



CRYPTOASSETS – DIGITAL VALUE CARRIERS

Alternative value carriers are not an invention of the past decade, not even of the 21st century. **Back in 1929**, as a reaction to the world economic crisis at that time, there were attempts - regionally limited and mostly on the initiative of the municipalities - with the "Wära" in Germany (1929) and the "Wörgler Schwundgeld" in Austria (1932) to generate economically positive effects such as the reduction of unemployment figures by **introducing alternative means of payment**. These means of payment could be used within their respective territorial scope to **purchase goods or services**, i.e. they were accepted in (regional) economic transactions instead of state currencies. Due to the **violation of the national banks' banknote privilege**, none of these systems persisted for long.

The decisive breakthrough for the creation of a "digital currency" as an alternative carrier of value, however, came with the **cryptocurrency Bitcoin**, whose mode of operation was first presented in a publication in 2008. While the first exchange rate in 2011 was still USD 0.07, it rose continuously - despite violent price fluctuations - and reached a peak of USD 64,784.14 in mid-April 2021. This corresponds to an **increase in value of 92,548,657.43%**.

In the meantime, there is an almost incomprehensible variety of digital securities that can be summarised under the generic term "**cryptoassets**".

I. WHAT ARE THE CHARACTERISTICS OF A CRYPTOASSET?

Despite the diversity of cryptoassets, several characteristics can be identified that are inherent to each cryptoasset:

- Use of **secure cryptographic methods** to prevent the system from being corrupted.
- Use of a **decentrally managed account book** ("distributed ledger"). This is achieved, for example, through the use of a blockchain.
- **(In principle) no involvement of third parties** for the administration of the system, such as banks or public authorities.

II. WHAT TYPES OF CRYPTOASSETS DO EXIST?

From a **technical perspective**, cryptoassets can essentially be divided into independent cryptocurrencies (with issued "**coins**") and so-called "**tokens**". Cryptocurrencies basically use their own blockchain technology. Tokens are generally built on existing blockchains of other platforms.

With regard to their **intended use**, a subdivision can be made into **three main groups**, whereby a case-by-case assessment should be made in any circumstance:



- **Coins/Payment Tokens:** these are used as a means of exchange or payment in order to obtain goods or services.
- **Security tokens:** these are modelled on securities and usually represent a share in the profits of a company. Companies can raise capital by issuing them through a **security token offering (STO)**.
- **Utility tokens:** these provide digital **access** to a product or service provided by the issuer. They can also be used to establish other **membership rights** or access rights to certain services of the issuer.

III. IN WHICH AREAS IS LEGISLATION NEEDED?

Cryptoassets raise a number of difficult – and often currently unresolved – **legal questions** that affect the entire spectrum of the legal system. In particular, the question arises as to how such digital carriers of value are to be classified from the perspective of **currency law, civil law, supervisory law and corporate law**.

Another challenge is that cryptoassets are often **extraordinarily volatile**. In the past, single tweets were often enough to trigger massive price fluctuations. Thus, the creation of clear legal foundations is necessary to **protect investors** and prevent market exploitation.

As in many other technical areas, there is also a constant danger with cryptoassets that technological developments will advance faster than the legislative process. This means that at the time of promulgation of new provisions, new products may already exist to which these provisions may no longer be applicable.

The European Commission has recognised these issues and published a **proposal for a Regulation on Markets in Crypto-Assets (MiCA Regulation)** a while back.

IV. WHAT IS THE MICA REGULATION INTENDED TO REGULATE?

The MiCA Regulation is intended to apply to issuers of **crypto securities** or to providers of services in connection with crypto securities in the European Union. Especially since the current version is only a draft, it is to be expected that extensive amendments will be made in the trilogue procedure.

The term "**crypto value**" is seen in a purely functional and technology-neutral way: a crypto value should be a "digital representation of values or rights" that can be transferred and stored electronically by means of a **distributed ledger technology** or comparable technologies. However, certain crypto assets and companies are excluded from the scope of application.

The aim of the MiCA Regulation is to establish **uniform rules throughout the EU**, in particular by **creating transparency and disclosure obligations** in connection with the issuance and authorisation of crypto assets as well as the **authorisation of providers** of crypto services and issuers of certain tokens. It also contains **consumer protection** provisions and measures to **prevent market abuse**.

Violations of the MiCA Regulation are to be **punishable by fines of up to 15%** of the issuer's annual turnover in the previous business year. Furthermore, periodic **penalty payments** can be imposed. The member states are also obliged to introduce **administrative penalty provisions** including fines with regard to certain violations of the MiCA Regulation.



CONTACT

Austria:

Philipp Lukas Leitner
P.Leitner@scwp.com

Bulgaria:

Cornelia Draganova
Cornelia.Draganova@schindhelm.com

China:

Marcel Brinkmann
Marcel.Brinkmann@schindhelm.com

Czech Republic/Slovakia:

Monika Wetzlerova
Wetzlerova@scwp.cz

France:

Maurice Hartmann
Maurice.Hartmann@schindhelm.com

Germany:

Rüdiger Erfurt
Ruediger.Erfurt@schindhelm.com

Hungary:

Beatrix Fakó
B.Fako@scwp.hu

Italy:

Florian Bünger
Florian.Buenger@schindhelm.com

Poland:

Anna Materla
Anna.Materla@sdzlegal.pl

Romania:

Helge Schirkonyer
Helge.Schirkonyer@schindhelm.com

Spain:

Carlos Fernández
C.Fernandez@schindhelm.com

Turkey:

Müge Şengönül
Muge.Sengonul@schindhelm.com