

CRYPTO-ASSETS

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The European Legal Framework

Niels VANDEZANDE



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Crypto-assets. The European Legal Framework

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Around 2011, I first became interested in virtual currencies, and more particularly in the many cryptocurrencies that started developing in the wake of bitcoin's initial success. Around the same time, the question of the legal status of virtual currencies started popping up in the research projects that I was involved in as a legal researcher at the KU Leuven Centre for IT & IP Law (CiTiP) – formerly the Interdisciplinary Centre for Law & IT (ICRI). These questions would lead me to pursue a PhD on precisely that topic, starting in 2014 and culminating in my doctoral defence on 13 March 2018.

That doctoral research was published in 2018. Of course, the biggest fear of any PhD student is that, once published, your research risks soon becoming outdated by regulatory changes, or simply changing market conditions. This is particularly true when dealing with a topic like virtual currencies, even more so for cryptocurrencies, given the drastically and rapidly changing market and given that regulatory intervention in this field has been on the horizon for about a decade now.

Luckily, I can now say that five years and a sweeping regulatory reform later, my research and conclusions remain valid and relevant. The regulatory changes introduced in 2023 have not substantially altered my findings, as they mostly fill in the gaps that were present under the already existing financial law frameworks.

However, current and former PhD students have another fear, namely that their research ends up *incomplete*. Therefore, it was time to give this book a thorough update, making sure that it provides a complete overview again of EU crypto regulation under financial law frameworks. In updating this book, it was decided to keep the original text of the doctoral research mostly intact – with a few editorial interventions to make certain sections a bit more palatable for practitioners and other non-academics. Additionally, the new legal frameworks introduced in 2023 are discussed, with the goal to keep this as practice-oriented as possible.

As before, I remain indebted to my PhD promoters and jury members, my publisher, and – most of all – my family for their continued support.

Niels Vandezande

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ACRONYMS

AFM	Autoriteit Financiële Markten
AMF	Autorité des Marchés Financiers
AML	Anti-Money Laundering
AMLA	Authority for Anti-Money Laundering and Countering the Financing of Terrorism
AMLD1	First Anti-Money Laundering Directive
AMLD2	Second Anti-Money Laundering Directive
AMLD3	Third Anti-Money Laundering Directive
AMLD4	Fourth Anti-Money Laundering Directive
AMLD5	Fifth Anti-Money Laundering Directive
AMLD6	Sixth Anti-Money Laundering Directive
AMLR	Anti-Money Laundering Regulation
ATM	Automated Teller Machine
BaFin	Bundesamt für Finanzdienstleistungen
BCDR	Business Continuity and Disaster Recovery
CBDC	Central Bank Digital Currency
CDD	Customer Due Diligence
CEPS	Common Electronic Purse Specifications
CESR	Committee of European Securities Regulators
CFTC	Commodity Futures Trading Commission
CJEU	Court of Justice of the European Union
CNMV	Comisión Nacional de Mercado de Valores
CONSOB	Commissione Nazionale per le Società e la Borsa
COREPER II	Committee of Permanent Representatives
CSD	Central Securities Depository
DAC8	Directive on Administrative Cooperation 8
DAO	Decentralised Autonomous Organisation
DEX	Decentralised Exchange
DLT	Distributed Ledger Technology
DLTReg	Regulation on a pilot regime for market infrastructures based on DLT
DNB	De Nederlandsche Bank
DNS	Domain Name System
DORA	Digital Operational Resilience Act
EBA	European Banking Authority

ECB	European Central Bank
EDPS	European Data Protection Supervisor
EFT	Electronic Funds Transfers
EFTPOS	Electronic Funds Transfer at Point of Sale
EMD1	First E-money Directive
EMD2	Second E-money Directive
EMI	European Monetary Institute
EMU	Economic and Monetary Union
ENISA	EU Agency for Cyber Security
EPC	European Payments Council
ESA	European Supervisory Authorities
ESMA	European Securities and Markets Authority
ETF	Exchange-Traded Fund
EU	European Union
EULA	End-User License Agreement
FATF	Financial Action Task Force on Money Laundering
FCA	Financial Conduct Authority
FinCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
FSMA	Financial Services and Markets Authority
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
ICO	Initial Coin Offering
ICT	Information and Communication Technology
IRS	Internal Revenue Service
ISD	Investment Services Directive
KNF	Komisja Nadzoru Finansowego
KYC	Know-Your-Customer
LETS	Local Exchange Trading System
MiCAR	Markets in Crypto-Assets Regulation
MiFID1	First Markets in Financial Instruments Directive
MiFID2	Second Markets in Financial Instruments Directive
MiFiR	Markets in Financial Instruments Regulation
MMORPG	Massively Multiplayer Online Role-Playing Games
MTF	Multilateral Trading Facility
NFT	Non-fungible token
NIS	Network and Information Security
NFC	Near Field Communication
OJ	Official Journal of the European Union
OTF	Organised Trading Facility
P2P	Peer-to-peer
PEP	Politically Exposed Person

PSD1	First Payment Services Directive
PSD2	Second Payment Services Directive
PSP	Payment Service Provider
RFID	Radio-Frequency Identification
SEC	Securities and Exchange Commission
SegWit	Segregated Witness
SEPA	Single Euro Payments Area
TFEU	Treaty on the Functioning of the European Union
TLD	Top-level domain
UBO	Ultimate Beneficial Owner
UCC	Uniform Commercial Code
VAT	Value added tax

