

## REGULATORY INTELLIGENCE

**COUNTRY UPDATE-Finland: Crypto-asset regulation**

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Few areas of finance are developing faster than crypto-assets, a category that includes cryptocurrencies, securities tokens and utility tokens, whose common feature is use of distributed ledger technology (DLT). Their rise has led to calls for better regulation due to potential investor protection, money laundering and market integrity risks.

Several European governments have enacted or proposed legislation affecting crypto-assets. Regulatory differences can also arise when EU member states transpose directives into national law.

The EU's proposed [Markets in Crypto-Assets Regulation](#) (MiCA) would establish a framework for issuing crypto-assets and providing services relating to them. This includes stablecoins: crypto-assets purporting to maintain value by reference to another asset or assets.

This article provides an outline of EU legislation followed by an overview of crypto-asset regulation in Finland by [Sanna Boow](#) of [Hannes Snellman](#).

**Principal existing EU legislation:**

*Money Laundering Directives* [EU 2015/849](#) and [EU 2018/843](#)

The Fifth Money Laundering Directive (5MLD) extended the Fourth Money Laundering Directive (4MLD) regime to "providers engaged in exchange services between virtual and fiat currencies" and to "custodian wallet providers".

*Second Electronic Money Directive* [EU 2009/110](#) (EMD2)

Article 2(2) of EMD2 defines electronic money as "electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions ... and which is accepted by a natural or legal person other than the electronic money issuer".

Some stablecoins can be "electronic money tokens" under this definition.

*Revised Markets in Financial Instruments Directive* [EU 2014/65](#) (MiFID 2)

Some crypto-assets qualify as "financial instruments" under MiFID 2, art 4(1) point 15 and the associated list in section C of annex 1.

**The proposed MiCA regulation (COM 2020/593)**

MiCA would apply to persons engaged in the issuance or provision of services related to crypto-assets not within scope of existing EU regulation.

It distinguishes between stablecoins and other crypto-assets. Stablecoins are divided into "asset-referenced tokens" and "electronic money tokens". Any that pass threshold conditions would be classified as "significant" by the European Banking Authority (EBA).

**Crypto-asset regulation in Finland****1. Which body regulates crypto-assets and related services?**

The Finnish Financial Supervisory Authority (the FIN-FSA) acts as the registration authority and supervisory authority for crypto-assets and related services under the Finnish Act on Virtual Currency Providers (572/2019, as amended, in Finnish: Laki virtuaalivaluutan tarjoajista) (the Virtual Currency Act).



The FIN-FSA is also the supervisory authority for payments services providers under the Act on Payment Institutions (297/2010, as amended, in Finnish: maksulaitoslaki,) and the Act on Payment Services (290/2010, as amended, in Finnish: maksupalvelulaki) and investment services firms within the meaning of the Act on Investment Services (747/2012, as amended, in Finnish: sijoituspalvelulaki) (the Investment Services Act) implementing [Directive 2014/65/EU](#) (MiFID II).

## **2. Does any non-EU-derived law regulate crypto-assets or crypto-asset service providers such as exchanges?**

Yes.

The Finnish Virtual Currency Act regulates the provision of "virtual currency services" in Finland.

Under the Virtual Currency Act, "virtual currency services" are defined as:

- the issue of virtual currency,
- the provision of virtual currency exchange services; and
- the provision of custodian wallet services.

Anyone who offers any of the above virtual currency services in Finland must register with the FIN-FSA. The obligation to register does not, however, apply to:

- a natural or legal person who provides virtual currency services within a limited network (such as a network that is closed to the public and which requires registration);
- a natural or legal person who provides virtual currency services occasionally in connection with other professional activities that require some other authorisation, registration or prior approval; or
- virtual currencies issued by central banks and other authorities.

Under the Virtual Currency Act, registration is available only when the applicant has the right to carry out business in Finland. The FIN-FSA has interpreted this to mean that the applicant must be established in Finland or be a Finnish branch of a non-Finnish entity. Therefore, until there is harmonising EU regulation (i.e. the proposed MiCA regulation), virtual currency services cannot be provided into Finland on a cross-border basis.

The Virtual Currency Act does not specify its territorial scope. However, Finnish financial services legislation generally applies when the service provider is established in Finland (i.e. by way of a permanent establishment or a branch) or when services or products are marketed to a person or entity in Finland on a cross-border basis (even if the service provider does not have any local presence).

In addition, under the Act on Bank and Payment Account Monitoring System (571/2019, as amended, in Finnish: laki pankki- ja maksutilien valvontajärjestelmästä) (the "Account Monitoring Act") virtual currency providers must provide certain customer information to the bank and payment accounts register maintained by the Finnish Customs.

The Virtual Currency Act and the Account Monitoring Act implement certain parts of the 5AMLD in Finland, however, some of the obligations go beyond what is required under AMLD5.

The FIN-FSA has also issued Regulations and Guidelines (4/2019)[1] for virtual currency providers regarding the holding and safeguarding of client assets (including the virtual currency), customer due diligence and risk management systems.

## **3. Has a national law or regulation defined "crypto-asset" and/or "cryptocurrency"?**

Yes.

Under the Virtual Currency Act, "virtual currency" has been defined in line with AMLD5 and means a value that is in digital form and which:

- is not issued or guaranteed by a central bank or other public authority;
- is not a legal means of payment, but which can be used as means of payment; and
- can be transferred, stored, and traded electronically.

The Virtual Currency Act does not draw any distinctions between different types of virtual currency (such as stablecoins and other crypto-assets) and it applies if the virtual currency in question falls within the above definition.

There is also no further guidance in the Virtual Currency Act or the pre-legislative works on the definition of "virtual currency" and what, for instance, constitutes a "means of payment" in this context. Therefore, whether a particular crypto-asset or token falls within the Virtual Currency Act must always be considered on a case-by-case basis.

## **4. What money laundering regulations, including any due diligence requirements, apply to crypto-assets?**

Finnish anti-money laundering requirements are set out in the Act on Preventing Money Laundering and Terrorist Financing (444/2017, as amended, in Finnish: laki rahanpesun ja terrorismin rahoittamisen estämisestä) (the AML Act).

The AML Act applies to virtual currency providers who have registered with the FIN-FSA in accordance with the Virtual Currency Act.

Registered virtual currency providers must comply with all the obligations under the Finnish AML Act. This includes preparing a risk assessment on money laundering and terrorist financing, conducting customer due diligence and ongoing monitoring, as well as reporting suspicious transactions to the Financial Intelligence Unit in accordance with the AML Act.



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Customers must be identified, and their identity verified when establishing a regular customer relationship. Occasional customers must be identified, and their identity verified when the value of the transaction amounts to at least EUR 1,000.

#### **5. What rules apply to the promotion of crypto-assets?**

As described above, only virtual currency providers registered with the FIN-FSA can market virtual currencies and related services in Finland.

Under the Virtual Currency Act, when marketing virtual currencies, the registered virtual currency provider must provide the customer with all the information that may be relevant to the customer when the customer is making decisions about the virtual currency services. The virtual currency provider must not provide false or misleading information or act otherwise unfairly towards to customer or contrary to good market practices.

The virtual currency provider must also comply with the Finnish Securities Markets Act (746/2012, as amended, in Finnish: arvopaperimarkkinalaki) when the virtual currencies constitute securities, and the Finnish Consumer Protection Act (38/1978, as amended, in Finnish: kuluttajansuojalaki) when marketing to consumers.

#### **6. Do different crypto-asset rules apply to wholesale and retail markets, for example, on the sale of derivatives?**

No. The Virtual Currency Act applies equally to the offer and provision of virtual currency services to both wholesale and retail clients in Finland..

It is likely that a crypto derivative would constitute a financial instrument and, on that basis, it would fall under the Finnish Investment Services Act. Any offer of financial instruments triggers investment services licensing requirement under the Investment Services Act subject to limited exemptions. Broadly same rules apply to the offer of derivatives to both wholesale and retail clients in Finland.

#### **7. Does any existing or proposed national law impose requirements on issuers of stablecoin?**

The existing national law (i.e. the Virtual Currency Act) does not specifically refer to stablecoins. We are also not aware of any proposed national law that would address stablecoins.

If, however, based on its characteristics a stablecoin falls under the definition of a "virtual currency" under the Virtual Currency Act (i.e. it is in digital form, not issued or guaranteed by a central bank or other public authority, it is not a legal means of payment, but which can be used as means of payment; and it can be transferred, stored, and traded electronically), it is likely that the obligations under the Virtual Currency Act would apply to the issuer of stablecoin if the issuer provides "virtual currency services" in Finland.

If the stablecoin falls under the definition of e-money under the EMD2, the obligations under the Finnish payment services legislation would need to be considered including the obligation to be authorised as a payment institution, if such stablecoins were to be offered in Finland.

[1] [https://www.finanssivalvonta.fi/en/regulation/FIN-FSA-regulations/organisation-of-supervised-entities-operations/04\\_2019](https://www.finanssivalvonta.fi/en/regulation/FIN-FSA-regulations/organisation-of-supervised-entities-operations/04_2019) (available in English)

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