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Comparison of the European Union's Markets in Crypto-Assets Regulation and the United States' Enforcement-Based Approach to Crypto-Asset Regulation

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Comparison of the European Union's Markets in Crypto-Assets Regulation and the United States' Enforcement-Based Approach to Crypto-Asset Regulation

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The rapidly evolving industry of crypto-assets presents significant regulatory challenges, which are further complicated by differing approaches in the European Union (EU) and the United States (US). This article compares these frameworks, while focusing on the EU's *Markets in Crypto-Assets* (MiCAR) and the US's *Regulation by Enforcement* strategies.

The EU takes a proactive approach through its MiCA regulation, set to take effect on December 30, 2024. This regulation aims to harmonize the EU's regulatory framework for crypto-assets and crypto-asset service providers (CASPs), by virtue of offering legal clarity and creating a stable environment for digital assets, and thus ensuring consumer protection similar to the traditional financial sector.

Conversely, the US adopts a reactive stance, by applying the already existing legal rules to crypto-assets under the principle of technological neutrality. This 'regulation by enforcement' approach relies on established legal principles and regulatory discretion, while raising challenges related to legal predictability, supervisory powers, and the adaptation of the traditional laws to new technologies.

The comparative analysis conducted in this article explores practical regulatory challenges and broader implications for consumer protection, market stability, legal predictability and innovation incentives. By examining these elements, it contributes to the discourse among scholars and young researchers in the field of legal innovation.

Keywords: crypto-assets, regulatory frameworks, Markets in Crypto-Assets Regulation (MiCAR), technological neutrality, regulation by enforcement, Crypto-Asset Service Providers (CASPs).

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Europos Sąjungos kriptoturto rinkų reglamento ir Jungtinių Amerikos Valstijų vykdymo užtikrinimu grindžiamo požiūrio į kriptoturto reguliavimą palyginimas

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Sparčiai besiplėtojant kriptoturto sektoriui susiduriama su jo reguliavimo iššūkiais, kuriuos spręsti apsunkina skirtingas požiūris į kriptoturto reguliavimą Europos Sąjungoje (ES) ir Jungtinėse Amerikos Valstijose (JAV). Šiame straipsnyje lyginamos šios dvi teisinės sistemos, daugiausia dėmesio skiriama ES kriptoturto rinkų reglamentui (angl. *Markets in Crypto-Assets*, MiCAR) ir JAV naudojamai „reguliavimo per vykdymo užtikrinimą“ strategijai.

ES laikosi aktyvaus požiūrio, taikydama MiCA reglamentą, kuris įsigaliojo 2024 m. gruodžio 30 dieną. Šiuo reglamentu siekiama harmonizuoti ES kriptoturto ir kriptoturto paslaugų teikėjų (angl. *crypto-asset service providers*, CASP) reguliavimo taisykles, suteikti daugiau teisinio aiškumo ir sukurti stabilią aplinką skaitmeniniam turtui, taip pat užtikrinti vartotojų teisių apsaugą, panašią į teikiamą tradicinio finansų sektoriaus.

JAV, priešingai, laikosi reaktyvios pozicijos, taikydamos esamas teisines taisykles kriptoturtui ir vadovaudamosi technologinio neutralumo principu. Toks vykdymo užtikrinimu grindžiamas požiūris į kriptoturto reguliavimą remiasi nusistovėjusiais teisiniais principais ir priežiūros institucijų diskrecija. Todėl kyla sunkumų dėl teisinio tikrumo, priežiūros institucijų įgaliojimų ir tradicinių teisės aktų pritaikymo naujoms technologijoms.

Šiame straipsnyje remiantis pateikiama dviejų požiūrių lyginamąja analize nagrinėjami praktiniai reguliavimo iššūkiai ir vertinamos platesnės implikacijos vartotojų teisių apsaugai, rinkos stabilumui, teisiniam tikrumui ir paskatoms inovuoti. Nagrinėjant šiuos elementus, straipsnyje siekiama prisidėti prie mokslininkų ir jaunųjų tyrėjų diskusijų, susijusių su teisės inovacijų sritimi.

Pagrindiniai žodžiai: kriptoturtas, reguliavimo sistemos, Kriptoturto rinkų reglamentas (MiCAR), technologinis neutralumas, „reguliavimas per vykdymo užtikrinimą“, kriptoturto paslaugų teikėjai (CASPs).

Introduction

The emergence of crypto assets has brought new complexities to the global financial environment and triggered divergent regulatory responses from major economies. This legal research paper analyses distinct approaches taken by the European Union and the United States. It examines how different regulatory models impact the market stability, innovation, consumer protection, and global legal trends.

In the EU, *Markets in Crypto-Assets Regulation* (MiCAR) aims to standardize crypto-asset regulation across its member states. MiCAR contains provisions for various forms of digital tokens including asset-referenced tokens and e-money tokens. It targets *Crypto-Asset Service Providers* (CASPs). It introduces a comprehensive set of rules seeking to ensure transparency, security, consumer protection, proper authorization and systematic supervision of the crypto-asset sector (Zetzsche *et al*., 2020). This framework is designed to protect consumers and to stabilize the market by setting forth clear legislative standards for crypto-asset issuers and service providers (Vianelli and Pantaleo, 2024).

In contrast, the regulatory environment in the US is reliant on the already existing financial laws, enforced on a case-by-case basis by the *Securities and Exchange Commission* (SEC) and the *Commodity Futures Trading Commission* (CFTC). The SEC plays an essential role in this regulatory setup. It regulates the crypto-asset sector by enforcement actions. This involves using the already existing securities laws to oversee the new and emerging technologies like blockchain and crypto-assets, often leading to significant legal challenges and debates around the classification and treatment of digital assets. High-profile enforcement cases have set precedents shaping the industry's compliance norms (Dombalagian, 2024). The CFTC also supervises crypto-assets when crypto-asset trading is denoted by features of derivative products, fraud or manipulation. This approach has resulted in significant legal uncertainty. It illustrates the challenges of adapting existing regulatory frameworks to govern innovative financial products (Dombalagian, 2024).

The **aim** of this article is to conduct a comparative analysis of the EU's MiCAR and the US' enforcement-based approach towards crypto-asset regulation, focusing on their structural frameworks, implementation strategies and implications for the market participants and regulatory practices.

The **research objectives** of this paper include the following: i) examination of the foundational components of MiCAR and the US' enforcement-based regulatory approach, identifying key similarities and differences; ii) assessment of the methodologies employed in the application of both regulatory frameworks, considering their effectiveness and efficiency in overseeing crypto-asset activities; iii) investigation of the impact of each regulatory approach on consumer protection, market stability, innovation and legal predictability; and iv) exploration of MiCAR's potential to serve as a global regulatory standard for the regulation of crypto-assets-related activities.

This research contained herein is **novel** as it offers an analysis of the newly adopted EU legal act – *MiCAR* – which is compared with the longstanding enforcement-led strategy of the US, and contributes fresh perspectives to the discourse on the global crypto-asset regulation.

The following **research methods** were invoked: *Documentary research and analysis* was used for the examination of MiCAR and other legal documents; *Scholar literature analysis* was applied for a thorough review of the ongoing scholarly debates on the subject matter; *Linguistic analysis* helped to analyze and clarify specific terminology used in the relevant legislation and case law. This method aids in clarifying legal definitions and ensuring consistent understanding of the key concepts across different regulatory texts; *Comparative analysis* was utilized to compare the EU's regulatory model laid down in MiCAR with the enforcement-based approach of the US; *Systemic analysis* was key in seeking to crystalize the similarities and differences between the EU and the US regulatory setups, defining the interplay between various regulatory instruments and their collective impact on the crypto-asset ecosystem; A*nalogical reasoning* was applied to draw parallels between the established legal principles and emerging issues in the crypto-asset regulation, thus facilitating the application of the already existing legal frameworks to novel situations; finally, *Logical deduction* was fundamental in refining data and insights derived from various sources and drawing reasoned conclusions and actionable suggestions.

The **subject matter** of the paper is the comparative analysis of MiCAR and the United States' enforcement-based approach to crypto-asset regulation. This research is **relevant** as it addresses the urgent need for clarity and coherence in crypto-asset regulation across the world, which is critical for ensuring market integrity, protection of investors, and fostering of innovation.

The research draws upon a number of primary legal texts, scholarly literature and case law to establish an analytical foundation. Its key legal sources include MiCAR and significant US legal precedents such as *SEC v. Ripple Labs Inc.* and *CFTC v. Bitfinex*, which illustrate the enforcement dynamics within the U.S. regulatory landscape. Foundational literature encompasses Zetzsche *et al.* (2020), who provide an in-depth examination of the EU's digital finance strategy, highlighting the regulatory intentions behind the MiCAR. Dombalagian (2024) offers critical insights into the U.S. enforcement-led regulatory approach, analyzing its implications for market participants and regulatory efficacy. Goforth (2022) discusses the challenges inherent in regulation by enforcement, particularly within the rapidly evolving crypto-asset sector. Ferreira *et al.* (2021) explore the concept of regulatory recognition in Europe, shedding light on cross-border regulatory harmonization efforts. Further contributions from Annunziata (2023) and Vianelli and Pantaleo (2024) trace the evolution of the MiCAR, providing context to its current provisions and future trajectory. Broader theoretical perspectives are drawn from Ayres and Braithwaite (1992) on responsive regulation, offering a framework for understanding regulatory interactions, whereas the work by Pistor (2019) discusses the relationship between law and innovation. Recent scholarly discourse has expanded the understanding

of crypto-asset regulation. Galasso (2024) presents a comparative analysis of crypto regulation in the US and the EU, by emphasizing the proactive stance of the EU through the MiCAR and contrasting it with the reactive, enforcement-centric approach of the US. This work underscores the potential benefits of a harmonized regulatory framework in fostering innovation while ensuring consumer protection. Additionally, the taxonomy of crypto-assets under the MiCAR has been critically examined. The analysis of crypto-asset subcategories under the MiCAR provides clarity on the scope of regulation and highlights potential challenges in classification, which are crucial for effective regulatory implementation. Collectively, these sources provide a critical foundation for the examination of the EU and US regulatory approaches.

Meanwhile, the issues of activities based on the blockchain technology and crypto-asset regulation in Lithuania have only been partially explored. To date, researchers such as Ieva Turskytė and Alfreda Šapkauskienė have focused on the EU's cryptocurrency regulatory policy (Turskytė and Šapkauskienė, 2021). Denas Grigaitis examines the challenges of determining the applicable law in relationships among participants in cryptocurrency systems (Grigaitis, 2021). Evaldas Mikalajūnas published an article dedicated to the legal definition and issues of NFTs (Mikalajūnas, 2022). Sandra Idkinaitė and Artūras Grumulaitis investigate crypto-asset taxation matters (Idkinaitė and Grumulaitis, 2023). Meanwhile, Gediminas Laucius compares the new crypto-asset regulations in Lithuania and the European Union (Laucius, 2023). However, to the best of the author's knowledge, there have been no attempts in Lithuania to compare the EU's MiCAR with the US crypto-asset regulatory tradition.

1. Overview of MiCAR

The MiCAR is a significant advancement in the regulatory landscape of crypto-assets. It creates a comprehensive regulatory framework aimed at securing digital financial markets and fostering innovation (Ferreira *et al.*, 2021). This section of the paper overviews the history and theoretical background of the MiCAR, outlines the scope and provisions of the regulation, and sets the stage for a comparative analysis with the US's regulatory approach.

1.1. History and theoretical background

The MiCAR can be viewed through the perspective of the 'responsive regulation' – which is a concept proposed by Ayres and Braithwaite (1992). It requires regulations that would adapt to the behavior of regulated entities and technological advancements. This theoretical background partially explains the EU's proactive approach in developing regulations specifically designed to address the emerging challenges associated with crypto-assets. Unlike the US's reactive 'regulation by enforcement' strategy, the MiCAR seeks to put the member states in a leading regulatory position rather than leave them combating new phenomena caused by technological disruptions with the old set of legal instruments (Zetzsche, Buckley, Arner, and van Ek, 2023).

On 24 September 2020, the European Commission adopted the Digital Finance Package. It consists of a Digital Finance Strategy and proposals for the MiCAR and the regulation on a pilot regime for market infrastructures based on the distributed ledger technology. The package aims to create conditions for a competitive EU financial sector and provide consumers with access to innovative financial products, while ensuring consumer protection and financial stability (EC Communication: Digital Finance Package, 2020a). Tripartite negotiations between the EU Council, the European Parliament and the EC started on 31 March 2022 and concluded on 30 June 2022 with a pre-legislative agreement on

the scope and content of the MiCAR (Digital Finance: Agreement Reached..., 2022). The MiCAR has been adopted by the European Parliament and the Council, and has been in force since 30 December 2024, except for the provisions relating to *Electronic Money Tokens* (EMTs) and *Asset-Referenced Tokens* (ARTs) which have been effective since late June 2024 (Art. 149). The EU member states may introduce additional transitional period of up to 2 years for CASPs that operated in the member states before the MiCAR to get a special authorization license under the MiCA (Art. 143).

1.2. Scope and provisions of MiCAR

The MiCAR provides a harmonized regulatory framework aimed at enhancing the market integrity and consumer protection across the EU. It categorizes crypto-assets not covered by existing financial legislation and imposes stringent operational standards on CASPs. Article 1 of the MiCAR lays down that it establishes rules that will apply equally in all the EU member states, in particular: (i) transparency and disclosure requirements for cryptocurrency issuances and trading authorizations; (ii) authorization and supervision requirements of CASPS, issuers of ARTs and issuers of EMTs; (iii) consumer protection rules applicable to the issuance, trading, exchange and storage of crypto-assets; (iv) requirements for the protection of clients of crypto-asset service providers; and (v) the measures preventing market abuse and ensuring the integrity of crypto-assets markets.

Crypto-assets covered by the MiCAR are defined in its Article 3(5) as "a digital representation of value or rights that can be transferred and stored electronically using distributed ledger or similar technology". The MiCAR divides crypto-assets into three categories: (i) utility tokens, which are intended to provide digital access to a good or a service and can only be settled with the issuer who issued it; (ii) ART tokens that are a type of crypto-assets that are not EMTs and that purport to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies; and (iii) EMTs that are a type of crypto-assets that purport to maintain a stable value by referencing the value of one official currency. The primary purpose of EMTs is to serve as a medium of exchange (Laucius, 2023).

However, despite its comprehensive scope, the MiCAR explicitly excludes certain crypto-assets and sectors: (i) securities tokens, i.e. assets that qualify as securities and are regulated under existing frameworks like *Markets in Financial Instruments Directive* (MiFID); (ii) *Non-Fungible Tokens* (NFTs); and (iii) *De*centralized *Fi*nance Sector ("DeFi"). In respect to the latter, in the Preamble of the MiCAR, it is stated that "*where crypto-asset services are provided in a fully decentralised manner without any intermediary, they should not fall within the scope of this Regulation*". In other words, DeFi generally falls outside the MiCAR's scope, but, in certain cases, where some intermediary (e.g., a founding team, persons promoting a DeFi platform) can be determined, a DeFi project can be made subject to the MiCAR. This regulatory vagueness concerning DeFi prompts debates about the adequacy of the definition of the MiCAR's regulatory perimeter (Annunziata, 2024).

In terms of consumer protection, the MiCAR requires that crypto-asset issuers publish a comprehensive white paper detailing their project and notify the relevant authority 20 days before its publication and the commencement of marketing activities within the EU. Though, formal approval from the authority is not required (Articles 4(1)(b), 6, 9 of the MiCAR). Issuers are further obligated to adhere to stringent conduct standards (Article 14(1) of the MiCAR), specifically to: a) act honestly, fairly and professionally; b) ensure that communications with holders and potential holders are fair, clear and not misleading; c) identify, prevent, manage and disclose any conflicts of interest; and d) maintain solid systems and security protocols complying with the EU standards. In cases when an offer to the public

is cancelled, the issuers must return any collected funds to the holders or prospective holders within 25 calendar days after the cancellation date (Article 14(3) of the MiCAR).

Nearly a half of the MiCAR is devoted to the so-called stablecoins – ARTs and EMTs. Under the MiCAR, issuers of EU stable tokens must be legal entities established within the EU, and they must possess specific authorization granted by the competent authority in a member state. Importantly, there are no exemptions for issuers based in other countries (Articles 16 and 48 of the MiCAR). This means that global stablecoins which are issued not respecting the requirements of the MiCAR will not be allowed to circulate in the EU. To obtain the necessary authorization, legal entities are required to prepare a comprehensive white paper, implement the appropriate organizational arrangements, adopt the mandated policies and procedures, and maintain sufficient own funds along with a liquidity buffer. This buffer must be adequate to cover the full value of the stable tokens issued on a one-to-one basis (Articles 17, 18, 48 and 51 of the MiCAR). The reserve portfolio for stablecoins may comprise a variety of assets, including currencies, equities, securities, crypto-assets, deposits, commodities, and others. However, issuers must ensure that the reserve structure allows stablecoin holders to redeem their holdings without delay and without incurring any additional fees (Articles 36, 39 and 49 of the MiCAR). Furthermore, crypto-assets held in reserves must be deposited with EU-authorized CASPs, while other types of assets must be held with EU-authorized banks (Article 37(3) of the MiCAR).

Another important part of the MiCAR relates to the authorization and operations of CASPs. Pursuant to the MiCAR, CASPs are required to obtain authorization from the competent national authority. This authorization will be valid throughout the EU, and therefore CASPs will not need to be physically established in other EU member states (Articles 59, 62, and 65 of the MiCAR). A public register of all CASPs operating within the EU will be maintained at the EU level (Article 109 of the MiCAR). The prudential safeguards required for CASPs vary depending on their scale and activities. These safeguards include minimum capital requirements, ranging from €50,000 to €150,000, or of an amount sufficient to cover one quarter of the fixed overheads of the preceding year, if it is higher than the minimum capital requirements (Article 67(1)(a) and Annex IV of the MiCAR). Additionally, high standards of governance, staff training, professional indemnity insurance, segregation of assets, safekeeping, business structure and qualification of the management will apply to CASPs (Articles 66–68 of the MiCAR).

Finally, the MiCAR introduces anti-abuse rules for the crypto-asset sector. To prevent abuse of crypto-asset markets, the MiCAR's Articles 88 to 91 contain rules: obliging crypto-assets issuers to disclose insider information to the public as soon as possible and prohibiting: (i) insider trading in crypto-assets; (ii) unauthorized disclosure of insider information; and (iii) conduct that would amount to manipulation of crypto-assets markets.

The MiCAR presents a sharp contrast to the US approach, which leans heavily on the currently existing legal frameworks and case-by-case enforcement actions.

2. US Regulatory Approach

Unlike the EU's MiCAR's framework, the US does not have tailored laws for crypto-assets. The US regulates the field by mostly relying on the grounds of the previously established legal structures via *ad hoc* enforcement actions (Goforth, 2022). Although this method respects technological neutrality, it also raises concerns regarding the legal predictability and the suitability of old laws to govern new technologies.

2.1. Regulation by enforcement in the US Crypto-asset regulation

The US regulates crypto-assets primarily through enforcement actions by the SEC and the CFTC, by applying the traditional securities and commodities laws to crypto-assets, depending on their characteristics and how they are sold (Goforth, 2022).

The SEC determines whether certain crypto-assets qualify as securities, and then applying the *Securities Act* of 1933 and the *Securities Exchange Act* of 1934, while using criteria from the *Howey test* (Dombalagian, 2024). This test was developed in 1946 by the Supreme Court of the United States. It assesses whether a transaction qualifies as an investment contract and thus is a security. The test evaluates whether a certain asset meets the following criteria:

i) investment of money: there must be an investment of money or some form of consideration;
ii) common enterprise: the investment is in a common enterprise, meaning that there is a pooling of money or assets;
iii) expectation of profits: the investor expects to earn profits from the investment;
iv) efforts of others: the expected profits are derived from the efforts of others, typically the promoters or third parties.

The SEC's application of the *Howey test* to digital assets has been further clarified in several enforcement actions and guidelines by the SEC, called *Framework for "Investment Contract" Analysis of Digital Assets* issued in 2019. The corresponding documents list numerous factors to be considered in determining whether a crypto-asset is denoted by characteristics of any product that meets the definition of 'security' under the federal securities laws (SEC, 2019).

Another important aspect of securities regulation is the *Reves test*, used to determine whether a note constitutes a security. The *Reves test* originated from the Supreme Court's decision in *Reves v. Ernst & Young*. The criteria of *Reves test* include:

i) motivations of the buyer and seller: whether the seller's purpose is to raise money for the general use of a business or to finance substantial investments and whether the buyer is interested primarily in the profit that the note is expected to generate;
ii) plan of distribution: whether the instrument is being distributed for investment or commercial purposes (if it is being offered broadly to potential investors, it is more likely to be considered a security);
iii) reasonable expectations of the investing public: an assessment of what investors reasonably believe they are investing in based on marketing, advertising and the economic characteristics of the instrument;
iv) existence of alternative regulatory regimes: whether there is another regulatory scheme that adequately protects investors, which would reduce the need to treat the instrument as a security under federal securities laws (Guseva and Hutton, 2023).

The CFTC regulates crypto-assets-deemed commodities, by focusing on derivative products and fraud and manipulation in the underlying spot markets. The regulatory significance of the CFTC increased considerably following the recognition of *Bitcoin* and other cryptocurrencies as commodities, thus subjecting them to the applicable CFTC regulations (Guseva and Hutton, 2023).

2.2. Related case law

Entities face significant uncertainty because laws traditionally enforced by the SEC and the CFTC are applied to crypto-assets based on criteria that may not align with the digital nature of these assets,

and they are applied on a case-by-case basis. Moreover, regulation by enforcement can encourage a tendency to over-regulate. Below is an overview of the case studies illustrating the challenges caused by the current US regulatory approach.

SEC vs. Ripple Labs, Inc. In December 2020, the SEC filed a lawsuit against *Ripple Labs Inc.*, alleging that *Ripple* had raised over $1.3 billion through an unregistered securities offering since 2013 by selling XRP, which is a digital asset. The SEC contended that XRP qualified as a security under the US law and the *Howey test*. Because of that, XRP issuance required registration and disclosure (SEC, 2020a).

Ripple countered the SEC's claim by arguing that XRP acts as a currency rather than a security and thus should not be subject to stringent securities regulatory requirements. The classification by the SEC required *Ripple* to navigate complex securities law compliance, including registration and disclosure obligations. In a significant ruling on 13 July 2023, the court decided that *Ripple* did not violate the law when XRP was being sold on public exchanges. However, the victory was not absolute, as the court also found that *Ripple*'s sales of XRP to hedge funds and other institutional investors met the criteria of *Howey test*, and therefore violated the securities laws, since these sales were unregistered. This mixed verdict acknowledges *Ripple*'s targeted marketing to institutional investors and suggests that the company promoted XRP with a speculative intent on its value. The partial victory in the case introduces potential continuing legal challenges, as *Ripple*'s actions in selling XRP did not receive a clear legal assessment (Cointelegraph, 2024) and did not increase legal certainty for crypto-asset companies operating in the US.

SEC vs. Telegram Group, Inc. In October 2019, the SEC initiated a lawsuit against *Telegram Group, Inc.*, following their $1.7 billion fundraising for the *Telegram Open Network* (TON) through an *Initial Coin Offering* (ICO) of the tokens called *Grams*. The SEC argued that *Grams* were securities because they involved an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial and managerial efforts of others, specifically, *Telegram*'s team. This expectation was primarily based on *Telegram*'s promise that the tokens would increase in value and could be resold in a secondary market that *Telegram* would help create (SEC, 2020b). *Telegram* did not agree by claiming that *Grams* were not securities but rather commodities. Accordingly, the private sale of these tokens to accredited investors was exempt from the SEC registration requirements. However, the SEC highlighted that even if the initial sale was exempt, the planned distribution of *Grams* to a broader market would effectively be a public offering of securities without the necessary registration.

The legal battle culminated in June 2020 when *Telegram* agreed to settle with the SEC. As part of the settlement, *Telegram* returned more than $1.2 billion to investors and paid an $18.5 million civil penalty (SEC, 2020c). The settlement effectively halted the launch of *TON* and the issuance of *Grams*. Ultimately, *Telegram* announced it would discontinue its active involvement in the project.

CFTC vs. Bitfinex. In June 2016, the CFTC took action against a leading cryptocurrency exchange *Bitfinex* for not registering as a futures commission merchant despite offering margin trading on its platform. *Bitfinex* allowed its users to purchase crypto-assets on borrowed funds without securing these transactions in segregated accounts, as it was required by the US regulations. This practice exposed customers to heightened risks of loss.

Bitfinex admitted these allegations, cooperated with the CFTC, modified its business operations and agreed to a settlement. The exchange paid a $75,000 fine and halted all unregistered trading activities (CFTC, 2016). This case illustrated the need for exchanges to comply not only with the securities laws, but with the US commodity trading regulations as well. Specifically, the case highlighted the necessity for crypto platforms to manage customer funds prudently and to adhere to regulatory standards so that

to protect investor interests and ensure the market integrity. It served as a precedent for the regulatory treatment of margin trading by crypto exchanges.

CFTC vs. Tether and Bitfinex (2021). In October 2021, the CFTC imposed fines on *Tether* and *Bitfinex* for deceptive claims and unauthorized financial activities. *Tether* faced scrutiny for falsely asserting that its *USDT* tokens were fully backed by US dollars. Meanwhile, *Bitfinex* was accused of conducting illegal commodity transactions with the US residents and operating without the necessary registration as a futures commission merchant. This, in the CFTC view, they violated the *Commodity Exchange Act*'s (CEA) standards for financial transparency and integrity (Goforth, 2022).

The final resolution required *Tether* and *Bitfinex* to pay fines in the amount of $42.5 million and forced them to stop any further violations of the CEA (CFTC, 2021). This enforcement action emphasized the critical need for adherence to regulatory standards and aimed to introduce a greater discipline within the digital asset markets. It also illustrated the ongoing challenges of integrating digital asset operations with established financial regulatory structures.

2.3. Expansion of US regulatory framework and recent legal developments

In recent years, the US has intensified its regulatory oversight of the crypto-asset industry, by focusing on compliance and enforcement so that to ensure market integrity and consumer protection.

SEC vs. Binance (2023–2025). In June 2023, the SEC filed a lawsuit against *Binance Holdings Limited* and its founder, Changpeng Zhao, alleging 13 charges, including operating unregistered exchanges, broker-dealers and clearing agencies, as well as misrepresenting trading controls and oversight on the *Binance.us* platform. The SEC contended that *Binance* and Zhao engaged in a scheme to evade US federal securities laws, thus putting investors at risk (SEC, 2023). In November 2023, *Binance* and Zhao pleaded guilty to federal charges, including money laundering, unlicensed money transmitting and sanctions violations. As part of the plea agreement, *Binance* agreed to pay a 4.3 billion USD fine, while Zhao personally paid a $50 million fine and resigned as the CEO. In April 2024, Zhao was sentenced to four months in prison for his role in the violations. By February 2025, under the new administration, the SEC agreed to a 60-day pause in its ongoing legal proceedings against *Binance*, signaling a potential shift towards a more collaborative regulatory environment (Reuters, 2025).

SEC vs. Coinbase (2023–2025). In June 2023, the SEC filed a lawsuit against *Coinbase*, alleging that the platform operated as an unregistered securities exchange, broker and clearing agency, thereby violating federal securities laws. The SEC contended that *Coinbase* facilitated trading in at least 13 crypto tokens that should have been registered as securities (SEC, 2023). This legal battle lasted until February 2025, when the SEC, under new leadership, agreed in principle to dismiss the case (subject to approval from its commissioners). This decision marked a significant shift in the SEC's approach to crypto regulation, thus aligning with the current administration's more crypto-friendly stance (Reuters, 2025).

SEC investigation into Ethereum (2023–2024). In March 2023, the SEC initiated an investigation into *Ethereum 2.0*, exploring whether *Ether* (ETH) should be classified as a security under the federal law. However, in June 2024, the SEC concluded its investigation without recommending any enforcement action, effectively affirming that ETH is not considered a security. This outcome provided much-needed clarity and relief to developers and investors operating within the *Ethereum* ecosystem (CoinDesk, 2024).

Despite the recent favorable rulings for crypto-asset market participants, the US continues to predominantly employ a 'regulation by enforcement' strategy. This approach, led by agencies such as

the SEC and the CFTC, applies traditional securities and commodities laws to digital assets through enforcement actions. The reliance on tests like the Howey test and the Reves test to classify crypto-assets has often resulted in legal unpredictability and concerns regarding over-regulation. Unlike the EU's MiCAR, which offers a comprehensive legislative framework tailored to crypto-assets, the US lacks specific laws designed for the crypto market. This has resulted in occasionally contradictory and *ad hoc* legal rulings. Such historical regulatory tradition in the US serves as a critical context for comparing with the EU's MiCAR, providing insights into how differing regulatory models impact the development and stability of the crypto-asset market.

3. Comparative Analysis of EU and US Crypto-Asset Regulations

The regulatory approaches to crypto-assets in the EU and the US demonstrate considerable structural and execution differences. This section provides a comparative analysis on consumer protection, innovation, market stability, and legal predictability.

3.1. Effectiveness of consumer protection

The MiCAR offers a proactive regulatory framework intended to address the complexities of the crypto-asset sector before they have caused harm to consumers. By setting clear standards for crypto-assets that are not covered by the existing financial legislation, it includes stringent transparency requirements, mandatory disclosures and operational standards for CASPs. Specifically, the MiCAR requires mandatory authorization, introduces supervision of CASPs, and lays down specific consumer protection rules for the issuance, trading, exchange and storage of crypto-assets. In this way, it aims to protect consumers by ensuring clarity, reducing fraud, and enhancing the overall integrity of the digital asset markets (European Commission, 2020b).

The MiCAR categorizes crypto-assets and tailors specific provisions to each category. This is supposed to enhance consumer understanding and expectations. By virtue of holding a legal form of regulation, the MiCAR sets uniform rules across the EU member states. This ensures that all European consumers receive the same level of protection. The MiCAR's proactive regulatory approach is supported by its alignment with the broader *Digital Finance Strategy*. This strategy aims to create a competitive EU financial sector that would offer consumers the access to innovative financial products while ensuring high levels of consumer protection and financial stability (Council of the European Union, 2023).

On the other hand, the US approach relies on applying the already existing financial laws to crypto-assets, enforced through case-by-case actions by regulatory bodies. The advantage of this method is its flexibility. However, it has also led to significant legal unpredictability which can hinder consumer protection (Goforth, 2022). The *ad hoc* nature of the US regulatory environment means that consumer protection is inconsistent and largely dependent on the regulators' ability to engage in legal battles to establish precedents (Arima, 2022). This often means that consumers are not protected against risks that change quickly until after those risks have caused significant harm. Moreover, reliance on the traditional application of securities and commodities laws to new technologies often leads to outcomes that may not consistently protect consumers, since these laws were not initially designed with digital assets in mind. The retrospective application of laws can result in conservative risk assessments by businesses, making them potentially limit innovation. This, in turn, might negatively affect consumers' access to new products (Guseva, 2022).

To sum up, the EU's approach embodied by the MiCAR appears to be more sustainable and thorough. It offers a higher degree of clarity relating to the rules that apply to different areas of operations

concerning crypto-assets. Whereas, the US model seems to be more flexible, but it poses larger challenges in consumer protection by its unpredictability and inherent contradictions.

3.2. Innovation and market stability

Innovation. The MiCAR has been designed to promote innovation and market stability through clear and forward-looking regulations. By categorizing different types of crypto-assets, the MiCAR facilitates a favorable environment for technological development and seeks to ensure that these innovations occur within secure, transparent and stable market conditions (European Commission, 2020).

The MiCAR's comprehensive approach is expected to become advantageous for innovation as it provides clarity and legal certainty to entrepreneurs and investors about the regulatory requirements that have to be dealt with while operating in the EU. It should help reduce the fragmentation of the internal market and potentially lead to increased investments in crypto-assets and related technologies. Moreover, by establishing specific anti-abuse rules and operational standards for CASPs, the MiCAR aims to protect the market from volatility and deceptive investment practices and ensure an overall market stability (Vianelli and Pantaleo, 2024).

In contrast, the US approach has been critiqued for its potential to limit innovation due to its unpredictability and the retrospective application of existing securities and commodities laws to new technologies. It can create a reactive regulatory environment where rules are unclear until enforcement actions have defined them (Dombalagian, 2024). Such a scenario can deter investment into the sector due to the risks of unforeseen regulatory interventions and the heavy penalties ruining all entrepreneurial endeavors.

Market stability. By integrating new technologies into a clearly defined legal framework, the MiCAR decreases risks associated with market volatility. It aims to foster a stable environment for startups and established companies. Moreover, by setting out specific consumer protection rules, operational standards for CASPs and anti-abuse requirements, the MiCAR aims to protect the market from bad actors and prevent market distortions, thereby increasing the overall market stability.

In the US, conversely, the retrospective application of rules and the uncertainty of enforcement actions contribute to market volatility. This is well-illustrated by the SEC's case against *Ripple Labs, Inc*. In this case, XRP holders, represented by the attorney John Deaton, filed a petition for a writ of mandamus in the District of Rhode Island. They requested the court to exclude their XRP tokens from the SEC's litigation against *Ripple*, by arguing that their purchases did not constitute investment contracts. The petition highlighted that the SEC's actions "*caused multi-billion-dollar losses to innocent investors who have purchased, exchanged, received and/or acquired the Digital Asset XRP*…". In fact, XRP's price went down by more than 63% within days after the SEC sued *Ripple* for raising funds through an "unregistered securities offering" (Deaton v. Roisman, 2021). This case demonstrates how the SEC interventions can make markets more volatile and unstable.

In summary, the MiCAR is expected to create a stable and supportive market environment that encourages technological development, investor confidence, and market stability. In contrast, the US's reactive, enforcement-focused strategy may induce artificial market volatility and discourage investors from investing in the crypto-asset sector in the US.

3.3. Legal Predictability

The MiCAR, being a part of the European Commission's *Digital Finance Package*, sets detailed and harmonized rules across all the EU member states. In this way, it reduces legal ambiguity and fosters

a stable environment for established entities and newcomers. It also mitigates the risk of regulatory arbitrage within the EU and contributes to legal certainty and predictability.

On the other hand, the US is distinguished by its interpretative nature of enforcement actions. The *Ripple* and *Telegram* cases illustrate the unpredictability inherent in the US system (Dombalagian, 2024). Each enforcement action potentially sets a new precedent, thereby influencing market behaviors and legal expectations in an *ad hoc* manner.

In summary, for the participants of the crypto-asset industry, the EU's clear and consistent regulatory environment seems to offer a more reliable basis for long-term planning and investment. In contrast, the US's approach pushes entities to operate under more volatile legal conditions. This may impede the stability necessary for sustainable market growth.

3.4 MiCAR as a model for US Crypto-asset regulation

The US relies on enforcement actions which often create uncertainty, while the EU's MiCAR offers clear and consistent rules. Because of its structured approach, the MiCAR is denoted by the potential to become a global benchmark for crypto regulation, offering a model that would balance consumer protection, market stability and innovation (Vianelli and Pantaleo, 2024).

Regulatory fragmentation in the US. One of the biggest challenges in the US regulatory approach is its fragmentation. There is no single law covering crypto-assets, whereas different regulators – the SEC and the CFTC – apply the currently existing financial laws on a case-by-case basis (Goforth, 2022). This approach creates legal uncertainty, as crypto firms often do not know how their activities will be classified until a regulator has taken action. This unpredictability has already led to inconsistent enforcement. For example, in *SEC v. Ripple Labs Inc.*, the court ruled that some XRP transactions violated securities laws, while others did not, thereby creating even more confusion for the industry (Dombalagian, 2024). Similarly, in *SEC v. Telegram Group Inc.*, the regulator shut down an entire crypto project without clear guidance on how any future projects should comply (Goforth, 2022). The MiCAR, in contrast, sets clear rules for all EU member states, while ensuring that crypto businesses understand their obligations upfront (European Commission, 2020). If the US introduced a similar framework, crypto firms would no longer have to navigate conflicting interpretations from different agencies, thus making compliance easier and reducing the regulatory uncertainty.

Consumer protection and market integrity. A key advantage of the MiCAR is its strong consumer protection measures. It requires crypto-asset issuers to disclose detailed information about their projects and CASPs to follow strict operational rules, thereby ensuring that investors are protected from fraud and misinformation (Council of the European Union, 2023). By contrast, the US regulators often act only after harm has already been done. For example, in the *Tether* and *Bitfinex* case, the regulators fined *Tether* for misleading investors about the stablecoin reserves reactively and had not introduced the required legal rules that would have prevented such a situation from happening in advance (CFTC, 2021). Had clear reserve requirements been in place from the beginning, such issues could have been prevented. The MiCAR takes a proactive approach, requiring stablecoin issuers to maintain sufficient reserves and follow strict transparency rules. A similar US framework could improve the market integrity by ensuring that crypto-asset businesses operate within clearly defined standards.

The impact of regulatory clarity on innovation. Legal clarity is essential for fostering innovation and investment in digital assets. The MiCAR creates predictability, allowing businesses to plan for the long term without fear of sudden regulatory shifts. This approach encourages responsible innovation while ensuring compliance (Galasso, 2024). In contrast, uncertainty in the US can discourage invest-

ment. A recent example is the SEC's investigation into *Ethereum 2.0*, which raised concerns that ETH could be classified as a security, despite years of it being treated as a commodity (Coindesk, 2024). This regulatory uncertainty made it harder for developers and investors to commit to *Ethereum*-based projects, fearing future enforcement actions. If the US adopted a structured regulatory framework similar to the MiCAR, it could provide much-needed legal certainty for crypto businesses, attracting more investment and fostering innovation.

The global influence of MiCAR and US regulatory leadership. The MiCAR has the potential to become the global standard for crypto regulation (Annunziata, 2023), much like how the EU's *General Data Protection Regulation* (GDPR) shaped global data privacy laws. As crypto markets are inherently international, firms often follow the most developed regulatory framework in order to ensure compliance across multiple jurisdictions. If the US does not modernize its approach, US crypto firms may be forced to comply with the MiCAR standards anyway when operating in Europe. This could shift regulatory leadership away from the US toward the EU, thus weakening US influence in shaping global financial regulations. By adopting a MiCAR-like approach, the US could strengthen consumer protection, enhance legal clarity for businesses, and ensure its continued involvement in shaping global financial regulations.

Conclusion

1. **Divergent regulatory frameworks and their implications.** The comparative analysis demonstrates that the EU's MiCAR establishes a comprehensive and harmonized legal framework for crypto-assets, aiming to enhance consumer protection, stimulate innovation, and ensure market stability through uniform rules applicable across all the EU member states. In contrast, the US employs a complex regulatory approach, wherein the currently existing financial laws are interpreted and enforced by various agencies on a case-by-case basis.
2. **MiCAR's proactive approach to crypto-asset regulation.** The MiCAR's framework is designed to address gaps in the current EU financial services legislation by encompassing crypto-assets not previously regulated. It introduces stringent requirements for transparency, disclosure, authorization and supervision of crypto-asset transactions, thereby aiming to protect consumers and maintain financial stability. The regulation also defines specific categories of crypto-assets, such as utility tokens, asset-referenced tokens, and e-money tokens, each subject to tailored regulatory provisions.
3. **Challenges in the US regulatory landscape.** The US regulatory environment for crypto-assets is characterized by its reliance on pre-existing financial regulations and old-standing case-law, which are applied by different supervisory agencies, the SEC and the CFTC. This approach can lead to a fragmented regulatory landscape, where overlapping jurisdictions and divergent interpretations may create uncertainty for the market participants. Such unpredictability could potentially hinder innovation and complicate the compliance efforts within the crypto-asset industry.
4. **Potential for MiCAR to set a global regulatory benchmark.** The EU's MiCAR establishes a unified regulatory framework for crypto-assets, positioning the EU as a potential global standard-setter in this domain. By providing clear guidelines and fostering a stable regulatory environment, the MiCAR aims to attract crypto-asset businesses seeking legal certainty and operational consistency. As other jurisdictions observe the EU's proactive stance, there is a possibility that they may consider adopting similar frameworks to remain competitive in the evolving digital finance landscape. By adopting a MiCAR-like approach, the US could also strengthen consumer protection, enhance legal clarity for businesses, and ensure its continued involvement in shaping global financial regulations.

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