

L46: Swiss FINMA and EU MiCA

Module G: Regulation & Future

Blockchain & Cryptocurrency Course

December 2025

Why Focus on Switzerland and EU?

- **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”

- **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

- **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 → 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

- **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

MiCA vs Swiss Framework: Comparison

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

Industry Response: Compliance costs as barrier to entry benefit incumbents

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

MiCA Implementation Timeline (Realized)

- **June 30, 2024:** Stablecoin provisions (EMTs, ARTs) entered into force
 - Issuers must be authorized credit or e-money institutions
 - Reserve requirements and redemption rights mandatory
 - Existing stablecoins given grace period to comply
- **December 30, 2024:** Full MiCA implementation
 - All CASP provisions now in force
 - Existing providers must apply for authorization
 - 18-month grandfathering period begins
- **Key Milestone:** First comprehensive crypto regulation globally now fully operational
- **Scope:** 27 EU member states, 450 million people, single market for crypto

- **Circle (USDC):**

- Obtained e-money license in France (July 2024)
- First global stablecoin issuer MiCA-compliant
- USDC and EURC fully authorized for EU market

- **Tether (USDT):**

- Did NOT obtain EU e-money license by deadline
- Several EU exchanges delisted USDT (December 2024)
- Coinbase Europe, Crypto.com removed USDT pairs
- Tether exploring compliance options

- **Market Impact:**

- USDC gaining EU market share
- Euro-denominated stablecoins emerging (EURC, EURN)
- Compliance as competitive advantage

- **Major Exchanges Seeking Authorization:**

- Binance: Applied in multiple EU jurisdictions
- Kraken: Pursuing licenses in Germany, Ireland
- Coinbase: Leveraging existing Irish e-money license
- Bitstamp: Already licensed in Luxembourg

- **Authorization Bottlenecks:**

- National regulators overwhelmed with applications
- Varying interpretation across member states
- Technical standards still being finalized (ESMA)

- **Passporting Advantage:**

- Single authorization = access to entire EU market
- Race to obtain first authorization
- Ireland, France, Germany as preferred jurisdictions

- **FINMA Guidance Updates:**

- Clarified DeFi treatment (case-by-case continues)
- Staking services guidance (custody vs non-custody)
- Enhanced AML requirements for crypto transactions

- **SDX (SIX Digital Exchange):**

- Expanded tokenized bond offerings
- First regulated digital asset exchange operational
- Institutional adoption growing

- **Swiss-EU Coordination:**

- No equivalence agreement yet
- Swiss firms seeking EU presence for MiCA passport
- Dual licensing strategy emerging

- **Crypto Valley:** Remains competitive despite MiCA creating EU single market

- **European Commission Review** (expected 2025):
 - DeFi regulation (currently excluded)
 - NFT treatment (fractionalization, utility NFTs)
 - Staking and lending services
- **Technical Standards** (ESMA, EBA ongoing):
 - Custody requirements specification
 - Sustainability disclosures (PoW energy reporting)
 - Market surveillance systems
- **Transfer of Funds Regulation (TFR)**:
 - Travel Rule for crypto (sender/receiver info)
 - Applies to CASPs from December 2024
 - Self-hosted wallet verification above thresholds
- **Global Influence**: MiCA as template for UK, Japan, Singapore frameworks

- **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
- **2024 Milestone:** MiCA fully implemented December 30, 2024
- **Stablecoin Reality:** Circle compliant, Tether delisted from EU exchanges
- **Future:** MiCA 2.0 (DeFi, NFTs), Travel Rule enforcement, global template