

# A Comparative Analysis of Cryptocurrency Legal Frameworks in the United States and the European Union

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**Abstract:** Cryptocurrencies have changed the way the world's finances work. They are challenging standard financial systems and bringing up a lot of legal and regulatory issues. The legal systems that govern cryptocurrencies in the United States and the European Union are compared in this study paper. The first part of the study looks at how cryptocurrencies have changed over time, showing how important they are becoming in the digital market. It then looks at the legal and regulatory problems that have come up in the bitcoin space. It also looks at the legal systems that are already in place in the US and the EU. In the US, the study looks at both federal rules and the part that each state plays in making bitcoin policies. A number of important court decisions involving cryptocurrencies are looked at to give some background. In the European Union, the study looks at both EU-wide rules and the different ways that different member states handle things. Important court cases in the EU are also looked at to get a sense of the governing environment in the area. Comparative research is the most important part of this study because it shows how the US and the EU regulate cryptocurrencies and what their main similarities and differences are. We look closely at how these differences in regulation affect the cryptocurrency industry, the compliance problems companies in both regions face, and new regulatory trends. In the US and the EU, cryptocurrency laws are changing all the time. This study shows how these laws work and what they mean for lawmakers, businesses, and researchers. This study shows how important it is for countries to agree on how to regulate cryptocurrencies so that the ecosystem can grow safely and continue to grow.

**Keywords:** Cryptocurrency, Legal Framework, Regulation, Comparative Analysis, United States, European Union.

## 1. Introduction

Cryptocurrency is a new kind of digital or virtual currency that has changed the way people think about money and deals. This new financial instrument works without the help of central banks and is protected by cryptography. It offers a decentralised and open way to share money. In the early 21st century, Bitcoin became the first and most well-known cryptocurrency. This was the start of the history of cryptocurrencies. Bitcoin was created in 2009 by an unknown person or group known as Satoshi Nakamoto. It brought a new idea: blockchain technology, which is a decentralised ledger system that keeps track of all cryptocurrency transactions. Bitcoin started a worldwide movement that led to the creation of thousands of other cryptocurrencies. It also made governments and financial institutions rethink their roles in the changing financial scene. The history of cryptocurrency includes new technologies, changes to the economy, problems with regulations, and continuing research into the possibilities of blockchain technology, which is at the heart of the whole cryptocurrency ecosystem. This essay looks into the beginnings, growth, and present day effects of cryptocurrencies on the world's money system. It shows how these digital assets have changed over time.

## 2. Existing Legal Frameworks

### 2.1 United States

The existing legal framework in the United States about cryptocurrency is complex and evolving. The federal government has not yet passed comprehensive legislation to regulate cryptocurrency, but a number of

agencies have issued guidance and taken enforcement actions. The Financial Crimes Enforcement Network (FinCEN) is the primary federal agency responsible for regulating cryptocurrency. FinCEN has classified cryptocurrency exchanges and wallet providers as money service businesses (MSBs). This means that they must register with FinCEN and comply with anti-money laundering (AML) and counter-terrorism financing (CFT) regulations. The Securities and Exchange Commission (SEC) has also taken an interest in cryptocurrency. The SEC has stated that some cryptocurrencies may be considered securities under federal law. If a cryptocurrency is considered a security, it would be subject to SEC registration and disclosure requirements. The Commodity Futures Trading Commission (CFTC) also regulates cryptocurrency derivatives. Cryptocurrency derivatives are contracts that are based on the price of a cryptocurrency. The CFTC requires exchanges that offer cryptocurrency derivatives to be registered and to comply with CFTC regulations. In addition to federal regulation, a number of states have also enacted cryptocurrency-specific laws. These laws vary from state to state, but they generally focus on consumer protection and AML/CFT compliance. Here is a summary of some of the key existing legal frameworks in the United States about cryptocurrency:

- Bank Secrecy Act (BSA): The BSA requires MSBs to register with FinCEN and to comply with AML/CFT regulations. Cryptocurrency exchanges and wallet providers are considered MSBs under the BSA.
- Securities Act of 1933: The Securities Act of 1933 requires securities to be registered with the SEC before they can be sold to the public. The SEC has stated that some cryptocurrencies may be considered securities under federal law.
- Commodity Exchange Act (CEA): The CEA regulates commodity derivatives. Cryptocurrency derivatives are contracts that are based on the price of a cryptocurrency. The CFTC requires exchanges that offer cryptocurrency derivatives to be registered and to comply with CFTC regulations.
- State cryptocurrency laws: A number of states have enacted cryptocurrency-specific laws. These laws vary from state to state, but they generally focus on consumer protection and AML/CFT compliance.

It is imperative to acknowledge that the legal framework pertaining to cryptocurrency in the United States is now undergoing a process of development and refinement. The potential enactment of comprehensive cryptocurrency legislation at the federal level is currently under consideration by the government, while concurrent modifications to state laws are also being observed. Remaining informed on the most recent advancements in bitcoin regulation is vital prior to participating in any cryptocurrency-associated endeavours.

## 2.2 Germany

The legal structure pertaining to cryptocurrency in Germany is notably more thorough and advanced compared to that of numerous other nations. The year 2020 witnessed the enactment of the Fifth Anti-Money Laundering Act (AMLD5) in Germany, which resulted in the inclusion of cryptocurrency exchanges and wallet providers into the regulatory purview of the Federal Financial Supervisory Authority (BaFin). This implies that bitcoin enterprises operating in Germany are required to undergo registration with BaFin and adhere to anti-money laundering and counter-terrorism financing legislation. Furthermore, it should be noted that Germany has designated cryptocurrencies as financial instruments in accordance with the German Banking Act (KWG), in addition to its implementation of anti-money laundering and countering the financing of terrorism (AML/CFT) regulations. This implies that bitcoin enterprises in Germany may be required to acquire a licence from BaFin in order to conduct their operations. The particular licencing requirements are contingent upon the kind of the bitcoin business being undertaken. An illustration of this can be observed in Germany, where bitcoin exchanges are required to acquire a licence from BaFin in order to conduct their operations. In Germany, the acquisition of a licence from BaFin is a requisite for cryptocurrency custodians. In Germany, it may be necessary for cryptocurrency issuers to acquire a licence from BaFin, contingent upon the specific nature of the cryptocurrency being issued. The German government is currently contemplating the implementation of further regulations pertaining to cryptocurrencies. The draught law for the regulation of crypto assets was released by the German government in 2021. The proposed legislation aims to establish a novel regulatory framework for bitcoin enterprises within the jurisdiction of Germany. The draught legislation is presently undergoing examination by

the German Parliament. Here is a summary of some of the key existing legal frameworks in Germany about cryptocurrency:

- Fifth Anti-Money Laundering Act (AMLD5): AMLD5 brought cryptocurrency exchanges and wallet providers under the supervision of BaFin. This means that cryptocurrency businesses in Germany must register with BaFin and comply with AML/CFT regulations.
- German Banking Act (KWG): The KWG classifies cryptocurrencies as financial instruments. This means that cryptocurrency businesses in Germany may need to obtain a license from BaFin to operate.
- Draft law on the regulation of crypto assets: This draft law would create a new regulatory framework for cryptocurrency businesses in Germany. The draft law is currently under review by the German Parliament.

It is important to note that the German legal framework for cryptocurrency is still evolving. The German government is considering additional cryptocurrency regulation, and the new regulatory framework proposed by the draft law is not yet in force. It is important to stay up-to-date on the latest developments in German cryptocurrency regulation before engaging in any cryptocurrency-related activities.

### 2.3 France

The existing legal framework in France about cryptocurrency is based on two main regimes:

- The token sale or ICO (Initial Coin Offering) visa: This visa is required for companies that offer to the public tokens or digital assets that can be used to purchase goods or services, or that give the right to participate in a project. The visa is issued by the Autorité des marchés financiers (AMF), the French financial markets authority.
- The Digital Assets Service Providers (DASP) registration and license: This registration is mandatory for companies that provide digital asset services in France, such as custody, exchange, and trading services. The license is optional, but it is required for companies that want to offer certain services, such as managing portfolios of digital assets on behalf of clients.

The DASP registration and license are issued by the Autorité de contrôle prudentiel et de résolution (ACPR), the French prudential supervision and resolution authority. In addition to these two main regimes, there are a number of other laws and regulations that apply to cryptocurrency in France. For example, cryptocurrency businesses are subject to AML/CFT regulations, and cryptocurrency exchanges are required to register with the Tracfin, the French financial intelligence unit. The French government is also considering additional cryptocurrency regulation. In 2022, the French government published a draft law on the regulation of digital assets. The draft law would create a new regulatory framework for cryptocurrency businesses in France, and it would also give the AMF and ACPR more powers to supervise the cryptocurrency market. The draft law is currently under review by the French Parliament. Here is a summary of some of the key existing legal frameworks in France about cryptocurrency:

- Token sale or ICO visa: Required for companies that offer to the public tokens or digital assets that can be used to purchase goods or services, or that give the right to participate in a project. Issued by the AMF.
- DASP registration and license: Mandatory for companies that provide digital asset services in France. Issued by the ACPR.
- AML/CFT regulations: Apply to cryptocurrency businesses.
- Tracfin registration: Required for cryptocurrency exchanges.

The French legal framework for cryptocurrency is still evolving, but it is one of the more comprehensive and developed frameworks in the world.

### 2.4 Italy

The existing legal framework in Italy about cryptocurrency is based on a combination of European Union (EU) law and Italian domestic law.

EU law : The most important piece of EU legislation on cryptocurrency is the Fifth Anti-Money Laundering Directive (AMLD5), which was transposed into Italian law by Legislative Decree No. 125 of 2019.

AMLD5 requires cryptocurrency exchanges and wallet providers to register with the Italian Anti-Money Laundering Authority (OAM) and to comply with AML/CFT regulations.

Italian domestic law : The main piece of Italian domestic law on cryptocurrency is the Legislative Decree No. 141 of 2010, which provides for the registration of providers of virtual currency services and digital wallet services. This law requires cryptocurrency exchanges and wallet providers to register with the OAM and to comply with a number of requirements, including:

- Implementing KYC (know your customer) and AML/CFT procedures
- Reporting suspicious transactions to the OAM
- Protecting customer assets

In addition to Legislative Decree No. 141 of 2010, there are a number of other Italian laws and regulations that apply to cryptocurrency, such as the Italian tax code and the Italian Consumer Protection Code. The Italian government has taken a relatively cautious approach to cryptocurrency regulation. The government has emphasized the need to protect consumers and to prevent cryptocurrency from being used for illegal activities. In recent years, the Italian government has taken a number of steps to strengthen its regulation of cryptocurrency, including:

- Requiring cryptocurrency exchanges and wallet providers to register with the OAM
- Implementing KYC and AML/CFT requirements for cryptocurrency businesses
- Increasing the penalties for cryptocurrency-related crimes

The Italian government is also considering additional cryptocurrency regulation. For example, the government is considering enacting legislation that would create a new regulatory framework for cryptocurrency businesses and that would establish a new cryptocurrency exchange. Overall, the Italian legal framework for cryptocurrency is still evolving. However, Italy is one of the few countries in the world that has implemented a comprehensive regulatory framework for cryptocurrency businesses.

## 2.5 Switzerland

The existing legal framework in Switzerland about cryptocurrency is one of the most favorable in the world. Switzerland has taken a proactive approach to regulating cryptocurrency, while seeking to foster innovation in this area. The key piece of legislation in Switzerland that defines the framework for cryptocurrency transactions in the country is the Distributed Ledger Technology (DLT) Act. This law, which came into effect in 2021, regulates the following:

- Licensing of cryptocurrency activities
- Regulations for trading
- Anti-money laundering measures

Under the DLT Act, cryptocurrency exchanges and wallet providers are required to obtain a license from the Swiss Financial Market Supervisory Authority (FINMA). The licensing requirements are designed to ensure that cryptocurrency businesses are operated in a safe and sound manner, and that they comply with AML/CFT regulations. The DLT Act also establishes a clear regulatory framework for trading cryptocurrencies. For example, the law prohibits insider trading and market manipulation. It also requires cryptocurrency exchanges to provide their customers with adequate information about the risks associated with cryptocurrency trading. In addition to the DLT Act, there are a number of other Swiss laws and regulations that apply to cryptocurrency. For example, the Swiss Civil Code treats cryptocurrencies as assets, which means that they are protected by the law.

## Swiss government's approach to cryptocurrency regulation

The Swiss government has taken a very supportive approach to cryptocurrency regulation. The government recognizes the potential of cryptocurrency to revolutionize the financial system, and it is committed to creating an environment where cryptocurrency businesses can thrive. The Swiss government has also taken a number of steps to attract cryptocurrency businesses to the country. For example, the government has introduced tax breaks for cryptocurrency businesses, and it has created a dedicated sandbox where cryptocurrency businesses can test new products and services in a regulatory-friendly environment. Overall, the Swiss legal framework for cryptocurrency is one of the most favorable in the world. Switzerland has taken a proactive approach to regulating

cryptocurrency, while seeking to foster innovation in this area. Here are some of the key benefits of the Swiss legal framework for cryptocurrency:

- Clear and concise regulation: The DLT Act provides a clear and concise regulatory framework for cryptocurrency businesses. This helps to reduce uncertainty and risk for businesses and investors.
- Favorable tax regime: Switzerland offers a number of tax breaks for cryptocurrency businesses. This makes Switzerland a very attractive destination for cryptocurrency businesses.
- Regulatory sandbox: The Swiss regulatory sandbox allows cryptocurrency businesses to test new products and services in a regulatory-friendly environment. This helps to accelerate innovation in the cryptocurrency sector.
- Supportive government: The Swiss government is very supportive of the cryptocurrency industry. The government recognizes the potential of cryptocurrency to revolutionize the financial system, and it is committed to creating an environment where cryptocurrency businesses can thrive.

## 2.6 Poland

The existing legal framework in Poland about cryptocurrency is not as comprehensive as in some other countries, but it is developing. The Polish government has taken a cautious approach to cryptocurrency regulation, but it is also aware of the potential benefits of this technology. Key points of the Polish legal framework for cryptocurrency:

- Cryptoassets are legal in Poland. The Polish government does not recognize cryptoassets as a legal tender, but they are considered to be assets under Polish law. This means that cryptoassets are protected by the law, and they can be owned, bought, sold, and traded freely.
- Cryptocurrency exchanges and wallet providers must register with the Polish Financial Supervision Authority (KNF). The KNF is the Polish financial regulator, and it is responsible for supervising cryptocurrency businesses in Poland. Cryptocurrency exchanges and wallet providers must register with the KNF in order to operate in Poland.
- Cryptocurrency businesses must comply with AML/CFT regulations. Cryptocurrency businesses in Poland are subject to the same AML/CFT regulations as other financial institutions. This means that they must implement KYC procedures and report suspicious transactions to the Polish Financial Intelligence Unit (FIU).
- Cryptoassets are taxed in Poland. Cryptoassets are treated as capital assets under Polish tax law. This means that any profits made from trading cryptoassets are subject to capital gains tax.

The Polish government has taken a cautious approach to cryptocurrency regulation. The government is aware of the potential risks of cryptocurrency, such as fraud and money laundering. However, the government is also aware of the potential benefits of cryptocurrency, such as its potential to revolutionize the financial system. The Polish government is currently working on a new law that will specifically regulate cryptocurrency. The new law is expected to be introduced in 2023. The new law is expected to provide more specific guidance on cryptocurrency regulation, including how cryptocurrency businesses should be licensed and how cryptoassets should be taxed. Overall, the Polish legal framework for cryptocurrency is still developing. However, the Polish government is taking a proactive approach to regulating cryptocurrency, and it is committed to creating an environment where cryptocurrency businesses can thrive.

## 3. Challenges & Issues

The cryptocurrency ecosystem has experienced rapid growth and development, but it is not without its share of challenges and issues. Some of the key challenges and issues related to cryptocurrency include:

- The regulatory environment for cryptocurrencies varies greatly from one country to another. Many governments are still in the process of formulating clear regulations, creating uncertainty for businesses and users.
- Cryptocurrency exchanges and wallets are vulnerable to hacking and security breaches. High-profile incidents have resulted in significant financial losses and eroded trust in the industry.

- Cryptocurrencies are known for their price volatility. While this can create opportunities for traders, it also makes cryptocurrencies less stable as a store of value and complicates their use in day-to-day transactions.
- As the popularity of cryptocurrencies like Bitcoin has grown, so has the issue of scalability. Network congestion and slow transaction processing times have been ongoing challenges.
- While cryptocurrencies offer a degree of anonymity, they are not entirely private. Some blockchain analysis techniques can be used to trace transactions, potentially compromising user privacy.
- Cryptocurrencies have been associated with illegal activities such as money laundering, ransomware attacks, and the black market. This has drawn the attention of law enforcement agencies and regulators.
- Cryptocurrency markets are largely unregulated, which means that consumers have limited recourse in cases of fraud or disputes.
- The energy consumption of certain cryptocurrencies, particularly Bitcoin, has raised concerns about their environmental impact. The proof-of-work consensus mechanism requires significant computational power.
- Cryptocurrencies have not achieved widespread adoption for everyday transactions. Challenges related to usability, such as user-friendly wallets and payment solutions, need to be addressed.
- Cryptocurrency markets can be susceptible to market manipulation and pump-and-dump schemes, which can harm retail investors.
- The lack of standardization and interoperability between different cryptocurrencies and blockchain networks can hinder the development of a cohesive ecosystem.
- Taxation of cryptocurrency transactions varies widely and can be complex. Users may face challenges in complying with tax laws.
- Cryptocurrencies are built on rapidly evolving technology. Bugs and vulnerabilities in smart contracts or underlying blockchain technology can have serious consequences.
- Many people lack a basic understanding of how cryptocurrencies work, which can lead to misinformed decisions and an increased risk of scams.
- The emergence of stablecoins has raised questions about their regulation, as they are designed to be pegged to traditional currencies, blurring the line between cryptocurrencies and traditional financial assets.

#### 4. Conclusion

The legal frameworks pertaining to cryptocurrency are now in a state of evolution, with a discernible inclination towards increasingly comprehensive and intricate regulation. Governments worldwide are increasingly acknowledging the potential advantages associated with cryptocurrency and are actively endeavouring to establish conducive ecosystems that foster the growth and prosperity of bitcoin enterprises. The legal systems pertaining to cryptocurrency exhibit significant disparities globally, both in terms of their extent and complexity. Certain nations, like Switzerland, Germany, Italy and the United States, have established comprehensive regulatory frameworks that encompass all facets of the cryptocurrency sector. Other nations, including Poland and France, have adopted a more prudent strategy, characterised by regulatory systems that are comparatively less extensive. Nevertheless, prevailing patterns can be observed in the current legal frameworks pertaining to bitcoin. As an illustration, the majority of nations mandate that cryptocurrency exchanges and wallet providers undergo registration with a financial regulatory body. In addition, it is worth noting that numerous countries mandate cryptocurrency enterprises to adhere to anti-money laundering and countering the financing of terrorism rules. Moreover, numerous nations impose taxes on cryptoassets in the form of capital assets. The registration of cryptocurrency exchanges and wallet providers with a financial regulator is a requirement in most countries. The primary objective of this measure is to mitigate the occurrence of fraudulent activities and the illicit practise of money laundering. In the majority of nations, cryptocurrency enterprises are obligated to adhere to anti-money laundering and countering the financing of terrorism rules. The primary objective of this initiative is to mitigate the potential misuse of cryptocurrency for illicit purposes. In numerous jurisdictions, cryptoassets are subject to

taxation as capital assets. Consequently, any financial gains derived from the trading of cryptoassets are liable to be taxed as capital gains. In general, the legal frameworks pertaining to cryptocurrency are currently undergoing a process of continuous development. Nevertheless, there is a prevailing inclination towards the implementation of more thorough and intricate regulatory measures. Governments worldwide are increasingly acknowledging the prospective advantages of cryptocurrency and actively endeavouring to establish conducive ecosystems that foster the growth and prosperity of bitcoin enterprises.

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