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Stablecoin Regulation – A Comparative Glance at U.S. and EU law

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Stablecoin Regulation – A Comparative Glance at U.S. and EU law*[1]

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Introduction

How should legislators and regulators cope with technological innovation in the field of financial services? Move quickly, top-down, to provide legal certainty – or let things develop bottom-up, with decentralised legislators and agency initiatives preparing the ground? Over the last years, stablecoins, i.e., crypto assets that are framed as payment instruments and promise stability through a peg to underlying reserves,[2] have been a paradigm example for regulatory strategies and cultural differences between the U.S. and the EU. The U.S. has been inclined to take a bottom-up engagement, coupled with a distrust of government intervention, while the EU was more disposed towards quickly moving forward with comprehensive regulation, aimed at insulating financial consumers from anticipated harm.[3]

I. Anticipate and regulate: MiCAR

The starting points for understanding pre-MiCAR Member States' activity on stablecoins are MiFID II[4] and the E-Money Directives (EMD1[5], EMD2[6]). MiFID II defines a "financial instrument"[7] but leaves

* SAFE policy papers represent the authors' personal opinions and do not necessarily reflect the views of the Leibniz Institute for Financial Research SAFE or its staff.

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[2] On the distinction between stablecoins and tokenised deposits: Rodney G. and Shin H.S. (2023).

[3] In more detail: Jackson H.E. and Langenbucher K. (2026), pp. 77-78, covering crypto assets and AI regulation in the financial services sector; similarly: Awrey D. and Pallier P. (2026), p. 68; Jackson H.E., Massad T.G. and Awrey D. (2025), p. 6.

[4] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 "on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU", OJ L 173, 12.6.2014, pp. 349-496.

[5] Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 "on the taking up, pursuit of and prudential supervision of the business of electronic money institutions", OJ L 275, 27/10/2000 P. 0039 – 0043.

[6] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 "on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC", OJ L 267, 10.10.2009, pp. 7-17.

[7] Article 4(1)(15) MiFID II.

considerable leeway for Member State corporate and securities law. The EMD1 and EMD2 originally provided a basic framework for prepaid cards and early forms of digital cash. Against this background, Member States had concentrated on moving inside this "seamless web"[8] and on applying existing EU-derived categories. For instance, Germany amended its Banking Act to introduce "crypto custody business" (*Kryptoverwahrgeschäft*) as a licensable financial service.[9] BaFin suggested guidelines to distinguish different categories of tokens.[10] France had under the PACTE law of 2019 created a new optional licensing regime for Initial Coin Offerings and for Digital Asset Service Providers.[11]

In parallel with Member States, such as Germany and France, the EU Commission published its FinTech Action Plan,[12] and, 1.5 years later, a joint statement on stablecoins with the Council, signalling that legislative action was coming.[13] Instead of working with MiFID II's financial-instrument definition, the EU early on conceptualised stablecoins as a banking law topic by combining elements of the Capital Requirements Framework (CRD IV[14]/CRR[15]) and EMD2. Existing EU securities law complements this approach only insofar as it provided a toolset for market structure, drawing on the Prospectus Regulation[16] and the Markets Abuse Regulation[17].

1. The three categories of crypto-assets under MiCAR

A MiCAR-crypto asset is "a digital representation of a value or a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology", Article 3(5) MiCAR. This EU legislative act divides qualifying crypto assets into three categories. Compliance

[8] Jackson H.E. and Langenbucher K.(2026), p. 98.
[9] § 1(2) Nr. 6, (11) 4 KWG; on the legislative history pre- and post-MiCAR, see Schäfer F.A. (2026) § 1 KWG no. 176 *et seq*.
[10] At: https://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/WA/dl_wa_merkblatt_ICOs.pdf?__blob=publicationFile&v=1, p. 9.
[11] LOI n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises; on the EU strategy, see *infra* I.B.
[12] At: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0109.
[13] At: https://www.consilium.europa.eu/en/press/press-releases/2019/12/05/joint-statement-by-the-council-and-the-commission-on-stablecoins.
[14] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 "on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC", OJ L 176, 27.6.2013, pp. 338-436.
[15] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 "on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012", OJ L 176, pp. 1-337.
[16] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 "on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC", OJ L 168, 30.6.2017, pp. 12-82.
[17] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 "on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC", OJ L 173, 12.6.2014, pp. 1-61.

requirements are low for the catch-all category of "other crypto assets" that do not claim to maintain a stable value. Regulatory intensity is higher for the two other types of crypto assets which promise some form of stability through a peg to an underlying reserve. "E-money tokens" (EMTs) reference the value of one official currency.[18] "Asset-referenced tokens" (ARTs) reference any value or right including, but not limited to, one or more official currencies.[19] In what follows, I focus on EMTs. In fact, the ART category illustrates the perils of anticipatory regulation: At the EU COM's drawing table, it seemed plausible that some stablecoin issuers would back up the promise to maintain a stable value by referencing any value or right. At the time of writing, no ART has been licensed in the EU.[20] This suggests that, overall, the market for these coins has not developed as anticipated.

Notably, and in contrast to MiFID II and EMD2, the Commission succeeded in enacting MiCAR as a regulation. This concentrates rulemaking at EU-level. MiCAR grants the Commission, supported by the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA), powers to flesh out and amend non-essential elements of MiCAR by adopting regulatory technical standards (RTS) and implementing technical standards (ITS). By contrast, enforcement rests largely with Member States who designate the competent authorities,[21] safe for significant EMTs that are issued by e-money institutions, where EBA assumes direct supervisory responsibility.[22] Concerns from several National Competent Authorities (NCAs)[23] might have contributed to spurring the EU Commission to propose a centralisation of oversight concerning crypto asset service providers (CASPs) at the European Securities Markets Authority (ESMA).[24]

[18] Definition at Article 3(1)(7) MiCAR.
[19] Definition at Article 3(1)(6) MiCAR.
[20] At: https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica#InterimMiCARegister.
[21] Jackson H.E. and Langenbucher K. (2026), p. 123.
[22] This includes significant ARTs. Note that "significance" is established against the European, not the global market, see Articles 56, 43 MiCAR. The framework for significant tokens is beyond the scope of this essay. In more detail see: Annunziata F. (2026), pp. 15, 27-28 (with a comparison to the GENIUS Act).
[23] At: https://www.reuters.com/sustainability/boards-policy-regulation/france-threatens-block-crypto-licence-passporting-eu-regulatory-fight-2025-09-15; for France threatening to block other Member State licenses, see at: https://www.fma.gv.at/die-franzoesischen-oesterreichischen-und-italienischen-aufsichtsbehoerden-fordern-einen-staerkeren-europaeischen-rahmen-fuer-kryptomaerkte.
[24] At: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0940; for critique see at: https://agenceurope.eu/en/bulletin/article/13862/2/misp-package-divided-over-esmas-future-role-eu-countries-insist-on-cost-control.

2. Issuers and reserves

Under MiCAR, solely authorised credit institutions[25] or electronic money institutions[26] are permitted to issue EMTs.[27] Article 48 MiCAR stipulates that EMTs shall be deemed to be electronic money and invokes Titles II and III of EMD2. In that way, MiCAR does not build a freestanding prudential regime for EMT issuers, but layers specific rules onto the pre-existing e-money framework. The resulting regime is intricate as it starts with MiCAR, has MiCAR apply or modify certain EMD2 rules, and cross-references CRD IV/CRR for issuers that are credit institutions.

For issuers that are electronic money institutions, there are – roughly – four layers of requirements concerning the reserve. The first layer contains safeguarding requirements. There are several acceptable forms of safeguarding. Article 54 MiCAR mentions two and combines this with a mandatory quantitative floor:[28] Funds can (i) be deposited insolvency-remote in a separate account in a credit institution,[29] and (ii) be invested in secure, highly-liquid, low-risk assets with minimal market risk, credit risk, and concentration risk[30] which are denominated in the same currency as the EMT. Additionally, Article 54 MiCAR references Article 7(1) EMD2, which – in turn – references the payment services directive.[31] If one follows these references,[32] there are two more acceptable forms of safeguarding: (iii) funds can be covered by an insurance, or (iv) funds can be covered by a comparable guarantee from an insurance company, or a credit institution which does not belong the same group as the payment institution. This insurance/guarantee must cover an amount equivalent to what would have been segregated in the absence of an insurance policy or comparable guarantee.

The second layer is the prohibition of commingling funds that the issuer has received from the user of an EMT with the funds of any other person. According to Article 54 MiCAR, Article 7(1) EMD2, and

[25] Article 3(1)(28) MiCAR. Under MiCAR, authorisation of EMT-issuers is typically done by the same authorities that license banks and EMIs, see, for instance, Germany (BaFin): § 32 KWG, § 11 ZAG; France (ACPR): Articles L511-10, L525-5 ff.; Ireland (Central Bank of Ireland): European Communities (Electronic Money) Regulations 2011 (SI No 183 of 2011), Regulation 9, Central Bank Act 1971 (as amended), Section 9; Italy (Banca d'Italia): Legislative Decree No. 385/1993 (Testo Unico delle Leggi in materia bancaria e creditizia), Articles 13-18; Legislative Decree No. 385/1993 (Testo Unico delle Leggi in materia bancaria e creditizia), Articles 106-107.
[26] Article 3(1)(43) MiCAR.
[27] *Ibid*., Article 48(1).
[28] See on that floor *infra* "third layer".
[29] *Infra* I.D.
[30] This is further exemplified in Article 38(1) MiCAR to which Article 54(b) references.
[31] In more detail, Article 7(1) EMD2 references Article 9 of the payments services directive (PSD), which is now Article 10 PSD2.
[32] Lösing (2025), Article 54 MiCAR, no. 11; but see Omlor (2025), Article 54 MiCAR, no. 4 and Konow F.-J. (2026), p. 187 with a *lex specialis* argument: Given that Article 54(a) MiCAR lists only (i) and (ii), (iii) and (iv) are not acceptable.

Article 10(1)(a) PSD2, funds shall not be commingled at any time with the funds of any other person, unless these funds are covered by an insurance policy or a comparable guarantee.[33]

The third layer is a quantitative floor: At least 30% of the funds received against EMTs must always be deposited in separate accounts with credit institutions, Article 54(a) MiCAR. For EMTs that qualify as significant under Articles 43, 56, at least 60% must be deposited in credit-institution accounts. EBA is in charge of classifying EMTs as significant, Article 56(1).[34]

A fourth layer is pending: EBA RTS[35] will tighten the liquidity profile of the reserve. For non-significant EMTs, at least 20% of the reserve must mature within one working day. 30% in total must mature within five working days, which adds an additional 10% on top of the one-day bucket. For significant EMTs, these thresholds are doubled to 40% within one working day and 60% within five working days.

In addition to the four layers of requirements, which concern the reserve, MiCAR establishes capital requirements and minimal concentration rules.[36] Issuers must hold initial capital of € 350.000 under Article 4 EMD2 plus ongoing own funds, at least 2% of the average outstanding electronic money, Article 5(3) EMD2.[37] Diversification in the form of "minimal concentration risk" is required by Articles 58 (1)(a), 38 MiCAR, and Article 36(1)(b) requires adequate risk management. Supervisors may impose stress tests and additional liquidity requirements for significant EMTs. At the time of writing, the EBA contemplates mandatory over-collateralisation as a liquidity-management technique for significant EMTs, i.e., a reserve that exceeds the face value of outstanding tokens by a defined margin.[38] EBA's RTS specify the concrete quantitative content of these rules.

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[33] Lösing (2025), Article 54 MiCAR, no. 17 („*Vermischungsverbot*"), explaining that the prohibition to commingle requires to clearly separate the funds of all EMT users, while the separation requirement concerns the relationship between EMT user and issuer. Omlor (2025), Article 54 MiCAR, no. 6 agrees that the prohibition to commingle funds applies (arguably creating inconsistency with his claim that only what Article 54 MiCAR lists explicitly concerns EMTs).

[34] See *supra* fn. 21.

[35] See Article 36(4) MiCAR for EBA-jurisdiction.

[36] For issuers that are credit institutions, the CRR/CRD IV prudential regime applies. The CRR stipulates capital requirements based on risk-weighted assets. The CRD IV includes supervisory and governance requirements. The BRRD provides a resolution regime.

[37] For significant EMTs, the own funds requirement is raised to 3% of the average amount of the reserve assets, Articles 45(5), 58 MiCAR. Where several issuers issue the same significant EMT, this applies to each issuer. See *supra* fn. 21.

[38] At: https://www.eba.europa.eu/sites/default/files/2024-06/580db2f3-8370-4927-baa3-0f995722b417/Final%20report_draft%20RTS%20further%20specifying%20the%20liquidity%20requirements%20Article%2036%204.pdf (Article 6); Konow F.-J. (2026), p. 194 *et seq*.

3. Interest and redemption

Direct interest payments, as well as reward programs or indirect payments by third parties are prohibited, Article 50 MiCAR. The prohibition is intentionally broad, given concerns that interest-bearing EMTs, if held at scale, would pose monetary policy and financial stability questions, and create unwanted incentives to use coins to store value.

MiCAR grants EMT holders a strong right of redemption against the issuer. EMTs must be redeemed on demand, at any time, at par value and generally without a fee, Article 49(4), (6) MiCAR. The right is statutory, not contractual, and cannot be waived.[39]

4. Safety net and resolution

Funds received in exchange for EMTs are not bank deposits. Consequently, they fall outside the DGSD's deposit guarantee scheme protection for credit institutions, a warning Article 51(4) MiCAR requires issuers to explicitly spell out in their white papers.

Traditionally, non-bank EMT issuers did not have direct access to Eurosystem-operated payment systems such as TARGET2, and no access to central bank accounts for safeguarding funds. The Settlement Finality Directive[40] now includes payment institutions and EMIs as generally[41] eligible to become participants in payment systems designated under that Directive, including access to settlement accounts.[42] By contrast, the option to safeguard client funds at a central bank is subject to the central bank's discretion and currently not offered.[43]

For issuers that are credit institutions, the BRRD applies. By contrast, there is no dedicated resolution regime for non-bank EMT issuers in the EU. Recourse is to general national insolvency law, mediated

[39] Konow F.-J. (2026), pp. 138 *et seq.*; Annunziata F. (2026), p. 60.

[40] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 "on settlement finality in payment and securities settlement systems", OJ L 166, 11.6.1998, pp. 45-50 as amended by the Instant Payments Regulation (Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 "amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro", OJ L, 2024/886, 19.3.2024).

[41] Article 35a PSD2 inserted by Article 3 Instant Payments Regulation imposes additional conditions.

[42] Article 2(b) SFD, at: https://www.ecb.europa.eu/press/intro/publications/pdf/ecb.2025-12-18_MoU.en.pdf; https://www.ecb.europa.eu/press/targetservar/html/ecb.targetservar2024.en.html.

[43] Article 10(1) PSD2; Awrey D. and Pallier P. (2026), pp. 70-71 with a comparison to the U.S. See at: https://www.ecb.europa.eu/press/intro/news/html/ecb.mipnews20240719.en.html; and https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/tips/shared/pdf/Eurosys_pol_on_access_to_central_bank_operated_payment_systems_by_NBPSPs.pdf; ECB/2025/2.

by the safeguarding and segregation obligations.[44] Additionally, there are two *ex-ante* instruments, namely a recovery plan under Articles 55, 46 MiCAR, and a redemption plan under Articles 55, 47.

5. Foreign issuers and multi-issuance schemes

The market for stablecoins has been dominated by US-dollar denominated coins. For MiCAR legislators, this raised the question of how to position the Union in a global stablecoin market. Early hopes that providing a legally secure stablecoin framework would encourage issuers to license euro-denominated coins under MiCAR have not yet played out. This results in two options for the EU: integrating third-country issuers or (largely) keeping them out.

A classical mechanism for integrating third-country issuers in domestic markets is an equivalence mechanism.[45] However, unlike most EU financial services regimes, MiCAR does not contain such a rule: a U.S. coin regulated under the GENIUS Act cannot be offered to Europeans on the basis that it has received a U.S. license. Major EU exchanges illustrate this *de facto* hard border: Tether does not hold an e-money issuer license, consequently, major EU exchanges have delisted USDT.

MiCAR offers one narrow exception. Under Article 61 MiCAR, a token user in the Union can "at its own exclusive initiative" seek the services of a CASP situated in a third country. ESMA has interpreted the rule narrowly: any marketing, advertising or similar form of active outreach makes the carve-out unavailable.[46]

More workaround than exception is a strategy adopted by Circle for offering USDC. The company established an EU subsidiary, obtained an e-money issuer license, and issued a MiCAR-compliant version of its USDC token from within the Union.[47] While in compliance with MiCAR, this strategy has triggered a lively debate on issuers that trade the same fungible stablecoin jointly by an EU-authorised entity and a non-EU authorised entity. In *Circle's* case, an entity in France holds an e-money issuer authorisation and issues USDC into the EU. At the same time, Circle's U.S. operations issue the USDC token outside the Union. Economically and technically, the two issuances are fungible. The ECB has warned that multi-issuance tokens of this type create serious run risks for the EU leg.[48] If holders

[44] Under German law, § 28(9), (8) *Kryptomärkteaufsichtsgesetz* (KMAG) stipulates that the reserve does not form part of the bankruptcy estate, continuing the principle of segregating funds.
[45] *Infra* II.B.1.1.4 for the GENIUS Act mechanism.
[46] At: https://www.esma.europa.eu/sites/default/files/2025-02/ESMA35-1872330276-2030_Guidelines_on_reverse_solicitation_under_MiCA.pdf.
[47] Description at Farina T. *et al.* (2026), p. 13.
[48] E.g., at: https://data.consilium.europa.eu/doc/document/WK-4742-2025-COR-1/en/pdf; https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp250903~10647505c7.de.html; see also ESRB, at: https://www.esrb.europa.eu/pub/pdf/reports/esrb.report202510_cryptoassets.en.pdf?347510c016928b8c2f74825965cd20a9.

anywhere in the world lose confidence in the token, they will race to redeem, including automated trading bots. This run risk is compounded by the fact that redemption under Article 49 MiCAR is more comprehensive than the equivalent right under the GENIUS Act. This makes it likely that the EU reserve can be drained by non-EU token holders. In this way, European holders and reserves *de facto* underwrite the global token. The ECB insists on either prohibiting joint issuances or at least ring-fencing EU reserves against claims from non-EU holders. The EBA and the Commission have hesitated, given that this would effectively exclude major dollar-denominated stablecoins from the EU market.[49]

Another constraint is worth flagging. For EMTs that are denominated in a non-euro currency, MiCAR imposes restrictions on their use as payment instruments within the Union, Articles 58(3), 23 MiCAR. Where the estimated quarterly average daily number of transactions exceeds 1 Mio. or the daily aggregate value exceeds € 200 Mio., the issuer must stop issuing the EMT and within 40 days of reaching the threshold submit a plan to the competent authority to ensure that these thresholds are not exceeded going forward. *De facto*, this is a soft cap on the circulation of dollar-denominated stablecoins inside the EU.

6. Market structure

The EU lawmaker's ambition to anticipate future developments on crypto markets and create a comprehensive regime shows in MiCAR's Title V, which regulates authorisation and operating conditions for CASPs, and Title VI, which concerns market abuse, i.e., insider trading and market manipulation.

A CASP is an undertaking whose occupation is the provision of crypto-asset services on a professional basis, Article 3(15) MiCAR, for instance crypto-asset custodians, traders, investment advisers, or exchanges.[50] Covered crypto-assets include stablecoins (EMT and ART) but are not limited to these categories. CASPs need an authorization, under Article 59 MiCAR, and are required to act honestly, fairly, and professionally, in the best interest of their clients under Article 66(1). They face their own prudential (Article 67), safeguarding (Article 70), wind-down (Article 74), and governance (Articles 68, 72) requirements. Additional rules concern each individual service provided by a CASP.[51]

For crypto-assets that are admitted to trading (or where a request has been made), MiCAR creates its own market abuse regime, modelled after the MAR (Articles 86-92 MiCAR). If a crypto-asset qualifies

[49] Note that joint issuance must be distinguished from parallel issuance. In the case of Circle, in addition to its USDC (joint issuance), it offers EURC, a bespoke EU-only version of a global token. Parallel issuances do not raise the concerns mentioned, given that each token stands on its own reserve and its own redemption regime.
[50] Overview at Langenbucher K. (2024), pp. 249, 254 *et seq*.
[51] See Articles 75-82 MiCAR.

under Article 86(1), any transaction is relevant, irrespective of whether it takes place on a trading platform (Article 86(2)), in the Union, or in third countries, (Article 86(3)). Both rules follow Article 2(3), (4) MAR.

II. Isolate and regulate: The GENIUS Act, and the pending CLARITY Act

The U.S. has an extensive framework of financial regulatory agencies at federal and state level. For almost a decade, it let markets develop alongside state legislation and targeted federal enforcement actions. In contrast with the EU, which under MiCAR early on moved towards a prudential, rather than a financial-instruments regime, the picture in the U.S. has long remained more varied. Even after the GENIUS Act has entered into force, important variations remain.

1. Bottom-up regimes pre-GENIUS Act

Many U.S. states have advanced through their money transmitter laws.[52] While federal law prohibits unlicensed money transmitter businesses and requires registering with the U.S. Treasury to bring these firms under FinCEN supervision, the bulk of prudential regulation is state law.[53] Money transmitter licenses are required for money transmission within states and licenses are handed out by the state banking department or the financial services regulator. State laws concern minimum net worth and security requirements, as well as restrictions on permissible investments.[54] Most states have extended the relevant definitions of "money" to cover virtual currency transmission.[55] Such state-level laws generally require a license under each state's law where a stablecoin issuer intends to operate in.[56] However, as *Awrey* explains, the requirements set by each state are not cumulative. A single money transmitter business can operate across all fifty states if it satisfies the requirements in

[52] See the comprehensive overview of the regulatory frameworks governing all 50 U.S. states at Awrey D. (2020); see also Awrey D. (2025), pp. 206-207 explaining that established money transmitter laws were sufficient in a world where money transmitters only owed money to their customers for a short period of time, providing a bridge for moving money between local branches, but stressing that today institutions such as PayPal hold far more funds for a much longer time.
[53] Awrey D. (2020), pp. 46-47 on the U.S. federal regulatory framework.
[54] *Ibid.*, pp. 47-48 finding "incredible heterogeneity of minimum net worth requirements […] and relatively thin layer of protection in comparison with bank capital requirements" across U.S. states.
[55] State-by-state overview at: https://freemanlaw.com/digital-currency-transmission-laws-state-by-state/.
[56] This is different under the GENIUS Act: Section 4(b)(1) of the GENIUS Act (12 U.S.C. 5903(b)(1)) preempts some state law; see at: https://www.federalregister.gov/documents/2026/03/02/2026-04089/implementing-the-guiding-and-establishing-national-innovation-for-us-stablecoins-act-for-the (explaining that a Federal qualified payment stablecoin issuer shall be supervised exclusively by the Comptroller of the Currency (OCC) and that this generally prevents other regulators from subjecting these entities to additional oversight). Even before the GENIUS Act, there were workarounds such as a reverse solicitation concept, interstate trust company recognition or state money transmitter exemptions for trust companies, or federal preemption through master accounts and federal status.

the state with the most burdensome framework.[57] However, there is no direct equivalent to the EU passporting regime, which allows an issuer to operate with the license obtained in one Member State across the Union.[58]

Distinct elements of prudential regulation have surfaced in states that created their own licensing and regulatory regime. The New York Department of Financial Services (NYDFS) issued the "BitLicense".[59] While it is a licensing-and-conduct, rather than full prudential regulation, it has been the most demanding state-level regime in practice.[60] Additionally, the NYDFS chartered several stablecoin issuers as limited-purpose trust companies under the New York Banking Law.[61] While the BitLicense is conceptually closer to a money transmitter license, the limited-purpose trust company charter is more akin to a bank charter in that it imposes, for instance, capital requirements, activity restrictions, and reserve requirements – but, importantly, does not profit from a special resolution regime.[62]

Wyoming created its own, genuinely prudential charter, the Special Purpose Depository Institution (SPDI). These are technically fully reserved banks under the Wyoming Banking Law, which can hold customer deposits. They are subject to capital, risk management, reporting, as well as resolution and recovery planning requirements.[63] Additionally, they benefit from various exemptions for "banks" or "depository institutions" from money transmitter licensing laws in other U.S. states. In that sense, SPDIs can operate across the U.S. without having to obtain an additional license.[64] However, they

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[57] Awrey D. (2020), p. 48.

[58] In some respects, the National Bank Charter which preempts (some) state laws can be understood as a functional equivalent to the EU's passporting regime. However, federal preemption for National Banks is subject to careful analysis and applies only for activities within their banking powers; see *infra* fn. 64. It reflects structural differences between the EU (recognition of Member State licenses) and the U.S. (preemption of state law).

[59] See Title 23, Part 200 of the New York Codes, Rules, and Regulations (NYCRR) under the New York Financial Services Law. Overview at: https://www.dfs.ny.gov/virtual_currency_businesses; for data on the BitLicense see at: https://www.dfs.ny.gov/apps_and_licensing/virtual_currency/annual_assessment_charges_bitlicense; and https://govt.westlaw.com/nycrr/Document/I85908c6b253711e598dbff5462aa3db3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1.

[60] See in detail Awrey D. (2025), pp. 210 *et seq.*, listing Coinbase, Circle, Robinhood, and Ripple as holders of a BitLicense; further Awrey D. and Pallier P. (2026), p. 64.

[61] At: https://www.nysenate.gov/legislation/bills/2025/S3262.

[62] See, for instance, Paxos, which held a NYDFS limited purpose trust charter (but has in 12/2025 received approval to convert it to a national trust charter overseen by the OCC) at: https://www.paxos.com/newsroom/occ-approves-paxos-application-to-convert-to-occ-trust-paxos-to-complete-conversion-imminently-to-become-a-federally-regulated-blockchain-infrastructure-provider. Note, however, that § 2 of the New York Banking Law excludes trust companies from its definition of banks, see Awrey D. (2025), p. 214 with fn. 202. Comparing them to the EU framework, they resemble EMIs, not credit institutions. See in more detail Zaring D. (2025), pp. 730 *et seq.*

[63] At: https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/special-purpose-depository-institutions; overview at Awrey D. (2025), pp. 214 *et seq.*

[64] Awrey D. (2025), p. 216. Together with the state-level exemptions, the Riegle-Neale Interstate Banking and Branching Act of 1994 provides a pathway for state-chartered banks to branch across state lines where traditional banking activities are concerned. Note, however, that the combination of both does not produce the seamless

may not make loans, hence, are uninsured,[65] and have not been provided access to the Fed's master accounts.[66]

At federal level, three different agencies had been involved in cryptocurrency regulation. A prudential approach was proposed by the OCC, which – under the Obama administration – had announced its intention to consider applications for a Special Purpose National Bank Charter for fintech companies, using its existing statutory authority under the National Banking Act.[67] Had this been successful, stablecoin issuers with a federal banking charter along those lines would have been able to operate nationwide, preempting state licensing requirements – a functional equivalent to MiCAR's passporting regime. However, legal challenges followed.[68] A district court decision in *Lacewell v. OCC* had established that the OCC lacked statutory authority under the National Bank Act to charter non-depository institutions, but was later vacated on standing grounds.[69] During the following period the OCC was technically free to issue charters, but the considerable legal uncertainty effectively froze both, crypto chartering efforts and the approvals of new national trust banks.[70] The Federal Reserve, reluctant to grant crypto-focused institutions access to Fed master accounts, echoed these concerns.[71] This left regulatory action largely in the hands of the SEC and the CFTC.

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nationwide operation that a national bank charter provides under the National Bank Act with federal preemption as its conceptual underpinning (even if *Cantero v. Bank of America* 602 U.S. 205 (2024) has established that state laws are not automatically preempted and a case-by-case analysis is required).

[65] The FDIC requires lending activity for insurance.

[66] See for example at: https://law.justia.com/cases/federal/appellate-courts/ca10/24-8024/24-8024-2025-10-31.html, denying Custodia Bank, a Wyoming-chartered bank access to a master account with the Federal Reserve Bank of Kansas City, see Awrey D. (2025), pp. 234 *et seq*; Awrey D. and Pallier P. (2026), p. 65; further: Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 28-29; Zaring D. (2025), p. 732.

[67] For a more tailored framework, see Jackson H.E., Massad T.G. and Awrey D. (2022).

[68] See Awrey D. (2025), p. 242, noting that New York and Wyoming viewed this as unwelcome intrusion into state law territory.

[69] *Lacewell v. OCC*, 460 F.Supp. 3d 348 (S.D.N.Y. 2020). The Second Circuit vacated that decision on standing grounds, without reaching the merits, 999 F.3d 130 (2d Cir. 2021).

[70] Under the Biden administration, the OCC acted very cautiously, see interpretive letter 1179 of 2021, requiring national banks to obtain supervisory non-objection from their regulators before engaging in crypto assets (at: https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2021/int1179.pdf). Under the GENIUS Act's clear statutory authority, the OCC has changed its strategy and rescinded the interpretive letter 1179, see at: https://www.occ.treas.gov/topics/laws-and-regulations/interpretations-and-precedents/summary-of-interpretive-letter-1179-requests.html and *infra* II.B.

[71] Under the Trump administration, this approach has changed, see at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20251219a.htm requesting input on „skinny" master accounts (i.e., a payment account which eligible financial institutions could use for the limited purpose of clearing and settling their payments); https://www.federalreserve.gov/newsevents/speech/waller20251021a.htm; see further at: https://www.federalreserve.gov/econres/notes/feds-notes/banks-in-the-age-of-stablecoins-implications-for-deposits-credit-and-financial-intermediation-20251217.html for openness towards stablecoins.

By contrast with the OCC's prudential proposal, the CFTC and the SEC, securities and commodities markets regulators, have approached crypto assets as a financial markets' phenomenon. For the SEC this required framing crypto assets as securities under the Supreme Court's *Howey* test, i.e., "an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others".[72] Early tokens, for instance the "DAO" – which had led to a SEC investigative report under Commissioner *Clayton*[73] – suggested this approach. These tokens were often sold as "initial coin offering", as "security" or "governance" token, alluding to the terminology of equity markets and – promising – to combine elements that are characteristic of traditional financial instruments.[74] Chairman *Gensler* reinforced this approach, invoking Justice *Thurgood Marshall*'s description of the 1933 Securities Act's definition as painted "with a broad brush" and intent on following a substance over form approach.[75] Increasingly, however, industry participants complained about a lack of regulatory guidance, culminating in litigation by Coinbase to force SEC rulemaking.[76] More importantly, stablecoins emerged as proposing a payments-instrument use case that investment products do not offer.[77]

The CFTC was in a slightly different situation. While the agency – like the SEC – is a financial market, not a prudential regulator, its comprehensive jurisdiction over commodity futures and swaps is based on an extremely broad definition of a "commodity" under Section 1a(9) of the Commodity Exchange Act (CEA): "The term "commodity" means […] all other goods and articles […] and all services, rights,

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[72] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946); *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975); see Langenbucher (2024), p. 249.

[73] At: https://www.sec.gov/newsroom/press-releases/2017-131.

[74] Langenbucher K. (2019), p. 215. Even without governance elements, stablecoins generate reserve income for issuers. Early debates, for instance on LIBRA, might not have been wrong to ask whether the offer of a non-recourse instrument, which in some ways resembled non-voting rights equity, can circumvent securities regulation by keeping the yield for issuers, thereby evading the "profit" element of the *Howey*-based definition. In current practice, stablecoins have moved towards on- and off-ramp tools on digital exchanges, allowing seamless exchange for yield-bearing tokens; for a similar argument, see Farina T. *et al.* (2026), p. 12 on private seigniorage; Jackson H.E., Massad T.G. and Awrey D. (2025), p. 10.

[75] See *Reves v. Ernst & Young*, 494 U.S. 56, 60-61 (1990) for Justice Marshall; see at: https://www.sec.gov/newsroom/speeches-statements/gensler-sec-speaks-090822#_ftn3 for Chairman Gensler.

[76] In 2022, Coinbase filed a petition for rulemaking, in 2023, it sued the SEC to act on that petition. In December 2023, the SEC denied the petition, in September 2024 Coinbase sued the SEC for acting arbitrary and capricious. The Court of Appeals for the 3rd Circuit found that the SEC's order was conclusory and insufficiently reasoned, making it arbitrary and capricious, but declined to order the SEC to institute rulemaking, see at: https://law.justia.com/cases/federal/appellate-courts/ca3/23-3202/23-3202-2025-01-13.html; on widespread critique of "regulation by enforcement": Awrey D. and Pallier P. (2026), p. 67; Brummer C., Yadav Y. and Zaring D. (2024), p. 1316.

[77] Juxtaposing the investment products and the payments instruments approach: Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 10-11.

and interests […] in which contracts for future delivery are presently or in the future dealt in". Against this background, the agency had early on established jurisdiction for derivatives with an underlying crypto asset, determining that Bitcoin and other virtual currencies are commodities.[78] Additionally, the CFTC has limited jurisdiction over spot commodity markets where fraud and manipulation are concerned.[79] Major enforcement actions established CFTC jurisdiction over unregistered exchanges, false statements about reserve backing, AML failures,[80] and virtual currency fraud.[81]

2. The regulatory perimeter post-GENIUS Act

Crypto assets in general and the emerging world of stablecoins in particular had created overlap in the SEC's and the CFTC's jurisdiction:[82] The CFTC claimed crypto assets were commodities, the SEC understood them as securities. Various attempts at producing a legislative reaction failed prior to the Trump administration. With the GENIUS Act, a novel prudential framework exclusively for "permitted payment stablecoins" has been put into place.[83] It makes two important moves: First, it restricts the jurisdiction of the SEC and the CFTC for a well-defined category. A crypto asset that is a permitted stablecoin, issued by a permitted issuer and in compliance with the Act, is neither a security under the 1933 Securities Act, 1934 Securities Exchange Act, nor a commodity under the Commodity Exchange Act.[84] Second, it creates a federal-law regulated institution that faces core prudential requirements, but is not a bank – most notably: may not create money through lending, does not accept deposits under U.S. banking law,[85] may not pay interest, and does not participate in the safety net of Fed emergency lending facilities, deposit insurance, and special resolution.[86] However, the

[78] See at: https://www.cftc.gov/PressRoom/PressReleases/7231-15 regarding put and call options for the delivery of Bitcoins.

[79] CFTC jurisdiction over spot markets includes fraud and manipulation in spot commodity markets under Sections 6(c)(1): theft of nonpublic information held by the Federal government, Congress or the judiciary that is material for the price of the commodity, 9(a)(2) CEA, CFTC Rule 180.1: prohibition of manipulative and deceptive devices, but the agency does not generally register or supervise spot commodity exchanges.

[80] Bitmex, at: https://www.cftc.gov/PressRoom/PressReleases/8412-21; Tether and Bitfinex, at: https://www.cftc.gov/PressRoom/PressReleases/8450-21; Binance, at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.

[81] *CFTC v. McDonnell*, at: https://www.cftc.gov/sites/default/files/2018-08/enfdropmarketsmemorandum082318.pdf; *CFTC v. My Big Coin Pay*, at: https://www.cftc.gov/sites/default/files/2018-10/enfmybigcoinpayincmemorandum092618.pdf.

[82] Langenbucher (2024), pp. 249, 259.

[83] *Infra* II.B.1.

[84] Section 17(a)-(f) amends multiple federal statutes to include carve-outs from their definitions.

[85] See Section 3(l) of the Federal Deposit Insurance Act for the definition of a deposit.

[86] See already Awrey D. (2020), p. 60, arguing that „the new breed of aspiring monetary institutions simply do not look like banks" and instead likening them to money market funds. See Farina T. *et al.* (2026), pp. 5-6 for an analogy to "narrow" banks, but without a claim on central bank reserves.

classification is strictly confined and does not aim at preserving principles of technological neutrality.[87]

3. Permitted payment stablecoins and the GENIUS Act

The GENIUS Act, under its prudential, not financial-instruments regulatory policy, allocates primary licensing authority for stablecoins among federal banking regulators and focuses on liquidity and reserves.

3.1 Issuers and reserves

Under Sections 2(23), 5(a)(1)(A) of the GENIUS Act, bank subsidiaries, certain non-bank entities, certain uninsured banks, and federal branches of foreign banks can be permitted issuers. By contrast with the EU, Section 4(c)(1), 4(d) of the GENIUS Act keeps a dual federal and state licensing regime, with state issuers subject to a $ 10 bill. cap. Consequently, the licensing authority for a permitted payment stablecoin depends on its issuer. For non-bank federal issuers, the OCC is in charge, Sections 4(b)(1), 2(25)(D). For bank subsidiaries that issue a stablecoin, their parent's primary regulator, i.e., the OCC, the Fed or the FDIC, is the competent body, Section 2(25)(A)-(C). For issuers below the GENIUS Act's $ 10 bill. threshold, state regulators take over, Section 7(a). Under Section 4(a)(12)(B)(i), public companies that are not predominantly engaged in financial activities – think "BigTech" – require special approval from a newly installed Stablecoin Certification Review Committee to own a stablecoin issuer.

The GENIUS Act's approach to reserve composition differs markedly from MiCAR's heavy reliance on bank deposits. Instead of mandatory minimum deposits, the Act defines distinct statutory categories, coupled with emerging agency-level rulemaking of low-risk, highly liquid assets. Eligible assets are cash, Fed accounts, demand deposits, insured shares, Treasury securities with 93 days or less remaining maturity, overnight repos and overnight reverse repos backed by short-dated Treasuries, and certain money-market funds, Section 4(a)(1)(A).[88] Section 4(a)(1)(A)(vii) provides for (limited) regulatory flexibility: It allows regulators to add categories of "similarly liquid Federal Government-issued assets". A rehypothecation prohibition specifies that reserve assets cannot be used for purposes other than supporting redemption, Section 4(a)(2).

[87] See Awrey D. and Pallier P. (2026), pp. 74-75 (with the example of PayPal facing a different regulatory framework for its payment platform if compared to its blockchain-based platform).

[88] The GENIUS Act explicitly permits reserves to be held in tokenised form, Section 4(a)(1)(A)(viii). For a policy difference (MiCAR: focus on quantitative requirements, GENIUS Act: focus on asset eligibility), see Farina T. *et al.* (2026), p. 11.

The maturity ceiling of 93 days or less, combined with the absence of a deposit floor, allows U.S.-based stablecoin issuers to generate substantially more interest income from their reserves than their EU-equivalents. Arguably, this will translate into increased demand for sub-93-day Treasury bills,[89] while MiCAR's mandatory proportion of bank deposits channels reserves into EU bank balance sheets and euro-area sovereign low-risk highly liquid assets.[90]

Each primary stablecoin regulator[91] can mandate concentration limits, Section 4(a)(4)(A)(iii) of the GENIUS Act. This rule can be understood as a reaction to the Silicon Valley Bank (SVB) failure of March 2023, where Circle's USDC had depegged in response to the bank's failure because reserves were concentrated in SVB.[92]

Like MiCAR, the GENIUS Act has established a layered framework for insulating and segregating reserves. Section 4(a)(1)(A) requires issuers to maintain "identifiable reserves backing the outstanding payment stablecoins […] on an at least 1 to 1 basis". These must be segregated from assets of the custodian holding them and identifiable as customer assets, Section 10(b). Section 10(c)(1) stipulates a segregation requirement and a prohibition of commingling funds. Section 10(a)(1), 10(c) lists qualified custodians.[93] To ensure 1:1 reserve backing, capital and liquidity requirements apply. These are tailored to business model and risk profile, Section 4(a)(4)(A)(i) of the GENIUS Act.

3.2 Interest and redemption

Direct interest payments are prohibited under Section 4(a)(11) of the GENIUS Act. However, the prohibition is not as stringent as its MiCAR equivalent. While Article 50(2) MiCAR extends to CASPs and Article 50(3) explicitly targets "any remuneration or any other benefit", listing "net compensation or discounts, with an effect equivalent to that of interest received […] directly from the issuer or from

[89] See Jackson H.E., Massad T.G. and Awrey D. (2025), p. 5 quoting David Sacks' claim that stablecoins would create "potentially trillions of dollars of new demand".
[90] Rashad A. and Iñaki A. (2026) (finding that a 2-standard deviation inflow into stablecoins lowers 3-month T-bill yields by 2.5-3.5 basis points); Jacewitz S. (2025) (noting that the support of the Treasury market will have a possible counterweight in shifting funds from banks to stablecoin issuers); Farina T. *et al.* (2026), pp. 14-15 (undecided on whether there will be higher demand of T-bills or a substitution for shrinking demand elsewhere in the system); see Altavilla C. *et al.* (2026) (under the GENIUS Act predicting a shift from retail to wholesale deposits which degrades regulatory liquidity ratios).
[91] See Section 2(25) of the GENIUS Act for the relevant regulator which varies by issuer type.
[92] Critique of the GENIUS Act at Odinet C.K., Tosato A. and Yadav Y. (2026), p. 44; of the corresponding question under MiCAR: Konow F.-J. (2026), pp. 249-251.
[93] For EMTs, Articles 36, 58 MiCAR specify the segregation principle, but the operational mechanism includes Member State tools for achieving segregation. In Germany, this operates through § 13 *Zahlungsdiensteaufsichtsgesetz* and § 47 *Insolvenzordnung*. Another noteworthy point: custody at Federal Reserve Banks is permitted but not required, the practical availability of master accounts depends on Federal Reserve discretion. This is similar in the EU under Article 10 PSD2, see *supra* I.B.

third parties, and directly associated to the holder of the e-money token or from the remuneration or pricing of other products", the GENIUS Act references "any form of interest or yield" and "solely in connection with the holding, use, or retention". The status of reward programs and indirect payments by third parties is unclear.[94]

The GENIUS Act's redeemability rule is more ambiguous than MiCAR. Article 49 MiCAR stipulates a statutory right, on demand, at any time, and at par value. Section 4(a)(1)(B)(i) of the GENIUS Act includes a more open "timely" redemption requirement,[95] but the statutory language does not clarify whether this extends to all token holders or only to those with direct issuer relationships (which would exclude all secondary market holders). Furthermore, the GENIUS Act does not address the contractual characterisation of redemption rights in issuer's term of service,[96] and the requirement can be relaxed by supervisory action in unusual exigent circumstances, Section 7(e)(1)(C), 7(e)(2)(C) of the GENIUS Act. To warn stablecoin holders, Section 4(a)(1)(B) of the GENIUS Act prohibits issuers from making misleading statements about redemption rights, and Section 4(e) adds requirements concerning marketing and disclosure.

3.3 Safety net and resolution

Like MiCAR, the GENIUS Act does not provide for deposit insurance or a dedicated way to access the Fed payment infrastructure. Non-bank issuers must use the existing financial infrastructure to operate, which exposes them to third-party risk and the misalignment risk of facing redemption demands outside normal banking hours.[97]

There is no dedicated resolution regime under the GENIUS Act, which resembles the redemption and recovery plans under MiCAR. Instead, the Act modifies bankruptcy treatment to give tailored protections, combining the procedural infrastructure of bankruptcy administration with a newly-created, privileged class of claimants. Section 10(c)(3) provides bankruptcy priority for stablecoin holders against the custodian. Section 11(a)(1) establishes pro-rata priority of the claim of a stablecoin holder over the issuer's other creditors with respect to the stablecoin reserves. Section 11(a)(2) addresses standing for both, primary and secondary coin holders: any person holding a payment stablecoin is deemed to hold a claim against the issuer, regardless of direct contractual privity. Section 11(e)(3) goes further, excluding required reserves from the property of the debtor's estate.

[94] At: https://www.congress.gov/crs-product/IF13174.
[95] Annunziata F. (2026), pp. 23, 60.
[96] Odinet C.K., Tosato A. and Yadav Y. (2026), pp. 43, 50 *et seq*., 56 *et seq.*, 71.
[97] Critique at: Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 28-29; Odinet C.K., Tosato A. and Yadav Y. (2026), pp. 53 *et seq*., 66-67.

Section 11(c) of the GENIUS Act adds Section 362(a)(9) of the Bankruptcy Code with a new carve-out from the automatic stay for the redemption of payment stablecoins from required reserves. Section 11(d) provides super-priority for shortfall claims, a situation where reserves are insufficient to fully satisfy redemption obligations.[98]

3.4 Foreign issuers

A notable difference between MiCAR and the GENIUS Act concerns foreign issuers. Section 18(a)(1)-(4) of the GENIUS Act offers foreign issuers that have not obtained permitted issuer status under Section 5 or Section 7 a more accommodating framework. The rule establishes an equivalence regime, albeit narrower than traditional mutual recognition arrangements. It requires a comparable foreign regulation as determined by Treasury, registration with the Comptroller, reserves held at a U.S.-based financial institution that are sufficient to meet U.S. customer redemption demands (unless otherwise permitted under a reciprocal arrangement), and the foreign country not being subject to U.S. sanctions or designated as a primary money laundering concern jurisdiction. An EU-based EMT issuer could offer its EMT to U.S. customers, if Treasury determines MiCAR to be comparable.

It will be interesting to see how this rule unfolds in practice. At first glance, the rule appears to combine comfort to U.S. customers that their redemption claims are secure and demand to deposit reserves at U.S.-based financial institutions by third-party issuers. However, the technical reality involves pseudonymous stablecoins move freely on blockchains. It is for regulators to establish what counts as a U.S.-based customer and which point(s) in time are relevant. Possible readings might look, for instance, to an acquisition of the stablecoin through a U.S.-located transaction, wallets that are associated with U.S.-based exchanges, KYC-information, or geolocation data.[99] While issuers can observe secondary market transactions on the blockchain, they cannot determine who controls blockchain addresses, including how many U.S.-based customers hold the coins they issue. Arguably, issuers will resort to established blockchain analytics firms which identify, for instance, exchanges and intermediaries. Limitations remain where coins are held in unidentifiable addresses, holders change rapidly, or privacy concerns spawn.

4. The pending CLARITY Act

While MiCAR aims at a broad legislative framework the GENIUS Act regulates only the issuance of permitted payment stablecoins. The Act does not include designated market structure rules for such stablecoins, most notably prohibitions of fraud or market manipulation in stablecoins, nor does it

[98] Critique at: Odinet C.K., Tosato A. and Yadav Y. (2026), pp. 45-46.
[99] See earlier: Skinner C.P. (2023), pp. 326 *et seq.* on a central verifying party.

regulate stablecoin service providers.[100] At the time of writing, this creates a conspicuous gap in the law, which, arguably, the pending CLARITY Act will close.

Permitted payment stablecoins are under the GENIUS Act neither securities nor commodities, which rules out SEC Rule 10b-5 and CFTC Rule 180.1. The federal wire fraud and mail fraud statutes remain relevant,[101] as do the Bank Secrecy Act, FinCEN's authority over money services businesses, state securities laws (to the extent that they can qualify stablecoins differently under state law), state consumer protection statutes, and common law fraud.

An additional gap concerns crypto assets that do not meet the GENIUS Act requirements. For now, these remain in the contested regulatory landscape of the pre-GENIUS Act situation. The same is true for activities that are associated with permitted payment stablecoins, for instance trading platforms, custody arrangements, or derivatives based on a permitted payment stablecoin. Platforms that list both, compliant payment stablecoins and other crypto assets, currently face a mix of SEC/CFTC regulation over the non-GENIUS Act coins but not over the compliant payment stablecoins.

The CLARITY Act proposes to grant the CFTC primary jurisdiction over digital commodities and digital commodity exchanges, Section 401. This must be read in conjunction with the SEC having, under Chairman *Atkins*, moved towards a more accommodating framework. Several enforcement actions have been paused or dropped, and *Atkins* has signalled restraint towards qualifying crypto assets as securities.[102] Along those lines, the balance has shifted towards the CFTC which is emerging as a more central regulator. More generally, the power of federal agencies has met with increasing pushback in the U.S., suggesting a cautious stance by both, the SEC and the CFTC.[103]

The CLARITY Act would address the classification of non-stablecoin digital assets, Sections 104, 201, the regulation of trading platforms and intermediaries, Section 404 (digital commodity exchanges), Section 405 (digital asset custodians), and Section 406 (digital commodity brokers and dealers) and the allocation of authority between the SEC and the CFTC, Sections 301-307 (SEC-side) and 401 (CFTC jurisdiction).

Under the CLARITY Act, a digital commodity is a digital asset that derives its value from a "mature blockchain system", with maturity assessed through specific statutory criteria including decentralisation metrics, the absence of a common enterprise under *Howey*, and operational

[100] See Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 11-12.
[101] 18 U.S.C. §§ 1341, 1343; for an analysis of the *Wahi* and *Chastain* cases involving insider trading in crypto assets see Langenbucher K. (2026), pp. 585, 600 *et seq.*
[102] On "onshoring crypto", see at: https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-regulation-crypto-assets-031726.
[103] Awrey D. and Pallier P. (2026), p. 72; Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 23-24.

independence from any single issuer or affiliated group.[104] For Bitcoin and Ether specifically, the CLARITY Act would provide statutory confirmation of their commodity status and formalise the CFTC's classification. To provide more legal security for issuers – a common complaint under SEC Chairman *Gensler*[105] – the CLARITY Act suggests a self-certification mechanism with SEC review under the revised Section 42(4) of the Securities Exchange Act of 1934. It would allow issuers and platforms to seek pre-trade determination of whether a particular digital asset qualifies as a digital commodity.

The CLARITY Act further creates a registration framework for digital commodity brokers, dealers, and exchanges under CFTC supervision. These intermediaries face customer protection requirements, segregation of customer assets, capital requirements, and operational standards, Sections 404-406 of the CLARITY Act.

III. Concluding thoughts on convergence and strategic differences

In the world of crypto assets, stablecoins have emerged as a phenomenon that both, the U.S. and the EU ended up regulating – the EU moving quickly and comprehensively, the U.S. adopting a wait-and-see strategy with targeted regulation of permitted payment stablecoins.

Faced with the marketing efforts of stablecoin issuers, which presented coins as situated somewhere between a payment instrument and a bank deposit,[106] both jurisdictions decided to operate primarily under a prudential, not a securities-law approach. This entails considerable convergence as to rules that require 1:1 reserve backing, along with insulation and segregation of these reserves. In contrast with regular bank deposits, interest payments, lending, and maturity transformation are prohibited.[107] There are no deposit insurance and no special resolution regime available, and both jurisdictions take a very cautious stance regarding access to central bank accounts.

At the same time, there are important strategic differences as to treatment of the reserve. The EU built largely on the framework it inherited from the EMD2. Arguably, given the fragmented nature of EU Member State sovereign debt markets, if compared to its deep and liquid U.S. equivalent, there was little appetite to channel reserves towards government securities. This translates not only into a more forceful insulation of its banking sector from stablecoin competition. Additionally, it brings about competitive disadvantages for EU-based stablecoin issuers whose reserves can generate less yield than their U.S. counterparts.

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[104] Section 205 of the CLARITY Act adds a new Section 42 to the Securities Exchange Act of 1934.
[105] *Supra* II.A.
[106] See Awrey D. (2020), p. 43 for PayPal; Awrey (2025), p. 208 for Coinbase.
[107] See Chiu I. H.-Y. (2026) for a more flexible proposal regarding interest payments.

Consumer financial protection has been another area of convergence, albeit in a more limited way. Both jurisdictions prohibit issuers from making misleading representations about the nature of their stablecoins, particularly representations suggesting government backing or deposit insurance. The EU has added tools that are familiar from capital markets law to protect market integrity and, more indirectly, financial consumers: There is a designated regime for crypto asset white papers and for market abuse. Furthermore, its regulation of CASPs achieves a high degree of consumer protection regarding custodians. The U.S. has, for now, not passed comparable rules, revealing a mismatch between the aim of providing safety and the practical reality of relying on third-party custodians.[108]

Another conspicuous difference between the EU and the U.S. is their treatment of third-country issuers. The EU follows a hard-border strategy. No EMT may be offered in the EU without its issuer having obtained a license in a Member States. While this achieves a certain degree of financial consumer protection, novel challenges have arisen. EU consumers are left without regular[109] access to global stablecoins, unless their issuers go through the licensing procedure. Additionally, they are still exposed to some of the dangers that MiCAR had wanted to eliminate. As explained above, once an issuer registers in the EU and offers a coin that is indistinguishable from and fungible with a coin licensed in the U.S., the EU issuer faces a global run risk.[110] At the time of writing, it is unclear how supervisory agencies will handle these cases. The U.S., by contrast, decided to open their regime to third-country issuers. To contain risk, foreign issuers must (generally)[111] keep sufficient reserves to meet liquidity demands of U.S. customers in a U.S. financial institution. While this can raise considerable challenges for issuers,[112] it puts regulators in a comfortable place, given that they have discretion to set the reserve.

Coming full circle to the question raised at the beginning of this essay – how to best handle financial innovation – it is surprisingly hard to disentangle convergences from differences.

The EU has swiftly established a comprehensive framework, moving through the formal procedures of legislation, delegated regulations, and technical standards. Faced with innovation, this provides a certain degree of clarity, which should establish a level playing field, facilitate start-up investment, and bolster consumer confidence. At the same time, early legislation – especially if it is detailed and rule-, rather than principle-based – risks inflexibility and an ossification of the *status quo*. Additionally,

[108] See Odinet C.K., Tosato A. and Yadav Y. (2026), p. 55.
[109] Arguably, many investors use VPN clients to access third-country stablecoins.
[110] *Supra* I.E.
[111] See Section 18(a)(3) of the GENIUS Act for permission under a reciprocity agreement.
[112] *Supra* II.B.1.4.

the more fully a legislator tries to anticipate the future, the higher the risk of overlooking potential developments – the multi-issuer problem has provided an example.[113]

In the U.S., significant elements of regulatory policy had for a long period been established through *ex-post* agency enforcement and selected state law, rather than federal legislative action. This provided what might be considered room for regulatory experimentation and a "market for crypto law".[114] At first glance, this should be well-suited to cope with innovation. However, several market actors were dissatisfied with the ensuing lack of *ex-ante* federal guidance – illustrated by Coinbase suing the SEC to act on its petition for rule-making.[115] Even where guidance was eventually available *ex-post* and *pro futuro*, it was in important ways preliminary, given that changes in political leadership affect how agency discretion is exercised – a paradigm case was the move from Chairman *Gensler* to Chairman *Atkins*. When legislation is adopted, business models and practices have already shaped the regulatory discourse.[116] Even under the GENIUS Act, key aspects remain at the discretion of issuers, for instance contractual terms modifying redemption, additionally, the dual state-federal regime remains intact.[117]

While this seems to suggest a preference for the anticipatory and comprehensive, if less flexible reaction in the EU,[118] closer inspection has revealed that enforcement of MiCAR, for now, rests largely in the hands of Member States.[119] The result is a mix of overly detailed rules, coupled with variance in enforcement that invites regulatory arbitrage and rather than an efficient market for better regulation.[120] Calls for centralizing some oversight tasks at ESMA[121] would counter these effects, but leave the question unanswered whether, on balance, the advantages of anticipatory and detailed legislation outweigh the ensuing lack in adaptability to innovation and change. Arguably, principle-based regulation combined with a powerful, centralised, and independent regulatory body offers the

[113] *Supra* I.E.; see Awrey D. and Pallier P. (2026), p. 71 with the additional claim that technocratic EU rulemakers face few checks on discretion.
[114] Annunziata F. (2026), p. 64, Awrey D. and Pallier P. (2026), p. 70, Jackson H.E., Massad T.G. and Awrey D. (2025), pp. 26 *et seq.,* all on regulatory competition. On law & economics' theories on the market for corporate law see, for instance, Romano R. (2017); Bebchuk L.A. and Hamdani A. (2002); Bar-Gill O., Barzuza M. and Bebchuk L.A. (2006); Eldar O. and Magnolfi L. (2020).
[115] *Supra* II.A.
[116] For this argument see Jackson H.E. and Langenbucher K.(2026), pp. 77-78; similar: Awrey D. and Pallier P. (2026), pp. 72-73.
[117] Criticizing the lack of uniformity: Odinet C.K., Tosato A. and Yadav Y. (2026), p. 47.
[118] For a critique of the GENIUS Act as „an elaborate series of statutory patches that contradict one another" see Odinet C.K., Tosato A. and Yadav Y. (2026), p. 59.
[119] *Supra* I.A.
[120] On global arbitrage Farina T. *et al.* (2026), p. 10; Jackson H.E., Massad T.G. and Awrey D. (2025), p. 8 on a similar risk in the U.S.
[121] *Supra* I.A.

best chance to successfully cope with innovation. Open-textured principles, rather than all-or-nothing rules, provide the necessary degree of flexibility to adapt, when innovative techniques produce unforeseen consequences. Strong, central/federal agencies hinder inconsistent regulation and harmful arbitrage.[122] Independent bodies shield against the risk of regulatory change that caters to political preferences rather than optimal policy.[123]

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