

MiCA is Coming – Are You Ready?

Some Comments on the Markets in Crypto-Assets Regulation from a Swedish Perspective

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Introduction

The Markets in Crypto-Assets (MiCA) regulation, which establishes a comprehensive regulatory framework for crypto assets in the EU, has reached the final stages of the legislative process. In October 2022, the Council expressed its intention to endorse the final comprise text of the regulation for agreement.¹ Under the MiCA-regime, the classification, issuance, trading, exchange, and custody of crypto assets will be regulated across the EU. The regime will change the legal landscape for the crypto asset industry in the EU in a fundamental way. It has been claimed that this landmark regulation will put an end to the crypto wild west and confirms the EU's role as a standard-setter for digital topics.² Most likely, once MiCA is in place, EU would indeed take a leading position in the regulation of crypto space at the global level.

* This article is based on my contribution, Chen, K., *The Law and Regulation of Cryptocurrencies in Sweden*, in Lehmann, M. and Morishita, T. (eds), *Cryptocurrencies: the Impossible Domestic Law Regime?*, The 21st General Congress of the International Academy of Comparative Law, Intersentia, 2023 (upcoming).

¹ See the legislative schedule for MiCA, available at <https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-crypto-assets-1> [last viewed 9 December 2022].

² See Press Release by the Council quoting Bruno Le Maire, the French Minister for the Economy, Finance and Industrial and Digital Sovereignty, Press Release, *Digital Finance: Agreement Reached on European Crypto-Assets Regulation (MiCA)*, 30 June 2022, available at <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/> [last viewed 9 December 2022] (hereafter Council Press Release 2022).

This article provides a brief overview of the upcoming EU regulation and its impact on the Swedish market.³ It begins with a definition of crypto assets from a functional as well as legal perspective. It is followed by an outline of the MiCA regulation, focusing on its regulatory objectives and scope. The article then moves on to examine the relevant EU anti-money laundering and criminal provisions and how they have been implemented in Sweden. Some comments on how the frameworks can address the existing regulatory gaps under Swedish law is also provided. The article concludes with a few remarks on, among others, the interplay of private and public law in the field when the EU regulation has been implemented.

2. Defining Crypto Assets

2.1 A Functional Approach

Crypto assets and cryptocurrency are often used interchangeably. The Swedish public authorities, as well as the EU, have however showed a preference of the former. The Swedish central bank, Riksbanken, has stated that although bitcoins and other similar types of cryptocurrencies were created for payment uses, they are often bought and held for investment purposes. There are also few businesses that accept bitcoins as means of payment. Moreover, there are crypto assets that are not created for payment uses. Riksbanken has thus concluded that cryptocurrencies have insofar not functioned as means of payments, and crypto assets would be a more appropriate term.⁴ Further, both the Swedish financial supervisory authority, Finansinspektionen (FI) and the tax authority, Skatteverket (SKV), use the term crypto assets. SKV has however explained that crypto assets that function as a means of payment can also be called cryptocurrencies, virtual currencies or digital currencies.

It could be argued that while the terms crypto assets and cryptocurrencies are often treated synonymously, a distinction between the two is emerging. The key determining factor is the function. The term crypto assets can be used in a wide as well as narrow sense. The former encompasses all crypto-

³ For a more thorough analysis, see Chen, K., *The Law and Regulation of Cryptocurrencies in Sweden*, in Lehmann, M. and Morishita, T. (eds), *Cryptocurrencies: the Impossible Domestic Law Regime?*, The 21 st General Congress of the International Academy of Comparative Law, Intersentia, 2023 (upcoming) (hereafter Chen 2023).

⁴ Differences between E-kronor, Cryptocurrencies and Crypto-Assets, Riksbanken, last updated June 2021, available at <https://www.riksbank.se/en-gb/payments--cash/e-krona/difference-between-e-krona-and-crypto-assets/> [last viewed 31 January 2022].

currencies, which can function as means of payment or for investment purposes, and the latter refers to cryptocurrencies that are created solely for payment uses. The term cryptocurrencies, on the other hand, has a more specific meaning, referring only to those cryptocurrencies that seek to serve as means of payment. Possibly, for the sake of clarity, crypto assets, only in its narrow sense, should be used interchangeably with cryptocurrencies. In the following sections of this article, crypto assets will be used in its wide scope and cryptocurrencies to refer to the payment function only.⁵

2.2 The Legal Definition

Until MiCA has entered into application, there is no legal definition of crypto assets in Sweden. Riksbanken has defined crypto assets as “digital units that are created and transferred between users through the use of cryptographic calculations”. Cryptography, in turn, is understood as “the study of methods used to transfer information between a sender and a receiver without a third party being able to access it. This encrypts the information. Only those that have the right to take part of the information can have the key to enable the information.”⁶

Based on the agreed text,⁷ as well as the draft regulation,⁸ MiCA states that crypto asset is “a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology”.⁹ While MiCA has yet to be adopted, the Swedish

⁵ See Chen 2023.

⁶ Söderberg, Gabriel, Are Bitcoin and Other Crypto Assets Money? [Sw. Är Bitcoin och andra kryptotillgångar pengar?], Economic Commentary, Riksbanken, No. 5, 2018, available at <https://www.riksbank.se/globalassets/media/rapporter/ekonomiska-kommentarer/svenska/2018/ar-bitcoin-och-andra-kryptotillgangar-pengar.pdf> [last viewed 31 January 2022].

⁷ Provisional Agreement Resulting from Interinstitutional Negotiations, Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets and Amending Directive (EU) 2019/1937, 5 October 2022, available at https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/ECON/AG/2022/10-10/1264505EN.pdf [last viewed 9 December 2022] (hereafter Provisional Agreement on MiCA).

⁸ European Commission, Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-Assets, and Amending Directive (EU) 2019/1937, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593> [last viewed 9 December 2022] (hereafter Commission Draft Regulation of MiCA).

⁹ Article 3(2) of the Provisional Agreement on MiCA and Article 3(2) of the Commission Draft Regulation of MiCA.

supervisory authority FI has opted to follow this definition.¹⁰ As for distributed ledger technology, it is defined as “a type of technology that supports the distributed recording of encrypted data” in the draft regulation.¹¹ The agreed text, on the other hand, makes a reference to the Distributed Ledger Technology Pilot Regime Regulation (DLT Pilot Regime), which prescribes that distributed ledger is “an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism”.¹² This detail might seem insubstantial at a first glance. Cross references as such are however needed to ensure consistency among the many EU legislations in the field. Since the financial crisis of 2008, EU has increasingly enhanced the regulation of the internal financial market, resulting in a rich field of legislative acts, often of a highly technical nature. Due to the number and complexity of EU financial law, this type of detailed legislative work is necessary to prevent potential misinterpretation of a certain concept in case of variation of phrasing in different regulations.

3. The MiCA-Regime: A Brief Overview

3.1 Background and Timeline

In 2020, the Commission adopted a digital finance package, which includes a financial finance strategy and proposals for new legislations in the field. In sum, the digital finance strategy maps out the route for how EU can support a digital transformation of finance in the coming years, while regulating its risks. The prioritized areas are removing fragmentation in the Digital Single Market, adapting the EU regulatory framework to facilitate digital innovation, promoting a data-driven finance and addressing the challenges and risks with digital transformation, including enhancing the digital operational resilience of the financial system.¹³

¹⁰ Financial Instruments with Crypto-assets as Underlying Asset, FI Supervision Report, Finansinspektionen, No. 21, 22 February 2021 [hereafter FI Supervision Report 2021].

¹¹ Article 3(1) of the Commission Draft Regulation.

¹² Articles 3(1) and (1b) of the Provisional Agreement on MiCA. For the DLT Pilot Regime, see Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU.

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a

As for the new regulatory frameworks, they consist of MiCA, DLT Pilot Regime and the Digital Operational Resilience Act (DORA).¹⁴ The proposals were subsequently subject to legislative view in the EU. In terms of MiCA, inter-institutional negotiations, i.e., trilogues, started in April 2022 and a provisional agreement on the proposal was reached in June 2022. The Council has now announced its intention to endorse the agreed text. There are, as seen above, some differences between the draft and the agreed text. While some are of a pure technical nature, some changes are of material importance.¹⁵ The next steps include formal approval by the Parliament and the Council. Once published in the Official Journal, the regulation will enter into force 20 days thereafter.¹⁶ Further, it should be noted that certain parts of MiCA will enter into application 12 months thereafter and the rest 18 months.¹⁷ However, despite of a grace period of 12–18 months, due to the wide scope and complexity of the regime, the crypto industry should make appropriate preparations in due time.

3.2 Regulatory Objectives

The regulatory objectives of MiCA, comparable to other EU legislations in the financial markets, can be viewed from a broad as well as more specific perspective. From a general point of view, as a part of EU's digital finance package, the regulation aims to facilitate the digital transition of the internal financial market. Moreover, there is the overall objective of harmonizing the internal market. Currently, the regulation of crypto assets varies significantly among member states, resulting in a fragmented regulatory landscape in the EU. Such a state can also provide opportunities for market participants to take advantage of regulatory arbitrage.

As for a more specific context, MiCA aims to address the risks associated with crypto assets. The regulatory objectives of MiCA include ensuring investor and consumer protection, financial stability, and market integrity. It should be noted that a regulatory framework can seek to achieve all these

Digital Finance Strategy for the EU, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591> [last viewed 9 December 2022].

¹⁴ For DORA, see Proposal for a Regulation of the European Parliament and of the Council on Digital Operational Resilience for the Financial Sector and Amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014.

¹⁵ For examples of material changes between the draft and the agreed text, see Chen 2023.

¹⁶ Article 126(1) of the Provisional Agreement on MiCA.

¹⁷ Articles 126(2) and (3) of the Provisional Agreement on MiCA.

goals, the relevance of the different regulatory objectives could however vary within the framework. In the case of MiCA, given the number of scandals and fraudulent schemes we have witnessed in recent years, there is indeed an urgent need for a proper investor/consumer protection regime in EU's internal crypto market. The aim to preserve financial stability, on the other hand, would be more relevant to so-called stable coins as they become increasingly important from a systematic point of view.¹⁸ Further, in addition to market rules, MiCA lays down a framework for the prevention and prohibition of market abuse involving crypto assets, including rules on insider trading and market manipulation.¹⁹

Further, in addition to the “traditional” regulatory objectives of financial regulation, there is the objective of promoting the financial sector to contribute to sustainable development. The issue has gained increased recognition and significance in the EU as well as globally in recent years. As a result, sustainable finance is becoming a new regulatory objective of EU financial regulation.²⁰ As for sustainability-related provisions in MiCA, the actors in the crypto market are required to declare information on their environmental and climate footprint. Draft regulatory technical standards will be developed by the European Securities and Markets Authority (ESMA).²¹ The Commission will provide a report on the environmental impact of cryptoassets and the introduction of mandatory minimum sustainability standards for consensus mechanisms, including the proof-of-work, within two years.²²

3.3 Scope and Classification

In essence, MiCA will establish a bespoke regime for all crypto assets that are not covered elsewhere in EU financial services legislation and crypto asset service providers. The regulation lays down uniform rules for (i) transparency and disclosure requirements for the issuance, offering to the public and admission to trading of crypto assets on a trading platform; (ii) authorisation

¹⁸ See Zetzsche, D., Annunziata, F., Arner, D. and Buckley, R., *The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy*, European Banking Institute Working Paper Series No. 2020/77, 5 November 2020 (hereafter Zetzsche et al. 2020).

¹⁹ Title VI of the Provisional Agreement on MiCA.

²⁰ Colaert, V., *The Changing Nature of Financial Regulation – Sustainable Finance as a New Policy Goal*, Working Paper No. 2022/04, Jan Ronse Institute for Company and Financial Law, KU Leuven, April 2022, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087166 [last viewed 9 December 2022].

²¹ See recital 5a of the Provisional Agreement on MiCA.

²² Council Press Release 2022.

and supervision of crypto asset service providers, issuers of asset-referenced tokens and issuers of electronic money tokens; (iii) operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers; (iv) protection of holders of crypto assets in the issuance, offering to the public and admission to trading; (v) protection of clients of crypto assets service providers; (vi) measures to prevent market abuse to ensure the integrity of crypto asset markets.²³

In MiCA, crypto assets are divided into three categories. First, there is assets-referenced token, which are crypto assets that purport to maintain a stable value by referencing to another value, right or a combination thereof, including one or more official currencies. Second, electronic money tokens or e-money tokens, which include crypto assets that purports to maintain a stable value by referencing to the value of one official currency. Third, there are utility tokens, which are crypto assets that only provide access to a good or service supplied by the issuer of that token.²⁴

Crypto assets are thus defined broadly in MiCA and encompasses stable coins. It has been noted that stable coins have been subject to extensive regulation under the MiCA regime.²⁵ It is however specified that the regulation does not apply to crypto assets that qualify as financial instruments, electronic money, deposits, structured deposits and securitization as defined in the relevant EU financial services legislation.²⁶ In this regard, changes to major regulatory framework will be introduced to encompass crypto assets. It will for example be explicitly stated in MIFID II that the framework applies to instruments issued by means of distributed ledger technology.²⁷ Further, MiCA does not apply to certain persons and entities, such as EU entities including ECB, EIB, EFSF and ESM, the central bank of member states and public international organizations.²⁸ It should also be emphasized that non-fungible tokens (NFTs), which have raised much debate, are excluded from the scope of MiCA as well (if they do not qualify as crypto assets). Most likely, NFTs, if deemed necessary, will be subject to specific regulations within the EU.

²³ Article 1 of the Provisional Agreement on MiCA.

²⁴ Articles 3(3), (4) and (5) of the Provisional Agreement on MiCA.

²⁵ Zetzsche et al. 2020.

²⁶ Article 2(2) of the Provisional Agreement on MiCA.

²⁷ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341.

²⁸ Article 2(2) of the Provisional Agreement on MiCA.

4. Anti-Money Laundering and Criminal Provisions

Crypto assets were addressed in EU's directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD V).²⁹ The directive extended the scope to include providers of exchange services between virtual currencies and fiat currencies as well as custodian wallet providers.³⁰ The Swedish implementation of AMLD V included changes to the Act on Currency Exchange and Certain Financial Operations (1996:1006). Under the Act, legal and natural persons that seek to carry out currency trading on a large scale or other financial operations, such as the management of or trade with virtual currencies, must register with the financial supervisory authority.³¹ They must, *inter alia*, comply with the anti-money laundering framework including the Swedish Money Laundering and Terrorist Financing Prevention Act and related regulations.³²

Under Swedish law, custodian wallet providers are entities that safeguard private cryptographic keys on behalf of their clients, to hold, store and transfer virtual currencies.³³ The definition of providers of virtual currency exchange services goes however beyond AMLD V. As noted in the preparatory work, the scope of AMLD V does not encompass providers of exchange services between different virtual currencies, the Swedish government established however it was necessary to include these providers. As a result, in Sweden, providers of virtual currency exchange services are those engaged in the exchange between virtual currencies and fiat currencies, electronic money, or other virtual currencies.³⁴

Money laundering is criminalized in Sweden, the Act on Penalties for Money Offences applies to all persons and entities that must comply with anti-money laundering regulations. Further, Sweden has implemented the Directive on Combating Fraud and Counterfeiting of Non-cash Means of

²⁹ Article 1(2)(d)(19) of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending 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 [hereafter AMLD V].

³⁰ Recital 8 of AMLD V.

³¹ Sec 1(2) of the Act on Currency Exchange and Certain Financial Operations.

³² See Chen 2023.

³³ Legislative Proposal, Enhanced Measures against Money Laundering and Terrorism Financing [Sw. Skärpta åtgärder mot penningtvätt och finansiering av terrorism], Prop. 2018/19:150, p. 94 (hereafter Prop. 2018/19:150).

³⁴ Prop. 2018/19:150, p. 38.

Payment, by amending the Penal Code.³⁵ Lastly, it should be noted that general criminal law provisions on, inter alia, fraud are also applicable since crypto assets are considered property under Swedish law.³⁶

5. Some Comments from a Swedish Perspective

MiCA could indeed address a number of regulatory concerns in the Swedish markets. At the moment, the unregulated state of crypto assets in Sweden has been deemed as highly problematic.³⁷ The Swedish financial regulatory authority has stated that it is necessary with new regulations that are better equipped to manage the risks of crypto assets. FI has expressed three main concerns. The first one is the lack of proper consumer protection and the second one the risk of crypto assets being used for money laundering or other criminal purposes. In addition, there is the environmental impact of crypto assets. The most well-known crypto assets such as Bitcoin require for example extremely high electricity usage, and the electricity is generally sourced from fossil fuels such as coal and oil. FI has however emphasized that crypto assets that use proof-of-stake rather than proof-of-work as consensus mechanism need significantly less energy.³⁸ FI has together with the Swedish environmental agency recommended the EU to consider whether banning energy-intensive crypto production could be justified, sending a clear signal of Sweden's view of these types of crypto assets from a sustainability point of view.³⁹

Further, in Sweden, stable coins are categorized as a subgroup of cryptocurrencies and can be used as a means of payment in Sweden. The Swedish central bank Riksbanken has recognized stable coins that are pegged to other

³⁵ Legislative Proposal, A New Criminal Provision that Protects Means of Payment [Sw. En ny straffbestämmelse som skyddar betalningsverktyg], Prop. 2020/21:73.

³⁶ See Chen 2023.

³⁷ See Chen 2023.

³⁸ Crypto-Assets: Risks and Opportunities, Speech by Erik Thedéen, Director General of Finansinspektionen, FI dnr 21-348, 16 June 2021, available at <https://www.fi.se/contentassets/0727d79ddf8e44df82013b8912e125ae/tal-finansanalytikerforen-16juni-eng.pdf> [last viewed 31 January 2021].

³⁹ Crypto-assets are A Threat to the Climate Transition – Energy-intensive Mining Should be Banned, Speech by Erik Thedéen, Director General of Finansinspektionen, and Björn Risinger, Director General of the Swedish Environmental Protection Agency, available at <https://www.fi.se/en/published/presentations/2021/crypto-assets-are-a-threat-to-the-climate-transition--energy-intensive-mining-should-be-banned/> [last viewed 31 January 2022].

assets, e.g., national currencies and other financial assets, to be more stable than cryptocurrencies such as bitcoins. Two areas of concern were however identified. The first one is that a wide application of stable coins could pose risks to financial stability and the financial system in general. Here, Riksbanken made comparisons to risks generally associated with money market funds.⁴⁰ The second concern is from a policy perspective. As explicated by Riksbanken, if stable coins that are backed by another country's currency, for example US dollars, gain a strong foothold in the Swedish market, it could come to constrain the government's possibility to take measures of monetary policy nature or intervene when there is a financial crisis.⁴¹

In essence, it could be argued that MiCA could be a welcomed initiative in Sweden. The framework to preserve financial stability will most likely address the concern of the central bank Riksbanken in terms of stable coins. Moreover, FI has explicitly expressed that it is pleased that MiCA is undergoing negotiations at the EU level.⁴² Under the MiCA-regime, the lack of proper of consumer protection could be, at least partially, rectified. The risk of crypto assets being used for money laundering activities would also fall under EU's anti-money laundering framework. As for FI's last concern about the environmental impact of crypto assets, MiCA has indeed not provided a fully-fledged solution, especially at the level of the proposal of FI and the Swedish environmental agency. It has however not overlooked the significance of the environmental impact of some crypto assets. In this regard, Sweden should continue to put forward proposals that support its position and seek to make an impact of the issue at the EU level.

6. Conclusion

Crypto assets have come a long way since the introduction of Bitcoin in 2009, reaching a level of recognition far beyond the tech-savvy crowd. This article presents a brief overview of the new regulatory framework of crypto

⁴⁰ Payment Report 2021 [Sw. Betalningsrapport 2021], Riksbanken, p. 11 (hereafter Riksbanken Payment Report 2021). Available at <https://www.riksbank.se/globalassets/media/rapporter/betalningsrapport/2021/svenska/betalningsrapport-2021.pdf> [last viewed 31 January 2021].

⁴¹ Riksbanken Payment Report 2021, p. 12.

⁴² Crypto-assets Today and in the Future, Speech by Erik Thedéen, Director General of Finansinspektionen, p. 4, available at <https://www.fi.se/contentassets/0dbda3ac99ba46248c92de5f4261f591/tal-crypto-assets-today-future-erik-thedeen-13dec21-eng.pdf> [last viewed 31 January 2022].

assets in the EU from a Swedish perspective. More reviews of the regulatory framework can be expected as MiCA is becoming a reality, which is indeed needed.⁴³ Although some improvements were made in the agreed text, a number of shortcomings remain. Questions will also arise during the implementation process as well as when the rules are being applied.

In addition, although the field of crypto assets will fall under the remit of financial supervision in the EU, the risk of crypto assets being used for illegitimated and illegal purposes shall continue to exist. This is no surprise considering the anonymous nature of crypto assets. In this regard, it is crucial to have proper and updated anti-money laundering and terrorism financing framework in place. However, given the original vision of crypto assets such as Bitcoin, i.e., creating a peer-to-peer electronic cash system that is decentralized and anonymous, it cannot be excluded that there will be crypto assets that aim to operate outside of the traditional constraints of nation borders. Here, as long as they do not serve illegitimate purposes, the a-national character of crypto assets could, and perhaps should, be left intact.⁴⁴

In terms of the significant carbon footprints left by some crypto assets, although discussed at an initial stage, a ban has yet to be introduced at the EU level. In this regard, in addition to any regulatory initiatives in the future, it is necessary to follow the developments on the market. Ethereum switched for example from the proof-of-work to proof-of-stake mechanism in September 2022. It should be noted that Ethereum is one of the largest cryptocurrencies based on market cap in the world. It is indeed too early to draw any conclusive assumptions, the crypto market will most likely undergo a number of changes during the coming years, to prepare for upcoming regulations as well as seeking to correct itself in order to avoid further regulations.⁴⁵

Lastly, although EU legislations in the financial markets are often viewed as of a public law nature, the private/public law divided is not a guiding principle in EU law. Although the private/public law divided is deeply entrenched in the majority of member states, EU law operates on different terms. As seen in other areas of EU financial services law, legislations from the EU have not only reshaped the member states' public regulation of the financial markets but have had a significant impact of the private law framework as well. The

⁴³ Academic literature about crypto assets in Sweden remains scarce, see for example Elgebrant, E., *Kryptovalutor: Särskild rättsverkan vid innehav av bitcoins och andra liknande betalningsmedel*, Wolters Kluwer, Stockholm, 2016.

⁴⁴ See Chen 2023.

⁴⁵ See Chen 2023.

duty of loyalty prescribed upon financial advisors and portfolio managers is merely one example.⁴⁶

Evidently, the field of crypto assets is following this development. In MiCA, in addition to authorization requirements, issuers and service providers of crypto assets are subject to various organizational and conduct of business rules. An example is the duty to act in the best interests of the clients, which can be recognized as the duty of loyalty in many national private law regimes.⁴⁷ The contractual relationship between a crypto-related service provider and a client would thus no longer only be governed by the private law of the member states, it will be regulated at the EU level as well. This could be viewed as another example of EU financial regulations falling as an eclipse on contract law in the financial markets.⁴⁸ It could be argued that the introduction of MiCA will give rise to a rather intricate interplay between private and public law in the field of crypto assets in the EU.⁴⁹ The potential effects of the upcoming EU regulation on the private law framework of crypto assets in the member states could thus be an interesting, especially from a comparative perspective, topic to explore.

⁴⁶ For more about the duty of loyalty owed by investment firms towards their clients, see Chen, K., *Legal Aspects of Conflicts of Interest in the Financial Services Sector in the EU and China – the XYZ of Norm-making*, Doctoral Dissertation, Stockholm University, 2018, p. 196 f. (hereafter Chen 2018).

⁴⁷ Article 59(1) of the Provisional Agreement on MiCA prescribing upon all crypto assets service providers to act in the best interest of the clients. It should however be noted once a private law principle has been transformed to a regulatory requirement, it is necessary to apply and interpret it in conformity with the new regulatory context, see Chen 2018, p. 176 f.

⁴⁸ Chen 2018, p. 182.

⁴⁹ See Chen 2023.