# L46: Swiss FINMA and EU MiCA
## Module G: Regulation & Future

Blockchain & Cryptocurrency Course

December 2025

- **Switzerland**: Global leader in crypto regulation clarity
  - Crypto Valley (Zug): 1,000+ blockchain companies
  - Clear legal framework since 2019
  - Home to Ethereum Foundation, Cardano Foundation, Tezos
- **EU MiCA**: First comprehensive crypto regulatory framework
  - Applies to 27 member states (450M people)
  - Template for other jurisdictions globally
  - Effective 2024-2025

- **Relevance**: Both frameworks offer regulatory certainty for builders and investors
- **Contrast**: Principles-based (Switzerland) vs rules-based (EU)

- **FINMA (Swiss Financial Market Supervisory Authority)**: Independent regulator
- **Mandate**: Protect creditors, investors, and insured parties; ensure financial market functionality
- **Crypto Regulation Milestones**:
  - 2017: First ICO guidelines
  - 2019: Comprehensive token classification guidance
  - 2021: DLT Act (blockchain-specific legislation)
  - 2023: Updated guidance on DeFi and stablecoins
- **Approach**: Technology-neutral, principles-based
- **Philosophy**: "Same business, same risk, same rules"

# FINMA Token Classification

- **Three Token Categories** (not mutually exclusive):
    1. **Payment Tokens**: Means of payment, transfer of value
        - Examples: Bitcoin, Litecoin
        - Regulation: AML (not securities law)
    2. **Utility Tokens**: Access to application or service
        - Examples: Filecoin (storage), Golem (compute)
        - Regulation: No specific financial regulation (if truly utility)
    3. **Asset Tokens**: Represent assets, claims, or equity
        - Examples: Tokenized securities, equity tokens
        - Regulation: Securities law (prospectus, licensing)
- **Hybrid Tokens**: Can have multiple characteristics (e.g., utility + payment)

1. **Does token represent an asset or economic right?**
   - Yes → **Asset Token** (securities regulation)
   - No → Continue to question 2

2. **Is token primarily used for payments or value transfer?**
   - Yes → **Payment Token** (AML only)
   - No → Continue to question 3

3. **Does token grant access to application or service?**
   - Yes, and platform exists → **Utility Token** (minimal regulation)
   - Yes, but platform doesn't exist → May be asset token (investment contract)

**Key Insight**: Economic function determines regulatory treatment, not technology

- **Key Requirements for Token Issuances**:
  1. **AML Compliance**:
     - KYC for token purchasers (if payment tokens)
     - Anti-money laundering checks
     - Affiliation with Swiss financial intermediary
  2. **Securities Law** (if asset tokens):
     - Prospectus requirement (unless exemption)
     - Authorization as securities house (if professional issuer)
  3. **Banking Law**:
     - Public deposit-taking requires banking license
     - Exception: Pre-sale if tokens delivered within 6 months

- **Transparency**: FINMA publishes guidance, no-action letters

- **Flexibility**: Case-by-case assessment, no rigid rules

# DLT Act (2021): Blockchain-Specific Legislation

- **Purpose**: Adapt Swiss law to blockchain technology
- **Key Innovations**:
  1. **DLT Securities**: Legal recognition of tokenized securities
     - Rights register maintained on blockchain (not central registry)
     - Same legal status as traditional securities
  2. **DLT Trading Facilities**: New license category
     - For platforms trading tokenized securities
     - Lower barriers than traditional exchanges
     - Prudential requirements, custody standards
  3. **Segregation of Crypto Assets in Bankruptcy**:
     - Customer crypto assets segregated from bankruptcy estate
     - Protection against insolvency (unlike general creditor claim)
- **Impact**: Legal certainty for tokenization, institutional custody

## Requirements

- Minimum capital: CHF 500,000
- Fit-and-proper management
- Adequate organizational structure
- Risk management and internal controls
- Custody arrangements (segregation)
- AML/CFT compliance

## Scope

- Trading of DLT securities
- Central custody (optional)
- Order matching
- Settlement on DLT

## Advantages

- Lighter than traditional exchange license
- Faster authorization process
- Innovation-friendly framework
- Legal certainty for participants

## Examples

- SDX (SIX Digital Exchange): First FINMA-licensed DLT trading facility
- Tokenized bonds, funds, securities
- Regulated secondary market

- **Classification**: Depends on structure
  - **Fiat-backed (e.g., USDC)**: Payment token, may trigger e-money rules
  - **Asset-backed**: Asset token (securities regulation)
  - **Algorithmic**: Likely asset token (if investment scheme)
- **Banking Law Trigger**:
  - If accepts public deposits $\rightarrow$ Banking license required
  - Exception: Fully reserved, no maturity transformation, no credit risk
- **Payment System Regulation**:
  - Large-scale payment tokens may be systemically important
  - FINMA oversight of payment infrastructure
- **Case Study**: Libra/Diem project (Facebook)
  - Chose Switzerland for regulatory clarity
  - FINMA assessed as payment system (not bank)
  - Project ultimately abandoned for regulatory reasons globally

# Swiss Crypto Ecosystem

- **Crypto Valley (Zug)**: Global blockchain hub since 2013
  - 1,000+ blockchain companies
  - Ethereum Foundation, Cardano, Polkadot, Tezos foundations
  - Major exchanges: Bitcoin Suisse, Crypto Finance
- **Supportive Factors**:
  - Regulatory clarity and consistency
  - Political stability, rule of law
  - Banking infrastructure (crypto-friendly banks)
  - Tax competitiveness (low corporate tax in Zug)
  - Skilled workforce and universities
- **Institutional Adoption**:
  - SIX (Swiss stock exchange) operates SDX (digital asset exchange)
  - Swiss banks offer crypto custody (e.g., Julius Baer, Maerki Baumann)
  - Pension funds permitted to invest in crypto (small allocations)

- **MiCA (Markets in Crypto-Assets Regulation)**: EU-wide framework
- **Legislative Process**:
  - Proposed: September 2020
  - Approved: April 2023 (EU Parliament and Council)
  - Entry into force: Phased 2024-2025
- **Objectives**:
  1. Legal certainty for crypto assets not covered by existing financial regulation
  2. Support innovation and fair competition
  3. Consumer and investor protection
  4. Financial stability safeguards
- **Scope**: Crypto-assets, issuers, CASPs (Crypto-Asset Service Providers)
- **Exclusions**: NFTs (unless fractionalized), CBDCs, utility tokens for specific services

1. **E-Money Tokens (EMTs)**:
   - Maintain stable value by referencing single fiat currency
   - Examples: USDC, USDT (if compliant)
   - Regulation: Strictest (banking-like requirements)
2. **Asset-Referenced Tokens (ARTs)**:
   - Maintain stable value by referencing basket of assets, commodities, or multiple currencies
   - Examples: Hypothetical basket-backed stablecoins
   - Regulation: Strict (capital, reserve, governance)
3. **Other Crypto-Assets**:
   - All other tokens not EMTs or ARTs
   - Examples: Bitcoin, Ethereum, utility tokens
   - Regulation: Disclosure requirements (white paper)

- **Issuer Authorization**:
  - Must be authorized credit institution or e-money institution
  - CASP license NOT sufficient for issuance
- **Reserve Requirements**:
  - 1:1 backing in high-quality liquid assets
  - Segregated from issuer's own assets
  - Custody with authorized entities
  - Daily reconciliation
- **Redemption Rights**:
  - Holders can redeem at par value at any time
  - No fees for redemption
  - Redemption in referenced fiat currency
- **Supervision**: National competent authority (NCA) of home member state
- **Impact**: Tether (USDT) may struggle to comply; Circle (USDC) better positioned

- **Significance Criteria** (any one triggers):
  - Customer base ¿10 million
  - Reserve assets value ¿5 billion EUR
  - Daily transactions ¿2.5 million, value ¿500 million EUR
  - Interconnectedness with financial system
- **Enhanced Requirements**:
  - EBA (European Banking Authority) supervision
  - Higher capital requirements
  - Liquidity management plan
  - Recovery and redemption plan
  - Stress testing
  - Interoperability requirements
- **Limits on Use**:
  - Restrictions on use as means of exchange in single member state (prevent EUR substitution)

- **Issuer Authorization**:
  - Dedicated authorization (not credit institution)
  - Own funds requirement: 350,000 EUR or 2% of reserve assets
  - Fit-and-proper management
- **Reserve Assets**:
  - Composition matching referenced assets
  - Custody with authorized entities
  - Segregation from issuer's assets
  - Investment policy (limits on asset types)
- **Governance**:
  - White paper approval by competent authority
  - Disclosure of reserve composition (quarterly reports)
  - Audit of reserves (annual)
- **Prohibition**: Stablecoins offering interest payments (prevent bank-like deposit taking)

- **CASP Services** (require authorization):
  1. Custody and administration of crypto-assets
  2. Operation of trading platform
  3. Exchange of crypto-assets for fiat or other crypto
  4. Execution of orders on behalf of clients
  5. Placing of crypto-assets
  6. Reception and transmission of orders
  7. Providing advice on crypto-assets
  8. Portfolio management
  9. Transfer services

- **Authorization**: Single authorization valid across all EU member states (passporting)

- **Grandfathering**: Existing providers have 18 months to comply

## Organizational

- Minimum capital: 50,000-150,000 EUR (service-dependent)
- Fit-and-proper management
- Conflict of interest policies
- Complaint handling procedures
- Outsourcing governance

## Operational

- Custody requirements (segregation, cold storage)
- Cybersecurity measures
- Business continuity plans
- AML/CFT compliance

## Conduct of Business

- Fair, clear, not misleading communications
- Disclosure of fees and costs
- Best execution for client orders
- Prohibition of market manipulation, insider trading

## Transparency

- Public disclosure of services
- Conflicts of interest disclosure
- Annual reports to competent authority

- **Prohibited Conduct** (applies to crypto-assets under MiCA):
  1. **Insider Dealing**:
     - Trading based on material non-public information
     - Tipping (disclosing inside information)
     - Same rules as for traditional securities
  2. **Market Manipulation**:
     - Wash trading, spoofing, layering
     - Pump-and-dump schemes
     - Spreading false information
  3. **Unlawful Disclosure**: Recommending transactions based on inside information

- **Enforcement**: National competent authorities, criminal penalties possible

- **Surveillance**: CASPs must monitor and report suspicious transactions

- **Purpose**: Standardized disclosure document for crypto-asset offerings
- **Required Information**:
  - Issuer identification and information
  - Description of crypto-asset (purpose, technology, use cases)
  - Rights and obligations of holders
  - Underlying technology and consensus mechanism
  - Risks (comprehensive disclosure)
  - Sustainability impacts (energy consumption for PoW)
  - For ARTs/EMTs: Reserve composition, redemption rights
- **Approval Process**:
  - EMTs/ARTs: Competent authority approval required
  - Other crypto-assets: Notification to authority (20-day review)
- **Liability**: Issuers liable for misleading or incomplete white papers

| Aspect | Switzerland (FINMA) | EU (MiCA) |
|---|---|---|
| Approach | Principles-based | Rules-based |
| Legislation | Adapted existing + DLT Act | New comprehensive framework |
| Token Classification | 3 types (flexible) | 3 types (rigid) |
| Stablecoin Regulation | Case-by-case | Banking-like (EMTs) |
| Market Abuse | General law applies | Explicit crypto provisions |
| Passporting | No (Swiss-only) | Yes (EU-wide) |
| Scope | Narrower (financial services focus) | Broader (all CASPs) |
| DeFi Treatment | Unclear | Excluded (for now) |

**Both**: Clear frameworks attract institutional investment and innovation

- **Centralized Exchanges**:
  - Must obtain CASP license (EU) or equivalent (Switzerland)
  - Enhanced custody and compliance costs
  - Barrier to entry increases (consolidation likely)
- **Stablecoin Issuers**:
  - Tether: May exit EU market or comply (costly)
  - Circle: Well-positioned (already reserves-backed)
  - New EU-based stablecoins may emerge
- **DeFi Protocols**:
  - MiCA: Currently excluded (no legal entity)
  - Future regulation likely (DeFi not regulated = loophole)
  - Some protocols may incorporate CASP entity for compliance
- **Cross-Border Operations**: EU passport valuable, Swiss firms may seek EU presence

**MiCA Criticisms**

- **Innovation Chilling**: Heavy compliance costs
- **DeFi Gap**: Decentralized protocols not covered
- **NFT Exemption**: Unclear boundaries (fractionalization)
- **Self-Hosted Wallets**: Proposed KYC for large transfers (privacy concern)
- **One-Size-Fits-All**: Diverse crypto assets treated uniformly

**Swiss FINMA Challenges**

- **Limited Market**: Switzerland-only (no EU passport)
- **DeFi Uncertainty**: Principles-based = case-by-case uncertainty
- **Scaling Limits**: Regulatory capacity for rapid innovation
- **Enforcement**: Cross-border crypto operations difficult to supervise

**Industry Response**: Compliance costs as barrier to entry benefit incumbents

# Summary

- **Switzerland**: Principles-based, early clarity, DLT Act innovation
- **FINMA token classification**: Payment, Utility, Asset (flexible)
- **DLT Trading Facility**: New license for tokenized securities exchanges
- **EU MiCA**: Comprehensive rules-based framework, 27 countries
- **MiCA categories**: E-Money Tokens (EMTs), Asset-Referenced Tokens (ARTs), Other
- **Stablecoin regulation**: Banking-like requirements, reserve backing, redemption rights
- **CASPs**: Licensing, capital, custody, market abuse rules
- **Comparison**: Principles (CH) vs rules (EU), both offer clarity
- **Impact**: Institutional adoption enabled, DeFi regulatory gap remains
- **Future**: MiCA as global template, DeFi regulation coming