



Journal of Financial
Supervisors Academy

Regulatory and Compliance Insights

Publication Date: 1st September 2025

Volume 01

ISSN: 3104-4948
e-ISSN: 3104-4956





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Publication Date: 1st September 2025

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This volume, titled "**Regulatory and Compliance Insights**", focuses on the significant progress and ongoing challenges in the field of financial regulation and compliance. The articles are organized to cover key themes such as, capital markets, independence of financial supervision, digital transformation, and capacity building, reflecting the comprehensive approach needed to address the dynamic nature of financial markets.



1.1
Academic Article

The Changing Dynamics of Crypto Regulation

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Authors' Bios



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Abstract

This article studies the evolving international regulatory landscape for crypto-assets and highlights the necessity of harmonised and proportionate regulatory frameworks to foster innovation while ensuring market integrity, consumer protection, and financial stability. Efforts at both international and regional levels are examined, including comprehensive regulations like the EU's MiCA Regulation and regulatory initiatives in the US. The aim of the article is to briefly review the prudential and conduct regulatory developments at the international level, within the EU, and in the US, concerning crypto-asset regulation, and to highlight the importance of a harmonised and proportionate approach to ensure a stable and fair market environment while fostering innovation.

The Changing Dynamics of Crypto Regulation

Received (in revised form): 8th April 2025

Introduction

In November 2018, the Parliament of Malta enacted the Virtual Financial Assets Act¹ to regulate offerings of crypto-assets and the operations of crypto-asset service providers ('CASPs'). This legislation was augmented by regulations² and rules issued by the Malta Financial Services Authority ('MFSA')³, which required the registration of whitepapers for crypto-asset offers and the authorisation and supervision of CASPs. At that time, there were no established international or regional standards harmonizing the regulation of this sector.⁴

1 'Virtual Financial Assets Act, Chapter 590 of the Laws of Malta' (Malta Legislation) <https://legislation.mt/eli/cap/590/eng/pdf> accessed 02.06.2024.

2 'Virtual Financial Assets Regulations, Legal Notice 357 of 2018 of the Laws of Malta as amended (Malta Legislation) <https://legislation.mt/eli/sl/590.1/eng/pdf> accessed 02.06.2024.

3 Malta Financial Services Authority, 'Virtual Financial Assets Rules' (Malta Financial Services Authority) <https://www.mfsa.mt/our-work/virtual-financial-assets/rules/> accessed 02.06.2024.

4 Buttigieg, Christopher P. and Efthymiopoulos, Christos, The Regulation of Crypto-assets in Malta: The Virtual Financial Assets Act and Beyond (October 15, 2018, Law and Financial Markets Review, <https://doi.org/10.1080/17521440.2018.1524687>, Available at SSRN: <https://ssrn.com/abstract=3747899>

Today, the regulatory environment continues to significantly evolve. International standards have been established, and the European Union ('EU') has enacted the Markets in Crypto-Assets Regulation⁵ ('MiCA'), which provides a harmonized framework for the regulation of crypto-assets. In the United States ('US'), federal regulatory enforcement actions have led to the creation of a preliminary framework for crypto regulation, which aims to divide regulatory responsibilities between the Securities and Exchange Commission ('SEC') and the Commodity Futures Trading Commission ('CFTC').⁶ Nevertheless, political developments in the US are rapidly changing the regulatory outlook for crypto-assets in a jurisdiction which has previously regulated through enforcement.

The central argument of this article is that the evolving regulatory landscape for crypto-assets underscores the necessity of harmonised and proportionate regulatory frameworks to foster innovation while ensuring market integrity, consumer protection, and financial stability. Efforts at both international and regional levels, including comprehensive regulations like the EU's MiCA and coordinated guidelines from bodies such as the Financial Stability Board ('FSB') and the International Organization of Securities Commissions ('IOSCO'), illustrate a concerted move towards creating a cohesive and robust regulatory environment. In the US, the development of frameworks such as the 21st Century Act⁷ ('FIT21') aim to provide clear regulatory guidance, enhance transparency, and delineate responsibilities between the SEC and CFTC, reflecting similar objectives.

Effective supervision by authorities like the European Banking Authority ('EBA') and the European Securities and Markets Authority ('ESMA') in the EU, and their counterparts in the US, is critical for promoting supervisory convergence and mitigating regulatory fragmentation especially considering the cross-border nature of the sector. These coordinated efforts are essential for the successful integration and sustainable development of the global crypto-asset market. The aim of this article is to briefly review the prudential and conduct regulatory developments at the international level, within the EU, and in the US concerning crypto-asset regulation, and highlighting the importance of a harmonised approach to ensure a stable and fair market environment. The article does not examine Anti-Money Laundering and Countering the Financing of Terrorism ('AML/CFT') developments, which will be the subject of a separate article.

The rest of the article is divided into three additional sections and a conclusion. The next section delves into international developments, focusing on the roles of the FSB and the IOSCO and their global regulatory frameworks and recommendations. The European Union section discusses the comprehensive approach of MiCA, the roles of ESMA and EBA, and their focus on supervisory convergence and preparation for new supervision tasks. The US section examines the regulatory landscape, highlighting the balance between federal and state regulations and introducing the proposed FIT21 framework and the possible direction which crypto policy in the US may take in the coming years. The article then compares the EU and US regulatory approaches, emphasizing the importance of international coordination. Finally, the conclusion recaps the need for harmonised and proportionate regulation, the importance of supervisory convergence, and provides a future outlook for the global crypto-asset market.

5 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance).

6 H.R.4763-Financial Innovation and Technology for the 21st Century Act, <https://www.congress.gov/bills/118th-congress/house-bill/4763/text?s=1&r=1&q=%7B%22search%22%3A%5B%22Financial+Innovation+and+Technology+for+the+21st+Century+Act.%22%5D%7D> accessed 26.08.2024.

7 Fn8

01

International Developments – Financial Stability and Securities Regulation

In July 2023, the FSB issued recommendations on crypto-assets and stablecoins, aiming to provide a robust framework for their regulation.⁸ These recommendations focus on risk management, consumer protection, and financial stability. Similarly, the IOSCO has issued high-level recommendations⁹, which align closely with those of the FSB.

The FSB's recommendations drew from the 2021 - 2022 market events in the field of crypto-assets and insights from FSB's public consultation. The FSB framework follows the principle of 'same activity, same risk, same regulation,' promoting consistent and comprehensive regulation of crypto-asset activities and stablecoins based on their risks.¹⁰ This global framework aims to address the industry's inherent volatility and potential systemic spillovers into the broader financial system. The high-level recommendations ensure adequate safeguarding of client assets, address conflicts of interest, and enhance cross-border cooperation.¹¹

In parallel, IOSCO developed eighteen policy recommendations designed to support regulatory consistency and address market integrity and investor protection concerns in its member jurisdictions.¹² These principles-based recommendations, which were adopted in November 2023, apply global securities market standards to CASPs, covering activities from offering and trading to settlement, surveillance, and custody. IOSCO's recommendations also emphasize enhanced regulatory cooperation to tackle cross-border challenges and prevent regulatory arbitrage.

The FSB and IOSCO monitor the implementation of their recommendations on an ongoing basis through mechanisms such as peer reviews. Additionally, the International Monetary Fund ('IMF') also collaborates with the FSB¹³ and plays a pivotal role through its Financial Sector Assessment Program, which evaluates countries' adherence to international standards.¹⁴ To this end, one can expect that any regional crypto-asset frameworks established going forward will embody these recommendations and standards, ensuring a degree of harmonisation in the regulatory frameworks for crypto-assets around the globe.

8 FSB, 'FSB finalises global regulatory framework for crypto-asset activities' (Financial Stability Board, July 2023) <https://www.fsb.org/2023/07/fsb-finalises-global-regulatory-framework-for-crypto-asset-activities/> accessed 02.06.2024.

9 IOSCO, 'IOSCO Press Release – 16 November 2023' (International Organization of Securities Commissions - IOSCO/MR/25/ 2023) <https://www.iosco.org/news/pdf/IOSCONEWS712.pdf> accessed 02.06.2024.

10 fn9.

11 fn9.

12 IOSCO, 'Policy Recommendations for Crypto and Digital Asset Markets – Final Report' (International Organization of Securities Commissions) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD747.pdf> accessed 02.06.2024.

13 IMF-FSB 'Synthesis Paper: Policies for Crypto-Assets' 07.09.2023 <https://www.fsb.org/2023/09/imf-fsb-synthesis-paper-policies-for-crypto-assets/> accessed 28.08.2024

14 International Monetary Fund, 'Financial Sector Assessment Program' (International Monetary Fund) <https://www.imf.org/en/Publications/fssa> accessed 02.06.2024.

02

European Union – Markets in Crypto-Assets Regulation (MiCA)

At the European level, MiCA serves as a robust legal framework designed to bring regulation to a market that has long been largely unregulated. It establishes uniform standards for issuers of crypto-assets not previously covered by other EU financial services legislation, as well as for providers offering services related to these crypto-assets. The framework addresses several key areas, including: transparency and disclosure obligations for the issuance, public offering, and trading of crypto-assets; the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and stablecoins; and the organizational, operational, and governance requirements for issuers and service providers.¹⁵ Furthermore, MiCA incorporates safeguards for crypto-asset holders and clients of service providers, while also implementing measures to combat insider trading, the unauthorised disclosure of confidential information, and market manipulation.¹⁶ MiCA also ensures alignment with IOSCO and FSB frameworks while taking into account the sector's specific needs and the principle of proportionality to facilitate the growth and innovation of smaller and emerging entities within the EU. MiCA excludes services and offers which are carried out in a fully decentralised manner without any intermediary from its scope¹⁷. Such full decentralisation would imply that no single person or entity has control over a decentralised application.

The ESMA and the EBA play crucial roles in the effective implementation of MiCA. Both authorities are responsible for drafting level 2 regulations, which provide detailed technical standards and requirements necessary for the practical application of MiCA's principles.¹⁸ This includes the development of regulatory technical standards and implementation technical standards, ensuring the regulation is comprehensive and operable. Specifically, the EBA oversees these functions with respect to the issuance of stablecoins, focusing on prudential supervision, consumer protection, and the establishment of AML/CFT frameworks.¹⁹ Meanwhile, ESMA's responsibility extends to the remaining crypto market players, which include CASPs and issuers of other crypto-assets, ensuring their operations adhere to transparency, governance, and market integrity standards.²⁰ For this purpose ESMA has established the Digital Finance Standing Committee ('DFSC'), which facilitates coordination and convergence among National Competent Authorities ('NCAs'), aiming to develop consistent and comprehensive implementation of EU regulatory frameworks, including the MiCA. In this regard, several level 3 guidelines have been prepared by the DFSC and adopted by ESMA²¹.

15 European Parliamentary Research Service, 'Briefing – Markets in Crypto-Assets (MiCA)' (European Parliamentary Research Service) [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)739221](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)739221) accessed 02.06.2024.

16 WatsonLaw, 'Market Abuse Prevention Under MiCA' (WatsonLaw) <https://watsonlaw.nl/en/mica-market-abuse-prevention-under-mica/> accessed 02.06.2024.

17 See Recital 22 of Regulation (EU) 2023/1114

18 ESMA, 'Markets in Crypto-assets Regulation (MiCA)' (European Securities and Markets Authority) <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica> accessed 02.06.2024.

19 EBA, 'Markets in Crypto-assets' (European Banking Authority) <https://www.eba.europa.eu/legacy/markets-crypto-assets> accessed 02.06.2024.

20 Fn17.

21 ESMA, 'Guidelines, Recommendations and Technical Standards' <https://www.esma.europa.eu/publications-and-data/guidelines-recommendations-and-technical-standards> accessed 08.04.2025

In parallel with the policy development, the EBA, will be the first supranational regulator of crypto-assets globally and is undertaking various actions to prepare for its supervisory tasks related to significant stablecoins, as well as other responsibilities.²² The EBA is responsible for conducting assessments of stablecoins issued in the EU to determine if they meet the significance criteria outlined in Article 43(1) of MiCA. If a stablecoin is classified as 'significant', the EBA is tasked with executing the relevant supervisory duties under MiCA, which include establishing and chairing supervisory colleges for all significant stablecoins.

Both ESMA and EBA are pivotal in promoting supervisory convergence across EU member states, working to ensure that crypto-asset regulation and enforcement are consistent and harmonized throughout the Union.²³ This involves coordinating with national competent authorities to implement MiCA effectively, facilitating training, and sharing best practices to overcome discrepancies in regulatory enforcement. By doing so, they aim to mitigate fragmentation within the EU's regulatory landscape and foster a more cohesive environment for crypto-assets. Their roles also include monitoring market developments, identifying emerging risks, and advising the European Commission on necessary adjustments to the regulatory framework to address new challenges in this rapidly evolving sector. This coordinated effort helps create a unified and robust crypto-asset market within the EU, enhancing investor protection and promoting financial stability.

03

United States – FIT21

The US regulatory landscape is characterised by a blend of federal and state-level regulations²⁴, allowing states some flexibility to innovate. However, this has resulted in inconsistencies and regulatory uncertainty.

The SEC and the CFTC have been particularly active in enforcement, setting significant precedents through their actions. For example, in 2015, the CFTC declared Bitcoin as a commodity in one of its enforcement actions²⁵. Federal courts have been instrumental in clarifying jurisdictional questions, product definitions, and the application of existing laws to digital assets. The CFTC's jurisdiction typically covers commodities and futures markets, while the SEC oversees securities, including certain digital assets that qualify as investment contracts under the Howey Test.

22 Fn18.

23 ESMA, 'Supervision and Convergence' (European Securities and Markets Authority) <https://www.esma.europa.eu/esmas-activities/supervision-and-convergence> accessed 02.06.2024.

24 See for example the New York State – Department of Financial Services – Virtual Currency Regulation - New York State Department of Financial Services, 'Virtual Currency Businesses' (New York State Department of Financial Services) https://www.dfs.ny.gov/virtual_currency_businesses accessed 02.06.2024..

25 See 'CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering' 17.09.2015 <https://www.cftc.gov/PressRoom/PressReleases/7231-15> accessed 26.08.2024

Recent congressional efforts, such as the proposed "21st Century Act" ('FIT21'), aim to create a market structure framework that delineates regulatory jurisdiction over digital assets between the SEC and the CFTC. FIT21 seeks to protect consumers and enhance transparency and accountability among market participants. The jurisdictions of the CFTC and SEC are determined through the classification of digital assets as either digital commodities or restricted digital assets.²⁶ A digital asset would be considered a digital commodity if it is issued on a fully decentralised distributed ledger and the issuer or affiliated persons do not together own or control more than 20% of the tokens in issuance²⁷. Digital commodities will fall within scope of the lighter framework which FIT21 proposes for such assets and be subject to oversight by the CFTC.

In terms of the FIT21 proposal, digital asset developers would be required to provide accurate and relevant disclosures about their projects' operation, ownership, and structure. Consumer-serving institutions, such as exchanges, brokers, and dealers, would need to provide appropriate disclosures to customers, segregate customer funds from their own, and mitigate conflicts of interest through registration, disclosure, and operational requirements.

The FIT21 Bill further proposed stringent regulatory measures to oversee cryptocurrency exchanges, ensuring they operate within the legal framework and adhere to new guidelines, including detailed reporting and compliance with AML/CFT laws. To further protect consumers, the bill proposed provisions for increased security measures and fraud prevention. The collapse of FTX²⁸, a major cryptocurrency exchange, played a significant role in prompting the introduction of the FIT21 Bill. The scandal highlighted significant gaps in the regulatory framework, revealing the need for more stringent regulations to prevent similar occurrences in the future. FIT21 aims to address these gaps, ensuring a more secure and transparent market environment for digital assets.

Additionally, FIT21 proposed a pathway for digital asset developers to raise funds and provides a clear process for determining SEC and CFTC jurisdiction over digital asset transactions. The framework also aims to protect institutions that serve digital asset customers by establishing clear jurisdictional boundaries between the SEC and CFTC and creating comprehensive registration regimes to facilitate lawful operations in the digital asset markets²⁹. While this bill has passed the House of Representatives in May of this year, the change in US Administration in 2025 is likely to change the trajectory of this proposal.

The CFTC Global Markets Advisory Committee, an independent advisory body, has been influential in promoting regulatory consistency³⁰. They have recently released a comprehensive digital asset taxonomy, vetted by international stakeholders, which aims to bridge gaps and promote international regulatory alignment. This taxonomy aligns with the broader goals of both the CFTC and SEC to foster innovation and ensure market integrity, providing a standardized framework for classifying digital assets, thereby reducing ambiguity and enhancing regulatory clarity.

26 Congressional Research Service, 'An Overview of H.R 4763, Financial Innovation and Technology for the 21st Century Act' 17.05.2024 <https://crsreports.congress.gov/product/pdf/IN/IN12223> accessed 28.08.2024

27 Fn7, see definition of 'Decentralized Network' and 'Digital Commodity'

28 Fu, S., Wang, Q., Yu, J., & Chen, S. 'FTX collapse: a Ponzi story'. In International Conference on Financial Cryptography and Data Security (pp. 208-215). Cham: Springer Nature Switzerland 05.12.2023

29 The House Financial Services Committee 'House Passes Financial Innovation and Technology for the 21st Century Act with Overwhelming Bipartisan Support' 22.05.2024 <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409277> accessed 26.08.2024

30 See CFTC Press Release 'CFTC's Global Markets Advisory Committee Advances 3 recommendations 07.03.2024 <https://www.cftc.gov/PressRoom/PressReleases/8873-24> accessed 26.08.2024

The overlapping jurisdictions of the SEC and CFTC reflect their differing mandates and regulatory philosophies. The SEC, with its focus on investor protection and market integrity within securities markets, applies stringent rules to digital assets deemed securities. In contrast, the CFTC, with its oversight of commodities and derivatives, applies regulations aimed at ensuring market integrity and preventing systemic risks. These differences necessitate a clear and cooperative regulatory approach to effectively oversee the rapidly evolving digital assets space. The FIT21 framework aimed to embody such an approach, striving for a balanced oversight mechanism that enhances transparency and reduces conflicts of interest while providing a robust legal foundation for digital asset markets.

Although it might bring much needed regulatory clarity, the FIT21 Bill is opposed by some, noting that this regulatory framework may fall short of the intended objectives. The SEC in fact issued a statement opposing the introduction of the Bill for various reasons, including the fact that various assets which would be deemed as securities following application of the Howey Test, would instead be considered digital asset commodities under the new framework. Furthermore, the SEC noted that the self-classification system catered for by FIT21 runs the risk of the SEC being overwhelmed by a large volume of such declarations, and the Commission would not have sufficient resources to appropriately challenge such determination, creating consumer protection gaps³¹. The SEC in fact undertook significant enforcement action throughout 2024, by inter alia charging several crypto companies for unauthorised activity, including some of the largest incumbents in the industry such as Coinbase³², Kraken³³ and Binance³⁴, further clarifying its position that it considers a large proportion of crypto-asset activities are considered akin to securities exchange activities.

Nevertheless, recent political developments in the US including the election of Donald Trump as the next President of the US have had significant effects on the growth of the crypto market and the price of legacy crypto-assets such as Bitcoin, with the crypto-asset sector seeing this development as a signal of an upcoming 'golden era' within the crypto industry³⁵. The SEC has in fact established a crypto task force tasked with a public statement by a SEC Commissioner, further signalling a change in the SEC's stance towards crypto going forward³⁶. The US administration also indicated its intention prioritise crypto policy in the US through the issuance of an Executive Order setting out the new administration's intentions to support the responsible growth and use of crypto-assets and blockchain technology³⁷. It is therefore highly likely that the US will change its proposed policy stance on crypto in the coming years.

31 SEC, 'Statement on the Financial Innovation and Technology for the 21st Century Act', 22.05.2024, <https://www.sec.gov/newsroom/speeches-statements/gensler-21st-century-act-05222024> accessed 26.08.2024

32 SEC, 'SEC Charges Coinbase for Operating as an Unregistered Securities Exchange, Broker and Clearing Agency', 06.06.2023 <https://www.sec.gov/newsroom/press-releases/2023-102> accessed 13.01.2025

33 SEC, 'SEC Charges Kraken for Operating as an Unregistered Securities Exchange, Broker and Clearing Agency', 20.11.2023 <https://www.sec.gov/newsroom/press-releases/2023-237> accessed 13.01.2025

34 SEC, 'SEC Files 13 Charges Against Binance Entities and Founder Changpeng Zhao', 05.06.2023 <https://www.sec.gov/newsroom/press-releases/2023-101> accessed 13.01.2025

35 Financial Times, 'Crypto industry dreams of a golden era under Tump', 02.01.2025, <https://www.ft.com/content/af23fffc-e560-42eb-84a0-f25ca8d693c0> accessed 13.01.2025

36 'The Journey Begins', Statement by SEC Commission Hester M Peirce, 04.02.2025 <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425> accessed 19.02.2025

37 US Whitehouse Executive Order, 'Strengthening American Leadership in Digital Financial Technology', 23.01.2025, <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/> accessed 27.01.2025

04

Challenges and Comparison between EU and US

The EU's MiCA, plays a crucial role in managing digital innovation across the region. The DFSC significantly aids ESMA in navigating issues related to crypto-assets and aims to ensure the consistent implementation of MiCA. However, there are challenges associated with this approach. The committee's level 3 guidance, which is vital for ensuring regulatory consistency, may unintentionally lead to over-regulation and increased bureaucracy. Although designed to protect investors and maintain market integrity, the heavy compliance burdens may stifle innovation, eventually hampering Europe's competitive stance in the global crypto ecosystem. This rigidity contrasts sharply with the more dynamic approach recently seen in the United States.

The ESMA, through its Supervisory Briefing on the Authorization of CASPs, provides essential guidance to NCAs.³⁸ This briefing uses a risk-based methodology that treats CASPs as high-risk entities due to their interactions with retail investors and their inherently cross-border operations. While this structured approach seeks to protect investors and support market stability, it may also amplify bureaucratic demands on stakeholders within the EU. This could deter innovation and create barriers to entry in a rapidly evolving market—highlighting a disconnect between Europe's political aspirations regarding competitiveness³⁹ and the pragmatic realities of regulatory implementation.

Conversely, the recent regulatory shift in the United States seeks to position the country as a leader in digital asset innovation, particularly under the policies introduced by former President Trump. The establishment of the President's Working Group on Digital Asset Markets⁴⁰ aims to foster a clearer regulatory environment and support for the crypto industry. Initiatives such as enhancing access to banking services for crypto companies and promoting U.S. dollar-backed stablecoins indicate a commitment to alleviating barriers previously impeding the sector's growth. The "Crypto 2.0" task force within the SEC⁴¹ epitomizes a regulatory stance that, unlike earlier reactive approaches, is conducive to industry expansion. Furthermore, strategic appointments of pro-crypto figures and Congressional interest in measures like the FIT21 underscore a bipartisan commitment to regulatory clarity in the crypto arena.⁴²

38 European Securities and Markets Authority, 'Supervisory Briefing on the Authorisation of CASPs under MiCA' (2024) <https://www.esma.europa.eu/document/supervisory-briefing-authorisation-casps-under-mica> accessed 08.04.2025.

39 European Parliament, 'Metsola to EUCO: Focus on Competitiveness, Security, Defence, and Social Equality' (2024) <https://www.europarl.europa.eu/news/en/press-room/20240624IPR22302/metsola-to-euco-focus-on-competitiveness-security-defence-and-social-equality> accessed 08.04.2025.

40 The White House, 'Strengthening American Leadership in Digital Financial Technology' (2025) <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/> accessed 08.04.2025.

41 U.S. Securities and Exchange Commission, 'Written Submission to the Crypto Task Force' (24 March 2025) <https://www.sec.gov/about/crypto-task-force/written-submission/ctf-input-tupper-3-24-25> accessed 08.04.2025.

42 Jones Day, 'Regulating Digital Assets: FIT21 Seems to Fit the Bill' (February 2025) <https://www.jonesday.com/en/insights/2025/02/regulating-digital-assets-fit21-seems-to-fit-the-bill> accessed 08.04.2025.

The contrast with the EU's more bureaucratic structure, evidenced by complex guidelines such as those on reverse solicitation under MiCA, highlights a key difference.⁴³ These guidelines, while crucial for regulatory integrity, might restrict competitive dynamics and access to preferred services within the EU market, complicating the regulatory landscape further.

In conclusion, while the ESMA DFSC and Level 3 Guidance play vital roles in fostering regulatory convergence in the EU, there is an imperative need for recalibration towards reducing unnecessary regulatory complexity and fostering innovation. Meanwhile, the U.S. recent change in approach aligns regulatory frameworks with economic ambitions, fostering an environment conducive to growth and innovation. By adopting elements of the U.S. strategy, Europe could optimize its regulatory landscape, promoting both the growth and competitiveness of its digital finance sector in line with the rapid technological advancements occurring globally.

05

Conclusion

In journeying from 2018 to 2024, it has become clear that balanced and harmonized regulatory frameworks are essential for the dynamic crypto-asset sector. Harmonization helps prevent regulatory arbitrage, where businesses exploit jurisdictional differences to their advantage, potentially compromising financial stability. Europe's MiCA represents a significant move towards a unified regulatory environment. However, over-regulation must be avoided to prevent driving innovation outside the EU. The principle of proportionality must guide regulatory measures, ensuring that rules and ESMA guidelines are appropriately tailored to the risks and sizes of different entities, allowing smaller and emerging companies to thrive without undue burden.

In the United States, legislative initiatives such as the proposed FIT21 seek to offer clearer guidance by delineating responsibilities between the SEC and CFTC, signalling a shift towards a more coherent regulatory framework. While the prospects for the FIT21 proposal remain uncertain, the incoming U.S. administration is prioritizing crypto-friendly policies, indicating a departure from the regulation-by-enforcement paradigm. On a global scale, coordination among international bodies such as the FSB and IOSCO is crucial for maintaining consistent and effective regulations across jurisdictions. Upholding the principle of proportionality in regulations will ensure that the crypto market remains innovative and vibrant while safeguarding consumer protection, market integrity, and financial stability.

43 European Securities and Markets Authority, 'Guidelines on Reverse Solicitation under MiCA' (2025) https://www.esma.europa.eu/sites/default/files/2025-02/ESMA35-1872330276-2030_Guidelines_on_reverse_solicitation_under_MiCA.pdf accessed 08.04.2025.

