

BALTIC TOPICS IN FINANCIAL SERVICES





First Estonian crowdfunding licenses – key takeaways

As per the EU crowdfunding regulation (EU) 2020/1503, all operators of crowdfunding platforms who offer their users the opportunity to grant loans to or invest in crowdfunding projects owned by businesses must obtain an authorisation (activity license) by 10 November this year at the latest. In Estonia, the first crowdfunding activity licenses have now been issued by the Estonian Financial Supervision Authority (EFSA).

Here are some practical takeaways that all applicants should be aware of:

- proceedings can be lengthy and intensive, going on for more than a year and consisting of numerous rounds of additional questions and requests from EFSA;
- matters which require special attention when preparing and submitting the license application and internal rules to EFSA:
 - non-loan-based crowdfunding services (e.g., those connected to financial instruments);
 - the facilitation of the issuance of secured loans;
 - the mechanisms of investor protection and involvement set out in the platform documentations;
- internal rules and standard agreements should be very detailed and practical, so that the employees of the applicant are able to get all relevant instructions from the internal rules alone;
- EFSA may require the drafting and enforcement of new internal rules and procedures to an even greater extent than is expressly required under the EU crowdfunding regulation and its delegated acts;
- within internal rules and procedures, simply making references to the EU crowdfunding regulation and its delegated regulations may not be sufficient, as instead EFSA may demand to incorporate the exact wording of relevant provisions into the text.

Although the above list is derived from Estonian licensing proceedings, we believe applicants in other Baltic states may also find it useful to ensure their local licensing process goes smoothly.





A step closer to pan-European crypto-assets regulation

After several delays, on 9 June 2023 the Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets (MiCA) was published in the Official Journal of the European Union, expected to come into force in stages, starting from 30 December 2024. MiCA is a landmark regulation that will provide a unified approach in respect to crypto assets across the EU and establish a comprehensive set of rules to govern the European crypto-asset ecosystem, thus putting an end to the unregulated crypto market in the EU.

Who will be subject to MiCA

The new framework will apply to:

- cryptocurrency issuers;
- crypto asset service providers.

What types of assets will be regulated

MiCA focuses on certain categories of crypto-assets which are currently out of scope of the existing regulations. Namely it will not apply to NFTs and to security tokens qualifying as financial instruments under MiFID.

MiCA will, however, apply to:

- e-money tokens;
- asset-referenced tokens;
- utility tokens.





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Industry implications

The newly regulated entities will be subject to a host of obligations, in order to continue their business activities. The applicable requirements will vary, depending on several elements, such as: (1) whether the market participant is categorized as cryptocurrency issuer or crypto asset service provider; (2) the type of crypto-asset offered; (3) the amount of the offer.

In broad strokes, the following requirements may be applicable:

- obligation to obtain authorisation;
- publication of whitepaper;
- compliance with certain rules when marketing crypto-assets;
- providing certain rights to the consumers, such as the right of withdrawal;
- prudential requirements, such as own fund or insurance requirements;
- various organisational requirements, e.g. good reputation, internal control mechanisms;
- obligation to safeguard clients' crypto assets.



A step closer to pan-European crypto-assets regulation

Latvia

It is currently expected that the Bank of Latvia will take on the role of the supervising authority. Considering that crypto assets in Latvia were not previously subject to any local regulation, the upcoming framework will entail the need to adjust various processes both for the market participants, as well as for the local supervisory authorities. For instance, crypto-asset related taxation is currently an area that will require additional regulatory updates clarifications.

Lithuania

Currently, virtual currency exchange operators and depositary currency operators are not licensed in Lithuania, but they are obliged entities to mandatory requirements regulated by the Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania, such as notification of the Registrar of Legal Entities of the commencement and termination of activities, requirement to have a senior manager who is a permanent resident of the Republic of Lithuania, requirement of the share capital of at least EUR 125,000, implementation of AML/CTF measures, such as establishment and verification of the client's identity, the presence of designated AML managers, as well as cooperation with the Financial Crimes Investigation Service, which at the moment is a supervisory authority of virtual asset service providers.

Estonia

Estonian crypto asset service providers are currently locally licensed and supervised by the Financial Intelligence Unit, an AML/CFT focused supervisory authority that has recently taken a fairly strict approach towards crypto asset services. Upon MiCA's entry into force, the role of the competent authority will most likely be assumed by the Estonian Financial Supervision and Resolution Authority. It will be interesting to see how will this transition affect the current regulatory climate and what will remain of the detailed requirements currently applicable to crypto asset service providers under Estonian AML legislation.





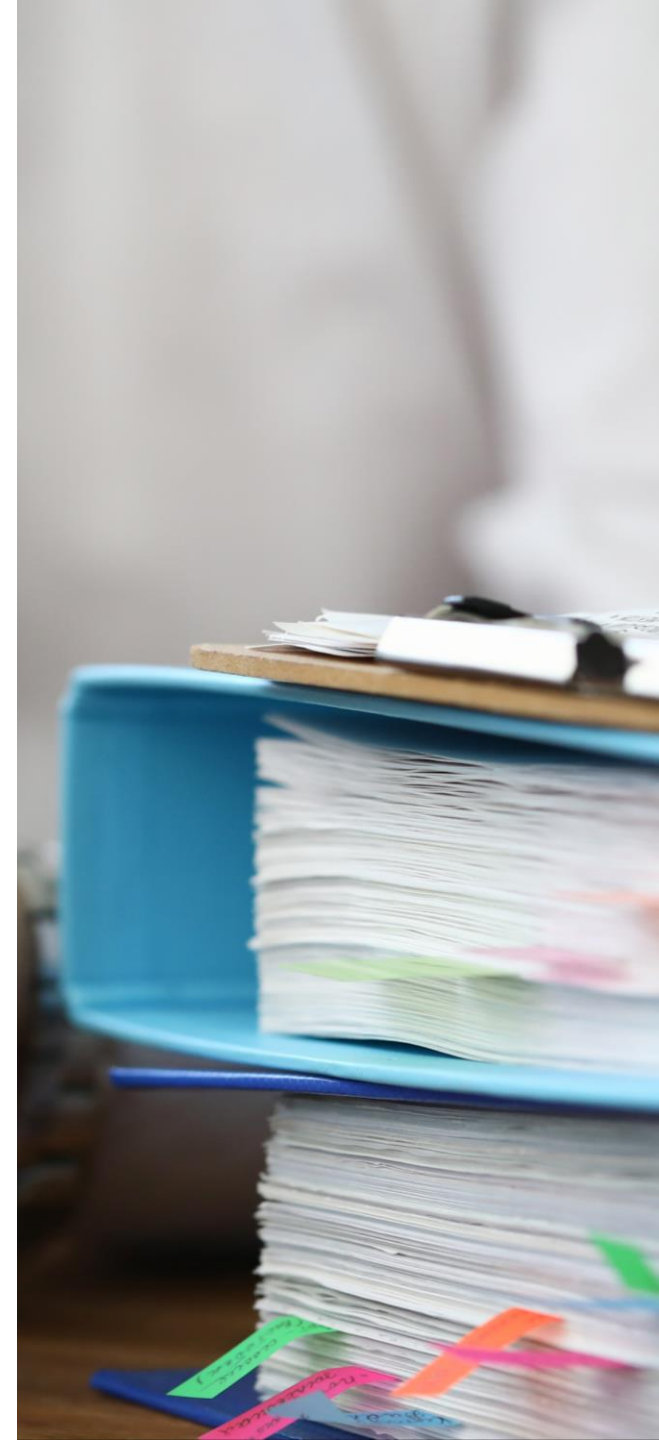
Pan-Baltic initiative to align regulation for public offerings up to 8 MEUR

In accordance with (EU) regulation 2017/1129 (**Prospectus Regulation**), the public offering of bonds requires a prospectus, unless the bond emission is up to 8 MEUR, then the issuer can choose to prepare only an informational document on bond emission. However, the specific threshold and regulation for the informational document is left to be determined by each EU member state.

As the capital markets of the Baltic states are closely related, local enterprises wish to issue bonds across the region and boost their possible capital gain, but due to the differences in how EU regulations were implemented in each Baltic state, issuers face obstacles in achieving this goal.

Currently:

- Lithuania and Latvia have established the same threshold of up to 8 MEUR, while Estonia has set it at up to 5 MEUR, which lowers the possible capital gain.
- In Lithuania, the Bank of Lithuania neither approves nor participate in any other way in preparation of the information document. Likewise, in Estonia there is no requirement for regulatory bodies to approve the information document or to participate in its preparation. Contrary to this, in Latvia the Bank of Latvia is involved in the process as information document has to be submitted to the Bank of Latvia which has the authority to provide comments and objections during 15 business days.
- In Lithuania, the information document can be prepared either in English or Lithuanian. Nonetheless, in Latvia the information document has to be prepared in Latvian only. In Estonia, the information document must be prepared at least in Estonian, but may additionally be translated to other languages.
- In Lithuania, the issuer has to appoint a trustee in all public offering. Nonetheless, in Latvia and Estonia there is no such mandatory requirement, and the trustee may be appointed at the discretion of the issuer only.



Pan-Baltic initiative to align regulation for public offerings up to 8MEU

These differences among Baltic states' regulation in public offerings up to 8 MEUR do not support to the development of Baltics capital market. To address this issue, the supervisory authorities of all Baltic states have established a working group with the aim to harmonise the key requirements for public offerings up to 8 MEUR. The main goal of this working group is to allow the issuer to prepare information document for the public offerings up to 8 MEUR in English only, eliminating the mandatory trustee appointment and any submission or registration of the information document with the supervisory authority.

If this initiative of all three supervisory authorities succeeds in implementing these amendments, it would facilitate the public offerings of small issues across the Baltic states, strengthen the capital market and promote its development.

