

A large, dark blue Bitcoin coin is centered in the background. The coin features the Bitcoin symbol (a 'B' with two vertical bars) in the center. The words 'BITCOIN', 'DIGITAL', 'DECENTRALIZED', and 'PEER TO PEER' are inscribed around the perimeter of the coin. The coin is overlaid with a semi-transparent European Union flag, showing the twelve yellow stars on a blue background. The title 'Bitcoin & Blockchain in Europe' is written across the center of the coin in a bold, sans-serif font. 'Bitcoin & Blockchain' is in dark blue, and 'in Europe' is in yellow.

# Bitcoin & Blockchain in Europe

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Booklet

**STADLER VÖLKEL**  
RECHTSANWÄLTE · ATTORNEYS AT LAW



# Hi there, welcome to #sv.law



# Intro

Bitcoin, the world's first and most popular cryptocurrency, has taken the financial world by storm. From its early beginnings as a fringe technology used primarily by tech enthusiasts and libertarians, Bitcoin has evolved into a mainstream asset class with growing interest from investors, businesses, and regulators alike.

Europe has been a key player in the rise of Bitcoin and other cryptocurrencies. In this booklet, we will explore the state of Bitcoin in Europe and how it is shaping the future of finance on the continent. We will cover a range of topics, including the legal status of Bitcoin and other cryptocurrencies, the emergence of new financial products and services built on blockchain technology, the impact of Bitcoin on traditional finance, and the potential for Bitcoin to transform the global economy.

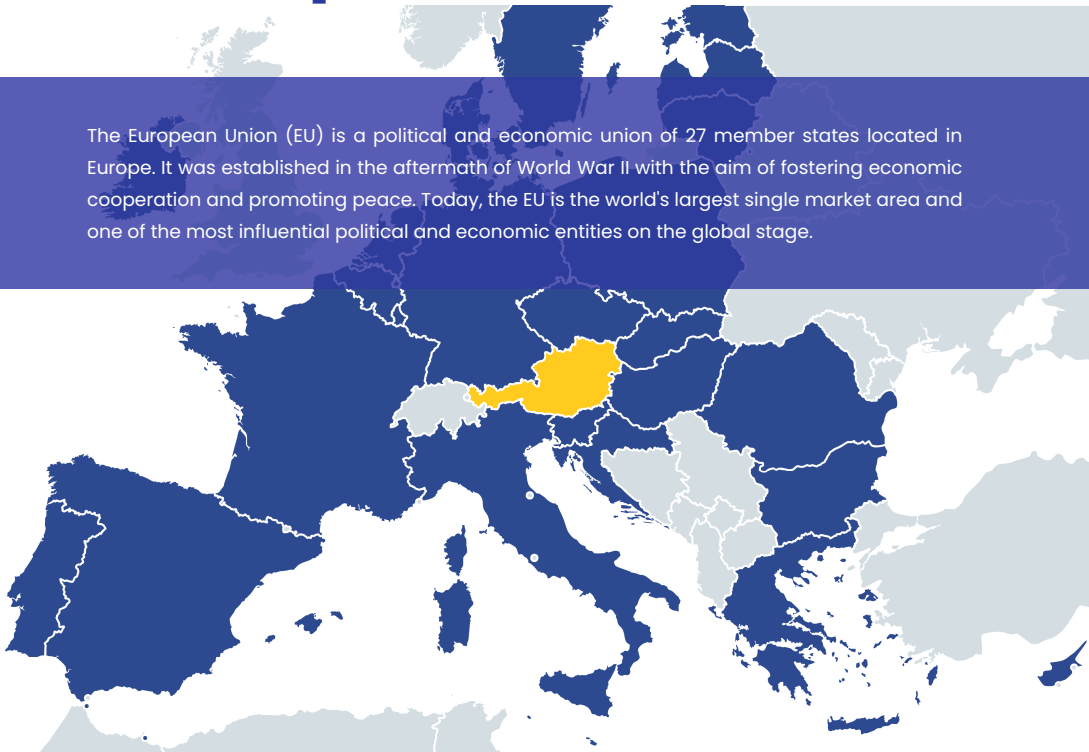
Despite Bitcoin's global appeal, there are significant differences between its adoption and use in Europe compared to the United States. In this booklet, we will explore the unique characteristics of the European Bitcoin ecosystem, including its regulatory framework, market structure, and technological innovations.

**For further information, the STADLER VÖLKE team will be glad to provide you with its expertise. Our contact details can be found on the last page of this booklet.**



# The European Union

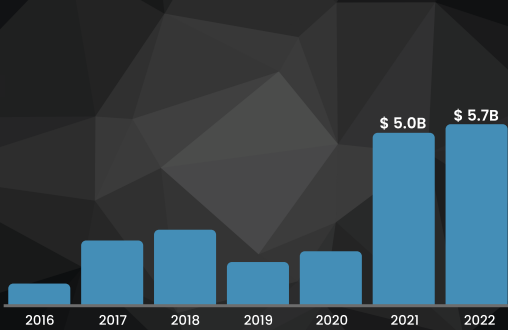
The European Union (EU) is a political and economic union of 27 member states located in Europe. It was established in the aftermath of World War II with the aim of fostering economic cooperation and promoting peace. Today, the EU is the world's largest single market area and one of the most influential political and economic entities on the global stage.



Over the last decade, the European Union has become a hub for companies and startups working in the Bitcoin and blockchain space. Some of the most prominent companies in this space include **Bitpanda**, an Austrian cryptocurrency broker and trading platform; **Bitstamp**, a cryptocurrency exchange based in Luxembourg; and **Ledger**, a French hardware wallet producer.

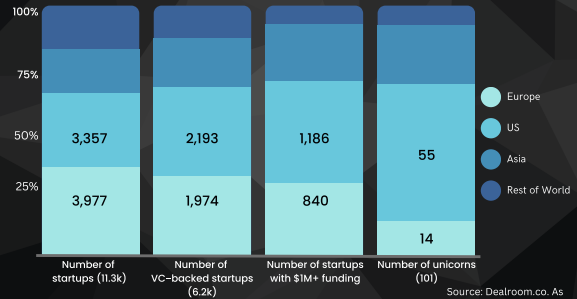
In 2021 and 2022, European venture capital investment in crypto startups reached an all-time high of \$10.7 billion. In addition, as of February 2023 the total number of European crypto startups outnumbered those in the United States.

### VC investment in European crypto startups



Source: Dealroom.

### Cumulative number of crypto startups by HQ location



Source: Dealroom.co. As of date 20/02/2023

# Doing Business in the EU

## Four fundamental freedoms

The founding treaties of the European Union guarantee the "four fundamental freedoms" – the free movement of goods, capital, services, and people within the EU. They form the cornerstone of the European single market. It means that goods, capital, services, and people can move without restriction within the EU. It also means that companies who do business in Europe can access the entire European market at once.

## EU regulatory passport

Companies established in the EU that provide regulated financial services can make use of the European regulatory "passport", which allows companies authorized in one EU member state to provide their services across all EU member states without needing additional authorization or licenses.

To obtain an EU regulatory passport, a company must first be authorized by the relevant regulatory authority where the company has its registered office. For example, in Austria the financial regulator is the Financial Market Authority (FMA). Once authorized, the company can offer its services in other member states after notifying the local regulatory authority.

## Reverse solicitation

Companies located outside the EU can provide services to EU customers without obtaining a license on the basis of reverse solicitation. The concept of reverse solicitation generally applies if contact with the company is made at the exclusive initiative of the customer. Companies that rely on reverse solicitation may not actively solicit or market their services to customers within the EU.

### Practice alert #1



The reverse solicitation exemption is interpreted by financial regulators in the EU differently, and it may be limited by national laws and regulations. In particular, providers without an EU license should be careful not to engage in activities that could be construed as active solicitation or marketing, such as advertising or other forms of outreach to potential clients in the EU. If a provider is unsure whether its activities could be considered active solicitation, it should seek legal advice to ensure compliance with relevant regulations.

# Legal Status of Bitcoin

## and other virtual currencies

Bitcoin can be used legally in the European Union to pay for goods and services or in exchange for other crypto assets.

According to a 2015 ruling by the European Court of Justice, for tax purposes Bitcoin is treated as a **currency** as opposed to a commodity, meaning that the exchange of fiat currencies for Bitcoin is **exempt** from value-added tax (VAT).

From a regulatory perspective, Bitcoin and other crypto assets generally qualify as "**virtual currencies**" under the EU's 5th Anti-Money Laundering Directive (5ALMD). As a result, virtual currency service providers such as custodial wallet providers and exchanges are subject to certain anti-money laundering and terrorist financing obligations. In most EU member states virtual asset service providers (VASPs) must register with the local financial regulator before offering services in that member state.





## Definition of virtual currency under the 5AMLD

A digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.

### Practice alert #2



Most financial regulators require VASPs to describe in depth their AML policies and procedures in the course of the registration procedure. These policies and procedures are then checked for compliance with local law, which can vary between EU member states. It is important to work with local legal counsel to ensure that these requirements are being satisfied.



# Bitcoin and Privacy

The EU has one of the most robust data protection laws in the world: the EU General Data Protection Regulation (GDPR). It applies to any company or organization, regardless of its location, that processes or stores personal data of individuals who are located in the EU. The GDPR provides a comprehensive framework for the collection, use, and processing of personal data, and imposes strict requirements on organizations that handle such data. It also gives individuals greater control over their personal information, including the right to access, rectify, and erase their data.

In line with international standards, the European Union is in the process of extending the so-called “travel rule” to transfers of Bitcoin and other crypto assets. The travel rule is nothing new—it has applied to U.S. banks and financial institutions since the 1990s—but it will require obliged entities including VASPs to collect and transmit information on the originator and beneficiary of certain transfers of crypto assets.

European legislators, understanding the delicate balance between privacy and the prevention of money laundering and terrorist financing, have limited the applicability of the transfer rule to transactions involving at least one regulated entity. As a result, person-to-person transfers of crypto assets conducted without a provider will not be subject to the travel rule.



# Bitcoin Ordinals: The new NFTs?

Launched in January 2023, the Bitcoin ordinal protocol allows users to inscribe satoshis with data such as text, images, audio or video.

In the two months following the launch of the protocol more than 200,000 satoshis have been inscribed with data. Popular NFT projects such as CryptoPunks and Ether Rocks now have ordinal counterparts that trade on the Bitcoin blockchain.

The European Union has taken a rather permissive approach to NFTs. They generally fall outside the scope of EU financial regulation. For example, NFTs are not considered virtual currencies under the 5AMLD because they do not qualify as a "means of exchange". In the latest draft of the upcoming EU Markets in Crypto-Assets (MiCA) Regulation, NFTs were explicitly excluded from the scope of the Regulation. It remains to be seen whether this exclusion will remain in the final version.



# The MiCA Regulation



The EU Markets in Crypto-Assets (MiCA) Regulation is a comprehensive legal framework for the regulation of crypto-assets and related activities across the EU. The regulation is in the final stages of the EU's legislative process and is expected to enter into force in 2024.

MiCA will regulate, among other things:

- Offer and admission to trading of crypto-assets, asset-referenced tokens, and e-money tokens;
- Publication and notification of crypto-asset white papers;
- Authorization of issuers of asset-referenced tokens and e-money tokens;
- Authorization of crypto-asset service providers (CASPs); and
- Prevention and prohibition of market abuse involving crypto-assets.

## New token taxonomy

MiCA defines crypto-asset as a digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology. The regulation distinguishes between three categories of crypto-assets: (1) asset-referenced tokens, (2) e-money tokens, and (3) utility tokens.

**Asset-referenced token** means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies;

**E-money token** means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency;

**Utility token** means a type of crypto-asset that is only intended to provide access to a good or a service supplied by its issuer.



Under MiCA, **Bitcoin** will qualify as a crypto-asset.  
(but not as an asset-referenced token, e-money token or utility token)

# The MiCA Regulation



## **Crypto-asset white paper**

Under MiCA, issuers of crypto-assets will be required to provide investors with comprehensive and accurate information about the nature, risks, and rights associated with the offered tokens in the form of a crypto-asset white paper. MiCA sets out the minimum content and form of the crypto-asset white paper and requires issuers to publish the document and notify the competent regulator before offering the tokens to the public.

## **Authorization of stablecoin issuers**

Stablecoin issuers will be required to obtain authorization before offering tokens in the EU. The authorization process will require issuers to submit detailed information about their business operations, governance structures, and risk management frameworks. Issuers must also establish a registered office in the EU, hold sufficient capital reserves to cover potential losses, and comply with ongoing reporting and disclosure requirements.

MiCA also permits EU credit institutions to issue asset-referenced tokens and e-money tokens after producing a crypto-asset white paper and notifying the respective competent authority at least 90 working days before issuing the token for the first time. The same applies to the issuance of e-money tokens by EU electronic money institutions, with the exception that the notification period is reduced to 40 working days.



## Authorization of CASPs

MiCA sets out the authorization and operating requirements for CASPs. Once authorized, CASPs may provide crypto-asset services throughout the EU on the basis of the EU regulatory passport. Under MiCA, CASPs will be required to implementing robust risk management and internal control systems, hold sufficient capital reserves, follow rules regarding the custody and safekeeping of client assets, as well as report suspicious transactions and comply with anti-money laundering and counter-terrorism financing obligations.

The following crypto-asset services fall within the scope of MiCA:

- providing custody and administration of crypto-assets on behalf of clients;
- operation of a trading platform for crypto-assets;
- exchange of crypto-assets for funds;
- exchange of crypto-assets for other crypto-assets;
- execution of orders for crypto-assets on behalf of clients;
- placing of crypto-assets;
- reception and transmission of orders for crypto-assets on behalf of clients;
- providing advice on crypto-assets;
- providing portfolio management on crypto-assets;
- providing transfer services for crypto-assets on behalf of clients.

# Public Offer

## of crypto-asset securities

Crypto assets that give holders rights comparable to those afforded to stockholders or bondholders such as dividend rights, voting rights, or rights to interest and repayment qualify as “transferable securities” under the EU Markets in Financial Instruments Directive (MiFID II).

The public offer of transferable securities within the EU, including crypto-asset securities, is subject to the EU Prospectus Regulation. It requires issuers to draw up and publish a capital market prospectus that contains comprehensive information about the issuer, its financial history, and the terms of the securities being offered. The prospectus must be approved by the relevant regulatory authority in the EU member state where the securities are being offered. Issuers located outside the EU can choose in which member state to seek the approval of the prospectus and then make use of the EU regulatory passport to offer the securities in other EU member states.



Whether a full-scale prospectus has to be produced depends on the terms and conditions associated with the offering. For example, offers of securities addressed solely to qualified investors or offers whose denomination per unit amounts to at least EUR 100,000 are exempt from the obligation to publish a prospectus. In addition, in some EU member states (including in Austria), issuers can raise up to (but not including) EUR 5 million on the basis of a simplified prospectus or EUR 2 million on the basis of an information sheet comprising only a few pages.

### Practice alert #3



The Howey test, the broad legal test used in the U.S. to determine whether a token qualifies as a security, is not applicable in the EU. As a result, there is considerably less legal uncertainty regarding the applicability of securities laws to crypto assets.

# About us

**STADLER VÖLKEL** is one of the leading law firms in Europe for cryptocurrency law. Founded in 2016 in Vienna, Austria, the firm has advised on groundbreaking projects related to the legal classification of Bitcoin, public token offerings, decentralized finance and more. STADLER VÖLKEL is known for its expertise in a wide range of legal areas, including corporate law, financial regulation, capital markets law, banking and finance law, data protection law, betting and gaming law, antitrust law and litigation.

# Your SV.LAW Team

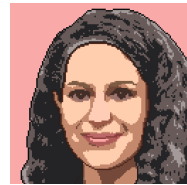
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