AMSTERDAM LAW FORUM
The International Law Journal of Vrije Universiteit Amsterdam

# The Legal Status of Cryptocurrency in the European Union

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**The Markets in Crypto-Assets (MiCA) Regulation, which was adopted by the EU in 2023 aims to establish a unified legal framework for cryptocurrencies and enhance investor protection. By setting rules for crypto-assets, licensing requirements, and stricter regulations on stablecoins, MiCA improves market transparency and stability. However, it leaves gaps in areas like DeFi and NFTs, and compliance costs may burden smaller firms. This blog explores the legal landscape of cryptocurrencies in the EU, the key provisions of MiCA, and its implications for innovation, fraud prevention, and financial stability.**

## Introduction

It cannot be denied that cryptocurrencies are transforming the financial sector by offering borderless and decentralized alternatives to traditional systems. However, despite their potential, they have also introduced significant regulatory challenges. The European Union's ("EU") adoption of the Markets in Crypto-Assets (MiCA") Regulation in 2023 marks a significant step forward in addressing challenges, as the Regulation aims to provide a unified legal framework for cryptocurrencies and related activities within the EU.[1] This blog will thus examine the evolving legal status of cryptocurrencies in the EU, the key features of MiCA, and its implications for innovation, fraud prevention, and financial stability.

## The Pre-MiCA Circumstances

Before MiCA, the legal status of cryptocurrencies within the EU were quite ambiguous. While some aspects of the industry were regulated, there was no universal framework to manage and control all crypto-assets uniformly across member states. To address this issue, measures such as the Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 were adopted.[2]

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[1] Dirk Andreas Zetzsche, Filippo Annunziata, Douglas W. Arner, Ross P. Buckley,"The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy, " p.10 -11 *European Banking Institute Working Paper Series* No. 2020/77, November 5, 2020, https://ssrn.com/abstract=3725395.

[2] European Union. (2018). Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending

However, this only addressed a few of the industry's challenges.[3] As a result, many cryptocurrencies, particularly utility tokens, and decentralized finance ("DeFi") protocols, fell outside the scope of these rules, creating uncertainty for issuers, service providers, and investors.[4] The absence of harmonized regulation created significant regulatory differences between member states. For example, Germany and Malta adopted crypto-friendly regulatory approaches to attract investment, while other EU states imposed stricter controls and took no regulatory action. Such circumstances challenged innovation and posed significant risks to both consumer protection and market integrity.[5]

**The MiCA Regulation**

Recognizing the need for a cohesive approach, the EU introduced the Markets in Crypto-Assets ("MiCA") Regulation.[6] The document was adopted by the European Parliament in 2023, with the aim of establishing a harmonized legal framework for cryptocurrencies across all EU member states. It is considered as one of the first steps towards addressing the regulatory gaps and inconsistencies posing one of the biggest challenge to the sector.[7] Under MiCA, cryptocurrencies are classified into distinct categories, such as asset-referenced tokens, e-money tokens, and other crypto assets and each category is subjected to specific rules which address unique characteristics. MiCA also introduces detailed licensing requirements for crypto

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Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. Official Journal of the European Union, L 156, 43–74. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843.

[3] C. Wronka, "Crypto-Asset Activities and Markets in the European Union: Issues, Challenges and Considerations for Regulation, Supervision and Oversight, " *Journal of Banking Regulation*, 25, 84– 93, 2024, https://doi.org/10.1057/s41261-023-00217-8.

[4] Tomasz Tomczak, "Crypto-assets and Crypto-assets' Subcategories under MiCA Regulation, " *Capital Markets Law Journal*, V olume 17, Issue 3, July 2022, p.371 , https://doi.org/10.1093/cmlj/kmac008.

[5] Dirk Andreas Zetzsche, Filippo Annunziata, Douglas W. Arner, Ross P. Buckley,"The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy, " p.7-9 *European Banking Institute Working Paper Series* No. 2020/77, November 5, 2020, https://ssrn.com/abstract=3725395.

[6] European Union. (2023). Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 575/2013 and (EU) 2019/1937 and Directive (EU) 2019/1937. Official Journal of the European Union, L 150, 1–139. Retrieved from https://eur-lex.europa.eu/eli/reg/2023/1114/oj.

[7] Filippo Annunziata, "An Overview of the Markets in Crypto-Assets Regulation (MiCAR), " p.13-15 European Banking Institute Working Paper Series no. 158, December 11, 2023, https://ssrn.com/abstract=4660379.

asset issuers and service providers. For example, entities must obtain authorization from national competent authorities and comply with provided standards relating to transparency, consumer protection, and anti-market abuse measures. These rules aim to encourage investor confidence and enhance the overall credibility of the crypto market.[8] Moreover, the MiCA regulation is highly focused on stablecoins, which are cryptocurrencies designed to maintain a steady value. Stablecoins had also drawn significant scrutiny due to their potential to disrupt traditional financial systems. To address this concern, under MiCA, stablecoin issuers are required to hold sufficient reserves, adhere to capital requirements, and provide redemption rights to token holders.[9]

**Challenges in Cryptocurrency Industry**

One of MiCA's main goals is to tackle problems like fraud and market manipulation in the cryptocurrency sector. In the past, the lack of proper rules and oversight allowed for scams like fake coin launches, pump-and-dump schemes, and insider trading to thrive. MiCA seeks to counter these practices by imposing transparency requirements on issuers and mandating market surveillance measures for exchanges and trading platforms. For example, issuers are required to publish detailed descriptions outlining the features, risks, and rights associated with their tokens, empowering investors to make informed decisions.[10] Exchanges, meanwhile, must implement mechanisms to detect and report abusive practices in order to enhance market integrity. While these measures represent significant progress, effective enforcement remains a critical challenge. Regulators must invest in advanced tools and expertise to monitor blockchain transactions and detect illicit activities in real-time.[11] Without effective enforcement, the rules laid out in MiCA risk

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[8] C. Wronka,"Crypto-Asset Activities and Markets in the European Union: Issues, Challenges and Considerations for Regulation, Supervision and Oversight," *Journal of Banking Regulation*, 25, 84– 93, 2024, https://doi.org/10.1057/s41261-023-00217-8

[9] Dirk Andreas Zetzsche, Filippo Annunziata, Julia Sinnig, "Digital Assets, MiCA and EU Investment Fund Law," p.28-31 SSRN, November 18, 2023, https://ssrn.com/abstract=4637019

[10] Francesco Paolo Patti,"The European MiCA Regulation: A New Era for Initial Coin Offerings," *Georgetown Journal of International Law*, Forthcoming, Bocconi Legal Studies Research Paper No. 4810910, April 23, 2024, https://ssrn.com/abstract=4810910.

[11] Filippo Annunziata, "An Overview of the Markets in Crypto-Assets Regulation (MiCAR)," European Banking Institute Working Paper Series no. 158, December 11, 2023, https://ssrn.com/abstract=4660379.

being undermined by non-compliance and regulatory arbitrage.

**Advantages and Criticism of MiCA**

MiCA's harmonized framework offers several benefits, including legal certainty and enhanced consumer protection. By removing regulatory ambiguity, MiCA encourages innovation and entrepreneurship in the cryptocurrency field. Startups and established firms can operate with greater confidence, knowing that they are navigating a more predictable regulatory environment.[12] However, MiCA is not without its disadvantages. The administrative burdens associated with compliance may disproportionately affect smaller firms, potentially negatively affecting competition.[13] Critics also address a concern that MiCA focuses primarily on centralized entities, leaving DeFi protocols and tokens like NFTs largely outside its scope. As these sectors continue to grow, regulators may need to revise and expand the framework to address emerging risks and opportunities.[14] Additionally, MiCA's provisions on environmental sustainability have sparked debate. The regulation requires issuers to disclose the energy consumption of crypto assets, particularly those using proof-of-work mechanisms such as Bitcoin. While this aligns with the EU's broader climate goals and aspirations, it may disadvantage certain cryptocurrencies without fully accounting for their ongoing transition to greener technologies.[15]

**Future Developments**

The adoption of MiCA positions the EU as a global leader in cryptocurrency regulation. Its comprehensive and forward-looking framework provides a model for other jurisdictions seeking to balance innovation with investor protection.[16] However, the inherently global nature of

[12] T. Van der Linden & T. Shirazi, "Markets in Crypto-Assets Regulation: Does It Provide Legal
Certainty and Increase Adoption of Crypto-Assets?" *Financial Innovation*, 9, 22, 2023, https://
doi.org/10.1186/s40854-022-00432-8.

[13] Tomasz Tomczak, "Crypto-assets and Crypto-assets' Subcategories under MiCA Regulation,
" *Capital Markets Law Journal*, V olume 17, Issue 3, July 2022, Pages 365–382, https://doi.org/ 10.1093/cmlj/kmac008.

[14] Dirk Andreas Zetzsche, Filippo Annunziata, Douglas W. Arner, Ross P. Buckley, "The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy, " *European Banking Institute
Working Paper Series* No. 2020/77, November 5, 2020, https://ssrn.com/abstract=3725395.

[15] Benson, V., Adamyk, B., Chinnaswamy, A. et al. Harmonising cryptocurrency regulation in
Europe: opportunities for preventing illicit transactions. Eur J Law Econ 57, 37–61 (2024). https://
doi.org/10.1007/s10657-024-09797-w.

[16] Filippo Annunziata, "An Overview of the Markets in Crypto-Assets Regulation (MiCAR), " European Banking Institute

cryptocurrencies underscores the need for international coordination. Discrepancies between MiCA and regulations in other major markets, such as the United States or China, could create challenges for cross-border transactions and enforcement.[17] Considering the approaching future, the EU may need to tackle several more unresolved issues. For example is DeFi which relies on blockchain-based contracts rather than traditional intermediaries. Similarly, the rise of NFTs, which are often used for speculative purposes, may need greater scrutiny in the future. Finally, the European Central Bank's plans to issue a digital euro could reshape the regulatory landscape, raising questions about the coexistence of central bank digital currencies and private cryptocurrencies.[18] It is also important to note that the cryptocurrency sector is developing at a rapid pace and is more than likely to outrun the legislation pace in the future.

**Conclusion**

The Markets in Crypto-Assets regulation marks a significant transformation in the evolution of cryptocurrency regulation within the European Union. By establishing a harmonized legal structure, MiCA addresses longstanding issues of regulatory fragmentation and uncertainty. As a result, MiCA promotes innovation while protecting investors and ensuring market stability. However, it is crucial to note that the effectiveness of MiCA will depend on implementation and enforcement by the member states within the EU. As cryptocurrencies continue to coexist with traditional financial systems, the EU's approach provides valuable lessons for regulators worldwide.

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Working Paper Series no. 158, December 11, 2023, https://ssrn.com/ abstract=4660379.

[17] Francesco Paolo Patti,"The European MiCA Regulation: A New Era for Initial Coin Offerings, "*Georgetown Journal of International Law*, Forthcoming, Bocconi Legal Studies Research Paper No. 4810910, April 23, 2024, https://ssrn.com/abstract=4810910.

[18] Benson, V ., Adamyk, B., Chinnaswamy, A. et al. Harmonising cryptocurrency regulation in Europe: opportunities for preventing illicit transactions. Eur J Law Econ 57, 37–61 (2024). https:// doi.org/10.1007/s10657-024-09797-w.

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