. If we think about the art world, NFTs representing digital or physical artwork on a blockchain removes the need for agents and allows artists to connect directly with their audiences.

Non-fungible tokens can also **democratise investing** by partitioning physical assets, like real estate for example. NFTs do offer the ability to “fractionalise” ownership of the underlying asset, which means to split ownership so that each purchaser of an NFT benefits from the underlying asset in proportion to the fraction they own. This is why we talk about the potential possibility of democratising ownership of assets that have traditionally been viewed as inaccessible. It becomes much easier to divide a digital real estate asset among multiple owners than a physical one. However, the tokenisation trend is not limited with real estate only, but it can be extended to other assets such as artwork. For instance, a painting or a sculpture are not necessarily owned by a single owner: the artwork’s digital equivalent can have several owners, and each is responsible for a fraction of the painting. These kind of arrangements can increase the artwork’s worth and economic value (R. Sharma, 2022).

The most interesting opportunity created by NFTs is related to the **creation of new markets and forms of investments**. Consider a piece of real estate, fractioned in multiple divisions, where each contains different features and property types. Depending on its characteristics, each piece of land is unique, priced differently and represented with an NFT. Therefore, even a

complex and bureaucratic activity as real estate trading can be simplified by incorporating relevant metadata into each unique NFT.

How do NFTs generate revenue?

NFTs' relevance in the digital space to this day is undeniable, but they are also related to the physical world since they have the potential to digitise unique physical assets, such as physical artwork as we mentioned before, allowing in theory these assets to be bought, sold and traded more efficiently. All physical assets could be tokenised either as fungible or non-fungible tokens. Many businesses have tokenised several assets including iconic images, entertainment and sports highlights, music albums, gaming and digital content using NFTs.

They can enable the *efficient commercialisation of unique assets* that otherwise would be difficult to sell or prove ownership of. They can also enable the creation of entirely new digital product lines and revenue streams.

A digital asset such as a video or digital photograph can be linked to a finite number of NFTs. The sale of such NFTs creates a whole *new revenue stream*. An artist could also sell an NFT linked to a digital version of a physical asset, for instance the image of a painting or sculpture, to one buyer, while selling the physical work itself to another buyer as an additional opportunity to profit. NFTs have opened the door to artists and content producers further commercialising their work in a digital environment. The first story of success of NFTs was the so-called Beeple case, relating to the digital collage by the artist Mike Winkelmann (known as Beeple). The NFT was sold for almost 70 million dollars, meaning this crazy amount of money was the price paid for the token, testifying the ownership, thus not for the digital artwork itself! Nonetheless, Winkelmann himself said that he views NFTs as the next chapter of art history, and as the new way in which digital art will be acquired and traded going forward.

As NFTs may represent either digital or physical underlying assets, they open up huge opportunities for monetisation in the creative sector, in sports, gaming and fashion sectors. Thanks to NFTs the provenance and traceability of assets is much easier to prove, making assets as digital works of art easier to buy, sell and trade, broadening access to new asset classes.²

² Clifford Chance , Ballon D. et al., "Non-fungible tokens: the global legal impact", June 2021

These tokens have become so popular in recent times also because of some exogenous variables, and one of these is the ongoing race for returns: the search for new asset classes to invest in to generate further returns. Given the excitement around NFTs, there are also some limitations.

- *Price*: prices of NFTs today are driven by hype and speculation, rather than the inherent value of the underlying piece of art. These days, possessing certain types of tokens confers a certain status and reputation only because of the value of the token itself.
- *Safety*: NFTs which use blockchain technology just like cryptocurrency are generally secure. One security risk for NFTs is that you could lose access to your non-fungible token if the platform hosting the NFT goes out of business. If access to your wallet is compromised, a user can have their NFTs stolen, with no way of retrieving them.
- *Last mile problems*: we can verify who owns an NFT, but not who created the initial asset that was converted to NFT. An example is the case where artists discover that their works are being turned into NFTs without their permission (abc.net, 2021).

A global issue: what are regulators doing?

Non-fungible tokens bring up many legal implications that include, among others, intellectual property, contractual and consumer protection issues. It is critical to understand the legal and regulatory issues before deciding whether to issue, purchase or deal in NFTs. Most jurisdictions have not yet developed legislation or regulations specifically applicable to NFTs, and there is very little global regulatory guidance as to whether NFTs fall within the perimeter of existing regulation applicable to crypto assets. This will depend on the token's characteristics and features, the activities performed in respect of such token, and the territorial scope of the particular regulatory framework. Therefore, there is currently no unique legal definition of NFTs on a European level. In the absence of such unique definition, there is no harmonised regulatory regime across the EU member states applicable to NFTs, their issuance, exchange, custody etc.³

³ "NFT: Cross border perspectives on unprecedented regulatory challenges", 2022, Chiomenti, Cuatrecasas, Gide, Gleiss Lutz

Regulatory regimes vary significantly globally, so it will be necessary to analyse the regulatory position in each jurisdiction where the NFT is issued, marketed and where key participants are based.

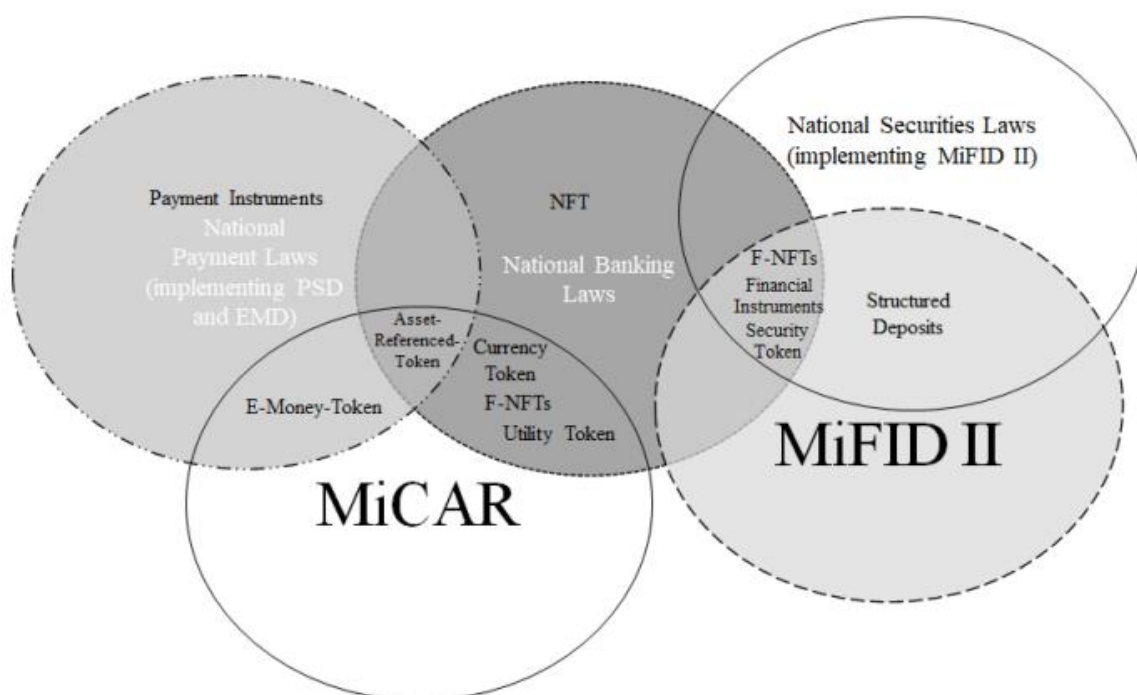
With the current legislation in force though, NFTs do not qualify as securities. In fact, in order to qualify as a security, an NFT should be tradeable, and thus must be transferrable to a third party, and with a certain degree of standardisation, therefore NFTs fall out of scope of the definition of security.

It really depends on the *function* of the NFT, so the economic function of the contract, which can also be mixed. There are debates on whether the NFT could be categorised as a financial product in certain cases or not, because the definition of “financial product” does not ask for standardisation, as instead the definition of “financial instrument” does.

The European approach: MiCAR and MiFID II

To this day NFTs are not specifically regulated in the European Union. However, the features of any proposed NFT issuance would need to be considered alongside various existing regimes, such as in relation to securities, electronic money and crowdfunding, to ensure that these regimes are not triggered (Clifford Chance, 2021).

Figure 1 - The relevant regulatory framework



Source: EU Blockchain - Observatory and Forum

On September 2020, the European Commission adopted a digital finance package that includes the legislative proposal of the *Markets in Crypto Assets Regulation (MiCA)*, which proposes to regulate what is currently defined as out-of-scope crypto assets and their service providers under a single licensing regime. MiCA is anticipated to be effective by 2024 and will apply to any person issuing or providing crypto asset services across all member states, as well as to any firm that is not established in the European Union that seeks to trade in EU member states. The MiCA proposal includes regulations that would apply to NFTs in certain cases and defines for the first time in the EU a crypto asset as a “digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology” (Art. 3 para. 1 no. 2 MiCAR).

The MiCA Regulation has the purpose of providing legal certainty and instilling appropriate consumer and investor protection levels, financial stability, and market integrity to a growing, innovative and previously unregulated market, without posing obstacles to the application of new technologies. Specifically, what the MiCAR aim to regulate is:

- The public offerings of crypto assets,
- The admission of crypto assets to trading on a trading platform
- The licensing of crypto asset service providers (CASPs)
- The implementation of market abuse rules for crypto asset businesses.

In the proposal, we can distinguish three main categories of tokens which are asset-referenced token, e-money token and other crypto assets, with different requirements regarding licensing and operations of issuers.

NFTs would likely fall into the category of *other crypto assets*, thus crypto assets that are not asset-referenced nor e-money tokens. For the issuers of “other crypto-assets”, there are no specific licensing obligations, but they are required to be a legal entity and to comply with certain governance and business conduct requirements (Art. 13 of MiCA Proposal). In addition, the Proposal exempts issuers of “crypto-assets that are unique and not fungible” from the requirement to publish a white paper for public offerings.

Therefore, under the current draft of the MiCA, NFT issuers will fall out of scope of the licensing obligation and will most likely be exempt from the requirement to draft, notify and publish a crypto-asset white paper at the time of an Initial Coin Offering, as this requirement will not apply to non-fungible tokens. However, certain requirements still apply to NFT issuers: they will be required to be a legal entity (which may be established outside the EU). Additionally, they will have to comply with a number of business conduct and governance requirements.

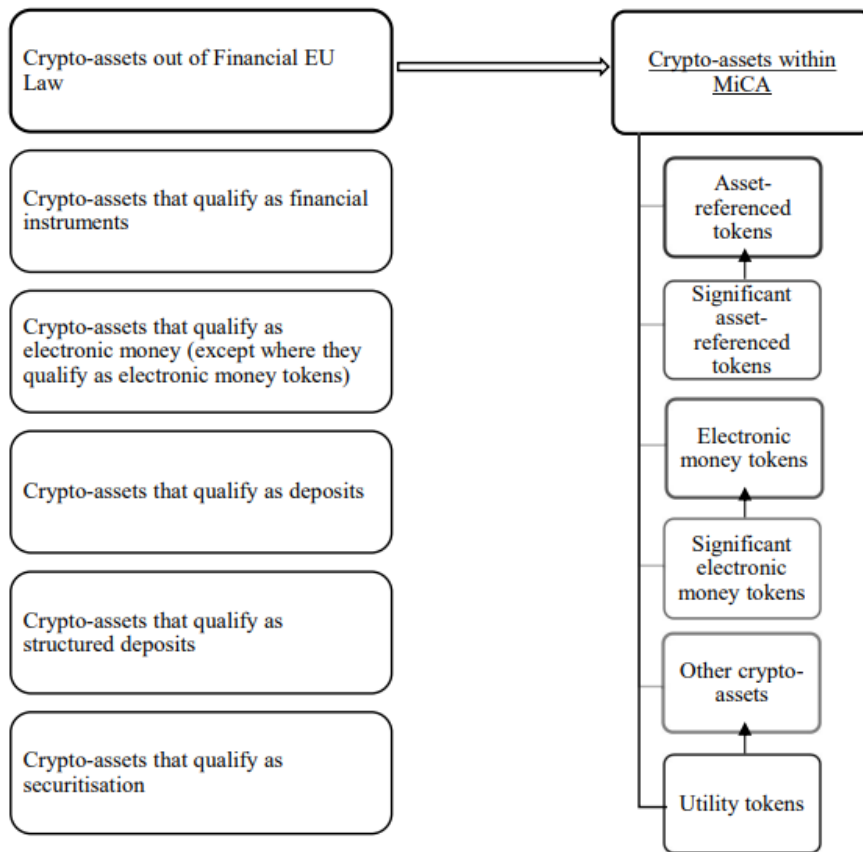
NFT issuers will be required to: i) act honestly, fairly and professionally; ii) communicate with the holders of NFTs in a fair, clear and non-misleading manner; iii) prevent identify, manage and disclose any conflicts of interest that may arise; iv) maintain systems and security access protocols to appropriate Union standards, which will be further developed by ESMA and EBA.

Overall, MiCAR has created a new crypto-asset definition that partly differs from already established crypto-asset understandings. MiCAR thus uses the definition of crypto-assets as an “umbrella term” that includes utility tokens in the broadest sense, as well as e-money tokens and asset-reference tokens. These latter two types of tokens introduced by the MiCAR are also referred to as “stablecoins” in the market: they are mostly used as means of payment and depending on their features they could also fall under the scope of e-money regulation or existing financial instruments regulation. For crypto assets that are not e-money tokens or value-referenced tokens, MiCAR provides a more graduated regulatory regime. Tokens that are used for the acquisition of goods to-be-created, that do not exist yet, have financial nature and should be covered by MiCAR, if they are not already covered by the Markets in Financial Instruments Directive (MiFID).

Nevertheless, the current definition of crypto assets will be probably narrowed in the MiCAR. Thus, probably NFTs will not be covered by it! The very features of NFTs such as uniqueness, scarcity, non-interchangeability, is what explains their exclusion from the MiCAR because they cannot be used as medium of exchange (or only in limited cases), and neither be defined as financial instruments. In this sense, the risks for clients and the market are limited.

Although, interestingly, fractional parts of NFTs (F-NFTs) would not be defined as unique and would instead be fungible, and therefore they would be covered by MiCAR.

Figure 2 - Taxonomy of crypto assets in MiCA



It should be noted that issuers of crypto-assets shall explain why the crypto-asset they are issuing is not covered in European Union financial services legislation in the information provided in the public offer, in accordance with MiCA. This obligation might be challenging to stand with in some cases because of harmonisation difficulties, caused by the different transpositions of the relevant legislation from Member States.

Could MiFID II potentially apply to NFTs?

The Markets in Financial Instruments Directive is a cornerstone of the European Union’s regulation of financial markets that aims at regulating financial markets and improve protection for investors. A revised version of the original MiFID, namely MiFID II came out in January 2018. Since the MiCA Regulation is still a pending legislative process and there is no existing legislation at European level that would explicitly regulate NFTs, we cannot exclude a priori the applicability of other potentially relevant EU laws.

The starting point is questioning whether NFTs could fall in the category of financial instruments. In Art. 4 of MiFID II, there is the definition of financial instruments, but the “exact definition” will depend on how each member state in the EU has transposed MiFID II into the respective national

laws. In general, Directives leave more space for divergences across member states, and in this specific case we also see divergence in the definitional scope of financial instruments.

For the quasi-financial nature of crypto-assets, we reckon that somehow MiCA is inspired by MiFID II: we observe that most of the crypto-assets services are the same as most of MiFID II services, namely custody and administration, placement, reception and transmission of orders, providing advice and operation of a trading platform. Compared to MiFID II, the content of such services tends to be generally more elaborated and detailed in MiCA: the effect could be a fully harmonized legislation regarding the provision of crypto-assets services. Requirements for the authorization and operating conditions of crypto-asset service providers are similar to requirements for investment companies under MiFID II. To provide crypto-asset services, companies will need to have a registered office in an EU member state and to have been authorized as a CASP by a competent member authority of the EU member state. Such authorization will be valid across the EU.

Going back to NFTs, if they were to be considered to fall into the category of financial instruments under MiFID II, several EU financial regulations would apply to NFT issuers and service providers, such as Transparency directive, Prospectus regulation, Market abuse regulation and so on.

Among the various types of financial instruments listed in Annex I in MiFID II, there are “transferable securities”, which might be the most relevant category for NFTs. Nevertheless, in order to fall within the definition of a “transferable security”, NFTs would need to belong to a *class* of securities. But belonging to a class would imply fungibility, interchangeability or replicability. Therefore, non-fungibility is what excludes NFTs from the category of transferable securities under MiFID II.

However, in the case of Fractional NFTs that are in fact fungible, they could potentially qualify as fungible financial instruments under MiFID II, but a case-by-case careful consideration is suggested.

Thus, MiCAR will provide a single regulatory framework for crypto assets that do not fall under the definition of financial instruments under MiFID. These crypto assets may be fungible but no true NFTs, while instead fractional NFTs may qualify as crypto assets.

Given the divergences in interpretations of MiFID II provisions, and the peculiar nature of NFTs, considering their early stage of development and rapid evolution, careful analysis of each NFT instrument is needed, until there is regulatory certainty and a dedicated set of laws. This would particularly concern tokens not covered by MiCAR, as the applicability of MiCAR and MiFID is mutually exclusive.

Other potentially relevant legislation for NFTs

We move further into the law perspective of NFTs. Until now we found that from the legal perspective for issuing such NFT tokens MiFID II and Prospectus regulation will not apply, however, issuers must be careful to check the applicability of the **Anti-Money Laundering** laws. When creating any kind of token, it is vital to determine what kind of *rights* will be granted to token holders. If token holders will have profit sharing rights or similar, such token will most probably be treated as a security token and will fall under the financial regulations. NFTs though normally won't grant any such rights (M. Krzysnik, LL.M., 2019).

Even though non-fungible tokens are still rather new invention it is important to create and launch them with diligence and care. We know that the regulation of such tokens is still not developed and that a careful case-by-case analysis should be conducted on each NFT to know the economic function of the contract and see which legislation applies to it, an eventually assess whether it complies with it.

Can Anti-Money Laundering apply to NFTs?

Even if NFTs are not currently specifically regulated in most countries in EU, they can fall into one of the existing regulatory frameworks depending on their features and purposes. In general, we could think NFTs might not fall under the scope of virtual currencies as introduced by the 5th Anti-Money laundering directive (**AMLD5**), because NFTs do not qualify as a means of exchange due to their lack of fungibility. However, *AMLD5 obligations may still apply*: for instance, for NFTs that are used in the art world, AMLD5 introduced an obligation for art market participants (“persons trading or acting as intermediaries in the trade of works of art”) with respect to transactions in art works for an amount of 10,000 euros or more.⁴

In case of these transactions, art dealers must comply with a series of AML obligations, including *client due diligence*, which includes verifying the clients' identity, *transaction monitoring for suspicious activity*, and submit suspicious activity reports The Financial Action Task Force (FATF), the global standard setter in relation to AML, has recognised that NFTs may create opportunities for money laundering or terrorist financing and has called for further regulation.

⁴ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD5), Art. 1

It should be noted that AMLD5 does not define or explicitly mention NFTs, nor does the Directive provide a definition of “works of art”. It remains to be seen whether a party that deals exclusively in NFTs that provide an ownership interest in digital art would fall under AMLD5 and its requirements for persons trading works of art (Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, 2021)

Anytime an NFT could be qualified as a **digital representation of value**, *exchanged for investment purposes*, then AML obligations might apply. Whether NFTs fall within the scope of existing AML regulation will depend on local implementations of FATF guidance in relevant jurisdictions and the specific characteristics of the NFT in question. For instance, in Italy the provision of services that are functional to the use, exchange, issuance, or storage of NFTs may reasonably fall within the scope of AML regulations, although a case-by-case assessment of the features of the relevant NFT would be necessary.

Closer look to Italy: transposition of AMLD5 and definition of “financial product”

Italy has not yet developed regulatory frameworks specifically applicable to NFTs, however the tokens can still fall into one of the existing regulatory frameworks depending on their features and purposes.

Pursuant to the Italian implementation of the Anti-Money Laundering Directive, the definition of “virtual currency” encompasses digital representations of value which are not used as means of exchange but are held for investment purposes, as long as they are transferred, stored and traded. According to this definition, some NFTs could fall within the scope of virtual currency and generate anti-money laundering obligations. In implementing the 5th Directive, Italy has decided to adopt a significantly *broader notion of virtual currency* and virtual currency service provider compared with the EU corresponding ones, so that, in Italy, the provision of services that are functional to the use, exchange, issuance, or storage of NFTs may reasonably fall within the scope of the AML regulations, although, also in this case, a careful assessment of each NFT would be necessary.

Moving on, we should also be aware of the existence of the domestic category of “financial products”. There is a debate on whether an NFT could be categorised as a financial product in certain cases or not. Some NFTs may qualify as investment or financial products under the Italian Consolidated Financial Act (Legislative Decree 58/1998), triggering additional licensing and other obligations.

Investment products encompass “any other form of investments of a financial nature” and in light of Consob’s consolidated interpretation, such category includes instruments that satisfy the following conditions:

- i) Capital disbursement,
- ii) The expectation or the promise of a financial gain or return,
- iii) The presence of risk, linked and correlated to the capital invested.

According to Consob, the Italian competent authority, the scope of “financial products” does not cover investments in consumer products (“designed to procure the investor the enjoyment of the asset”). However, the distinction between investment in “consumer goods” and in “financial products” is blurred and the thin relevant boundary is particularly exacerbated in the case of NFTs.

Conclusion

Through this research we tried to summarise and shed some light on the relevant legislation that could cover the nature of non-fungible tokens. In particular, we saw the role of the MiCAR, MiFID II, and AMLD5. At the moment, the fragmentation at legislation level concerning NFTs in the European Union is quite relevant, but hopefully the need to have this country-by-country approach may be limited to the short/medium term. As we saw with the MiCAR, that has given EU institutions the opportunity to discuss whether a specific regime for NFTs would be needed, several regulatory initiatives at European and also international levels may lead to the adoption of a more harmonised regime for NFTs. However, negotiations continue before the final enactment of this proposal and the European Parliament may advocate for the adoption of a specific regime for NFTs, distinct from the rules applicable to crypto-assets pursuant to the MiCA regulation.

Market actors engaging in activities in the NFT sector must therefore carefully monitor current negotiations to adopt a harmonised regulatory framework, especially in the EU.

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