



# Ny krypto-lovgivning: Finanssektorens nye kæledægge?

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## Indholdet af podcasten

### Intro-speak

The European Union has just passed a comprehensive legal package on crypto assets - a package referred to as MiCA. And with that, an entirely new legal framework has seen the light of day, effectively pulling the market for crypto assets out of a legal vacuum and into the established and more regulated parts of the financial system. This new legal framework, however, is introducing crypto to rules that have taken decades to develop and implement for the rest of the financial sector - rules that could prove quite demanding for this, up until today, notoriously unregulated market. So what does this new legal package contain? And what will its introduction mean for both the stability and the continued democratization of the crypto market? In this episode, I've invited dr. Alexandra Andov to talk with me about this new stack of rules. Alexandra is an associate professor here at the Faculty of Law researching, among other things, financial tech and regulation of blockchain structures. She's currently a visiting professor at the university of Western Australia, so she'll be joining us via zoom link. My name is Emil Tarp Vang. Welcome.

### Part 1

Emil Tarp Vang:

And welcome to you too, Alexandra.

Alexandra Andhov:

Thank you, Emil, for having me. Hi everyone.

Emil Tarp Vang:

So, would you start by telling us just briefly about this new package - what is MiCA?

Alexandra Andhov:

Sue, happy to. I'll try to be shorter than the MiCA regulation itself, which has almost 400 pages by the way. So, MiCA ultimately stands for Markets in Crypto Assets Regulation and at its core, it's the vision to regulate a crypto asset market – or, one could say, some parts of it, as there are still some parts that are unregulated. But ultimately, as you mentioned also, the crypto asset market has been greatly unregulated, which is true because some of the jurisdictions and some of the countries have been regulating some of the providers. Also, the EU has been regulating them through anti-money laundering so they had some obligations. But per se the new regulation, this MiCA, is creating a completely new framework to regulate different service providers who provide services in different types of crypto assets.

Emil Tarp Vang:

And maybe now would be a good time to just briefly define, what is a crypto asset?

Alexandra Andhov:

A crypto asset is a digital representation of value which may be transferred and stored. And this is also what the MiCA ultimately defines, because many jurisdictions over the world over the past 15 years have been discussing how should we define certain things - so we finally have one unifying definition of all these key terms. What MiCA also does is that it defines this crypto asset into three subsections and here I want to be fairly brief. First is electronic money tokens. It's ultimately crypto assets that is pegged to a stable value by referencing to the value of 1 official currency and that's what we also call stable coin. So that's the electronic money token - electronic money token only refers to one currency. Then they have asset reference tokens that can refer to two, three or more currencies or other values beat. It can be connected to the shares, it can be connected to gold price, it can be connected to anything else. And then the third one is utility tokens which ultimately refer to some common utility. So we could use in connection with electricity and having rights to electricity or we can use utility tokens if we decided to vote through Blockchain in Denmark. There have been couple of examples that several countries around the world were discussing more efficient and protective ways of voting in parliamentary elections or presidential elections.

Emil Tarp Vang

So, hopefully we're all slightly smarter now and I hope we have everyone on board. If we move back to MiCA, then what are some of the most important points to know about this new regulation?

Alexandra Andhov:

So, let me start with first thing that you often see in public discourse – that the EU decided to regulate the technology. I think that this is not really correct, but what MiCA is doing is, it regulates the service providers, so those entities that decide to offer some form of services connected to the crypto assets. And this is the ultimately the regulatory approach that we have seen over the centuries when it comes to telecommunication or the Internet, that we ultimately go into and look into how we can regulate those who have certain form of control over the industry. Right, so this is what the MiCA does. The second important factor is that it's in the form of regulation – which, those of you who have heard or have been interested a little bit about the EU law know that the EU can decide to regulate a matter mainly in two different ways: One is through adopting a directive which ultimately leaves a lot of power within the member states that can kind of fine tune it, or then they introduce this one set of rules - meaning regulation, the European Union regulation - whereas all of the member states - all of the 27 countries - they need to adopt and apply it in the same way. And that's what has been chosen in this case.

Emil Tarp Vang:

And that's better, then?

Alexandra Andhov:

It is better for the industry, because what it allows is that with the one passport - let's say a company here in Copenhagen would get a passport or license on the MiCA - they are able to do business in France and Spain and so on, because it's the same kind of system, which I believe is ultimately beneficial for the market.

## **Part 2**

Emil Tarp Vang:

What do you think were the motivation for the EU to put in all this work to develop MiCA?

Alexandra Andhov:

Indisputably, this is a huge market. Currently, I was just checking today, what is the market capitalization of crypto, and it's somewhere above \$1 trillion. And this is after being smashed with hot hammer several times over the past two years! I do think that it was about 3 trillions at some point, maybe two years back when the market was at its peak. So, you know, if you think as a regulator you are like: “Okay, so there's this cool, huge market and we should get some part of it, right? So either taxes we should get in or we should obviously be somehow responsible for

what is happening on the market” because one could argue from the perspective of the stability of the market that there might be a certain fear that this market can affect the financial markets of European Union. So A) the market, B) the potential and C) some of the scandals, I think, maybe have to some extent pushed the EU to regulate. The recent scandals like those connected with FTX or with Terra or some others for sure hang in our ears. So there have been a number of these scandals and for some reason we hear about them, but I would also like to remind all the listeners that two weeks ago we had a scandal of Silicon Valley Bank, so the scandals are part of the industries. Are they more part of the crypto industry? Possibly. Why? Because to some extent yes, they are still unregulated but also because it is still a new industry. You know, if you compare it to, I don't know, the Internet or the car industry or any technology driven industry at the very beginning, of course people are creative, and they are using this technology for good and for bad and unfortunately, we hear more about the bad. But again, in context crypto is not substantially different from any other industries.

Emil Tarp Vang

But even so, you mentioned the FTX crash and the crash of the Terra ecosystem – two of the major scandals in the crypto world. Do you think that this sort of regulation could prevent scandals like that from happening in the future?

Alexandra Andhov:

Could it prevent? To some extent. It can limit. Can it eliminate? I don't think so. What I like to do is to go a little bit to history because I think we can learn a lot from history. And to compare a little bit, crypto assets where we are now is where the share market or equity market was at the beginning of the 20th century. And many people will not know that, but the first kind of legislative attempts to regulate shares - something that is currently extremely regulated, how companies or corporations can sell their shares and what rights shareholders have; this is a heavily regulated field – but back at the beginning of the 20th century it wasn't! The first national legislature comes from like state of Georgia in the United States, so it wasn't yet federal - federal came later several decades later. These regulations were called Blue Sky Legislation and the reason why is because at this point, people were selling shares of blue sky. So, because it wasn't regulated and people believe that you can sell shares of blue sky, the same way how maybe some people believe that you can sell shares of the Moon or any planet and so on. What I'm trying to say here is that people will always be creative. But I think that, as any other industry, this industry has many great leaders and companies that already show that there is a value that they create. And I think that, and I hope, that what this regulation will do is ultimately develop a

certain legal certainty - for the existing, but also forthcoming startups - to understand, okay, so what is my obligation. And in this regard, I know number of startups - or maybe they not even startups because they have been around for many years - who have been sitting on their products or services for 2-3 years because they waited for the regulation, because they didn't want to do something that could be, you know, deemed illegal at one point. So hopefully, this will bring a little bit more, so to speak, legal certainty into the market; it will standardize certain behaviors and help facilitate for those who actually try to create some value not just for themselves, but for larger groups.

### **Part 3**

Emil Tarp Vang:

So, these rules could strengthen the legal certainty around crypto, which is a good thing – but I wonder if there could also be a downside to it? I mean, you could imagine it requiring huge legal departments to be compliant with, all these rules and I'm wondering if so, could the crypto marked risk losing that decentralized, democratized edge it sort of has over the rest of the financial sector?

Alexandra Andhov:

That's a good question. I think yes and no. Of course, there is a regulatory burden and compliance burden and for sure there is these regulatory obligations, but I mean if you want to sell whatever these days, there is some form of regulation you need to comply with. I think that this is the reality that we live in and, you know, hopefully there are different kinds of new technologies that will support the small and medium-sized enterprises with their regulatory burden.

Now, the democratization is a very interesting part of it, because I think it ultimately speaks to or connects with the original aim or hope that the group around Satoshi had at the beginning of Bitcoin, which was to democratize finances - and I'm not sure that that's going to happen. I'm a little bit skeptical that the existing financial infrastructures will allow it. The reason why I'm saying this is because I was at a conference back in 2014 or 2015, and at this point we were talking about Blockchain and there were already several patents pending to own this technology. And guess who they were, those entities that filed for patents? Well, one was Goldman Sachs and the other was JP Morgan. I'm sure by now, all the big companies and big banks have done this. I think, and this is the sad part, that these existing financial infrastructures and all the infrastructures that are behind these makes it extremely hard for just a new technology to simply change the infrastructure that has been built for centuries. So either we build the parallel and

there will be two financial systems parallel one to another, or actually one will one way or another merge or acquire the other.

Emil Tarp Vang:

So your worry is that the financial sector will sort of take over the crypto part?

Alexandra Andhov:

Yes, and I think that we already see it: We see that majority of the large banks already offer crypto portfolio. And ultimately when you start digging into it, this regulation was designed not for startups, not for innovative companies - it was designed for financial institutions. Because of how it is written, it also only entitles to use some kind of an exemption system for the entities that more or less already own and hold the licenses. I think that there for sure will be newcomers, there will for sure be new companies that will use this and they might create a competition towards the existing banking institutions and other financial institutions, but I think a lot will be somehow acquired over time.

#### **Part 4**

Emil Tarp Vang:

So was it a paradox originally to dream of having a market that was decentralized, democratized and stable? I mean, it has proved difficult to have all three. So I'm thinking with these new rules, it's getting stability, it's getting legal certainty, but it sort of sounds to me like it's losing that decentralized part a little bit.

Alexandra Andhov:

I think it could also have stability at some point. I think that we saw, for instance now because of the awful war in Ukraine, that the things that were stable weren't stable anymore. You know, the prices, the current fluctuation, which for decades has been stable, suddenly was very unstable.

It's just that, because there have been other legal constructs and financial instruments and systems, we were able to create a belief that things are stable, but the question is whether they're really stable. If you really think about it, they are not as stable as we believe, so I think it's about how much we're willing to own something which's value fluctuates as much as with, let's say, the original crypto assets like Bitcoin or Ethereum or whatever else. I think that's the question: Are we willing to own it and also, to what extent are we able to protect these assets from all of those who want to manipulate it. I don't want to sound like someone who has all of these theories so I'll just stop here, but I think, you know, we live in a big world where there are many, many 6

interests and incentives. And ultimately, the regulation in its form and shape that exists today is a compromise between many, many, many interest groups, both in the EU and on a national level.

Emil Tarp Vang:

So you could say that stability comes at a price when the stability is offered by the financial sector.

Alexandra Andhov:

Yes and I think that maybe that should ultimately be the end of the of the discourse.

Emil Tarp Vang:

We'll leave it at that, then. Alexandra, thank you so much for joining us here and giving us some insight into this MiCA package.

Alexandra Andhov:

Thank you for having me.