



Blockchain & Cryptocurrency Regulation 2025

Seventh Edition

Contributing Editor:
Josias N. Dewey
Holland & Knight LLP



glg Global Legal Group

TABLE OF CONTENTS

Preface

Josias N. Dewey
Holland & Knight LLP

Glossary

The Contributing Editor shares key concepts and definitions of blockchain

Foreword

Karen Scarbrough
Enterprise Ethereum Alliance

Industry Viewpoint

1 On crypto, blockchain, and the turning of corners

Ron Quaranta
Wall Street Blockchain Alliance

Expert Analysis Chapters

8 Blockchain and intellectual property: A case study

Ieuan G. Mahony, Brian J. Colandreo & Jacob Schneider
Holland & Knight LLP

24 Cryptocurrency and other digital asset funds for U.S. investors

Gregory S. Rowland & Trevor Kiviat
Davis Polk & Wardwell LLP

37 Regulating the unseen: Limiting the potential for negative externalities from MEV realization

Tom Momberg & Angela Angelovska-Wilson
DLx Law PLLC

59 Legal considerations in the minting, marketing and selling of NFTs

Stuart Levi, Eytan Fisch, Alex Drylewski & Dan Michael
Skadden, Arps, Slate, Meagher & Flom LLP

82 The regulation of stablecoins in the United States

Douglas Landy & Chanté Eliaszadeh
White & Case LLP

96 Battle for the Planet of the Bored Apes: Regulation of digital assets

Richard B. Levin, Matthew G. Lindenbaum & Robert L. Lindholm
Nelson Mullins Riley & Scarborough, LLP

117 Digital asset litigation defence: Leveraging the statutory seller requirement
Matthew Solomon, Thomas Bednar, Samuel Levander & Andrew Khanarian
Cleary Gottlieb Steen & Hamilton LLP

125 Trends in the derivatives market and how recent fintech developments are reshaping this space
Jonathan Gilmour & Tom Purkiss
Travers Smith LLP

135 Blockchain taxation in the United States
David L. Forst & Sean P. McElroy
Fenwick & West LLP

145 OFAC sanctions and digital assets: Regulation, compliance, and recent developments
David M. Stetson, Evan T. Abrams, Andrew C. Adams & Sophia Breggia
Steptoe LLP

159 Restaking and the evolution of blockchain security
Sarah Chen, Lewis Rinaudo Cohen & Gregory Strong
Cahill Gordon & Reindel LLP

169 Digital asset mergers and acquisitions
William E. Turner II, Rebecca Jack, Thania Charmani & Sara Susnjar
Winston & Strawn LLP

186 Accounting considerations for cryptoassets
Sean Stein Smith
The City University of New York

Jurisdiction Chapters

195 Australia
Peter Reeves, Emily Shen & Jade McGlynn
Gilbert + Tobin

209 Austria
Thomas Kulnigg, Marco Thorbauer & Michael Schmiedinger
Schoenherr Attorneys at Law

216 Bermuda
Steven Rees Davies, Charissa Ball & Alexandra Fox
Carey Olsen

228 Brazil
Luiz Felipe Maia, Flávio Augusto Picchi & André Napoli
Maia Yoshiyasu Advogados

245 British Virgin Islands

Chris Duncan & Katrina Lindsay

Carey Olsen

253 Canada

Alix d'Anglejan-Chatillon, Ramandeep K. Grewal, Éric Lévesque &

Antonin Lapointe

Stikeman Elliott LLP

265 Cayman Islands

Alistair Russell & Chris Duncan

Carey Olsen

273 Estonia

Priit Lätt & Rainer Urmas Maine

TGS Baltic

284 France

Hubert de Vauplane, Victor Charpiat & Hugo Bordet

Kramer Levin Naftalis & Frankel LLP

295 Gibraltar

Jay Gomez, Javi Triay, Rupert Moffatt & Johnluis Pitto

Triay Lawyers Limited

303 Greece

Dr. Anastasia Mallerou

Bernitsas Law

312 India

Reddy Pawan Kumar & Athif Ahmed

Hash Legal

323 Ireland

Keith Waine, Caoimhe Costello & David Lawless

Dillon Eustace LLP

334 Israel

Uri Zichor

FISCHER (FBC & Co.)

347 Japan

Takeshi Nagase, Takato Fukui, Keisuke Hatano & Huan Lee (Henry) Tan

Anderson Mori & Tomotsune

357 Liechtenstein

Matthias Niedermüller & Giuseppina Epicoco

Niedermüller Attorneys at Law

368 Lithuania

Vladimiras Kokorevas

Gofaizen & Sherle UAB

379 Mexico
Carlos Valderrama & Arturo Salvador Alvarado Betancourt
Legal Paradox®

390 Norway
Mads Ribe, Philip Heyden, Rasmus Jørgensen & Gjert Melsom
Ernst & Young Advokatfirma AS

401 Poland
Mihhail Šerle
Gofaizen & Sherle Sp. z o.o.

410 Portugal
Filipe Lowndes Marques, Vera Esteves Cardoso & Ashick Remetula
Morais Leitão, Galvão Teles, Soares da Silva & Associados

424 Romania
Sergiu-Traian Vasilescu, Luca Dejan & Bogdan Rotaru VD Law Group
Flavius Jakubowicz JASILL Accounting & Business

439 Singapore
Kenneth Pereire & Lin YingXin
KGP Legal LLC

449 Spain
Alfonso López-Ibor Aliño, Olivia López-Ibor Jaume, Victoria Moreno Motilva & Santiago Alsina Gil
López-Ibor Abogados, S.L.P.

458 Switzerland
Daniel Haeberli, Stefan Oesterhelt & Alexander Wherlock
Homburger

474 Taiwan
Robin Chang & Eddie Hsiung
Lee and Li, Attorneys-at-Law

481 Thailand
Jason Corbett & Don Chaiyos Sornumpol
Silk Legal Co., Ltd.

491 Turkey/Türkiye
Şevki Özgür Altındaş, Merve Kütükçüoğlu Karpuzcu & Elif Öksüzler
Aksan Law Firm

502 United Kingdom
Charles Kerrigan, Mike Ringer, Matthew Nyman & Anna Burdzy
CMS LLP

518 USA
Josias N. Dewey & Samir Patel
Holland & Knight LLP

Norway

Mads Ribe

Philip Heyden

Rasmus Jørgensen

Gjert Melsom

Ernst & Young Advokatfirma AS

Government attitude and definition

General overview of cryptocurrency in Norway

The approach of Norwegian authorities towards cryptocurrency has been predominantly cautious, emphasising the need for stringent regulation and vigilant monitoring. However, this does not mean that cryptocurrency has no presence in Norway.

A 2024 survey¹ conducted by EY in collaboration with K33 revealed that approximately 395,000 Norwegians own cryptocurrency, which accounts for roughly 9% of the adult population. Additionally, a survey² commissioned by the Norwegian Central Bank (NCB) from June 2024 indicates that 11% of Norwegians own crypto assets. Furthermore, the number of crypto owners in Norway is set to grow, as indicated by the EY survey responses that more than 1 million Norwegians will own crypto within 10 years.

With this in mind, cryptocurrency has been a subject of interest for the Norwegian authorities over recent years and the Norwegian government thereby recognises the need to implement regulatory measures. The Ministry of Finance (MoF) and the Financial Supervisory Authority (FSA) are the leading authorities, but Økokrim (the National Authority for Investigation and Prosecution of Economic and Environmental Crime), the NCB and the Norwegian Business Register (BR) are also focused on and conduct projects around blockchain technology and digital assets.

Government attitude

The Ministry of Finance

The MoF provides an annual Financial Market Report to the Norwegian Parliament.³ It is here recognised that the rise of cryptocurrency and decentralised finance could potentially enhance the efficiency of the financial sector and drive innovation. However, its main focus and approach towards cryptocurrency, like all new emerging technology, is focused on the new risks considering how cryptocurrency can affect both our financial systems and the people's economy.

The report raises concerns about consumer and investor protection, as well as threats of money laundering, terrorist financing, and evasion of sanctions, with a particular focus on international trading platforms, payment solutions and investment applications that are aimed at retail users and often use misleading marketing.⁴ The report points out that Økokrim regularly receives inquiries from individuals who have been subjected to investment fraud via fictitious investment platforms offering cryptocurrency.⁵

The Financial Supervisory Authority

The FSA is responsible for conducting supervision of virtual currency services and for the implementation of the Markets in Crypto-Assets Regulation (MiCA). Today, for anti-money laundering (AML) purposes, providers of exchange and custody services of virtual currency must be registered with the FSA. In our experience, the FSA has a relatively strict approach on who may be registered (as further discussed below). Although the FSA is also seeing the positive sides of the technology (e.g., delivering more efficient and inexpensive transactions in the financial market), its approach has been somewhat restrictive due to concerns about risks in the use and development of cryptocurrency, such as criminal activities, digital vulnerability, consumer and investor protection and financial stability.⁶ An example is the FSA's issuance of cautionary statements on its website^{7,8} regarding the potential risks associated with virtual currencies for retail investors.

The Norwegian Central Bank

The NCB has an ongoing project on central bank digital currency (CBDC). The NCB provides an annual report detailing the Norwegian financial infrastructure, and the 2024 report⁹ dedicates a whole chapter to the topic of crypto assets.

The NCB report points out the volatile nature of the crypto asset market in recent years, highlighting the risks and consequences, and a need for regulatory oversight. An important point to emphasise is the potential for crypto assets to grow and become so intertwined with the conventional financial system that they could pose a systemic risk. The NCB suggests that it is necessary to explore the development of a national strategy for regulating crypto assets, which may include the introduction of specific regulations within Norway that extend beyond the current EU/EEA framework.¹⁰

The Norwegian Business Register

The BR has been experimenting and assessing the possibility of running the shareholder/UBO (ultimate beneficial owner) register on an open blockchain protocol (Ethereum), in which EY has been involved. However, the project is currently on hold and awaiting political support. EY has further helped both the BR and the Tax Office to establish an office in the metaverse Decentraland to allow them to experiment and learn.

Other institutions

In addition to public bodies, the expansion of cryptocurrency in Norway is affecting other central institutions, and the attitudes towards crypto vary across different sectors. For instance, banks tend to be sceptical about crypto assets, largely due to concerns over potential money laundering issues. Our experience is that banks are cautious with funds related to cryptocurrency, considering their licence to operate as a bank under supervision of the FSA. However, the FSA has so far communicated that Norwegian banks must, in general, accept customers who exchange crypto with an exchange who is registered at the FSA and thereby subject to the same AML regulations as the banks themselves.

Nevertheless, many banks are still restrictive and typically lack the capacity to manage this type of customer, which is also the case with most auditing firms. We assume this will change with MiCA, with banks having to respect crypto asset service providers (CASPs) and the like being regulated by the FSA. In EY's experience, by working with clients and crypto-related projects, banks have demanded and assessed themselves that companies have efficient AML tools and frameworks.

Cryptocurrency is also an ongoing subject for the Norwegian media. However, our impression is that the media still has a sensational attitude towards crypto assets and usually focuses on the negatives (e.g., energy consumption), writing about risks and scams.

Cryptocurrency is not classified as money

In Norway, cryptocurrencies are not legally classified as money. For now, cryptocurrency is subject to the definition of “virtual currency” under section 1-3 of the Norwegian AML Regulation:

“A digital expression of value, not issued by a central bank or public authority, not necessarily attached to an official currency, and which does not have the legal status of currency or money, but is accepted as a means of payment, and can be transferred, stored, or traded electronically” (unofficial translation).

The definition of “virtual currency” differs somewhat from MiCA’s definition of “crypto assets” and might be changed to harmonise with MiCA.

However, cryptocurrency will be considered money and subject to existing regulation when considered e-money. The EU’s E-Money Directive has been adopted in Norway through the EEA Agreement. Only licensed undertakings are permitted to issue e-money, and such licences are issued by the FSA. Additionally, e-money can be issued by foreign credit institutions and e-money firms within the EEA, provided they have the necessary licence in their home country. E-money tokens will also be regulated in Norway when MiCA is implemented (expected 2025).

The Payment Services Directive 2 (PSD2) is further implemented in Norway via the EEA Agreement, in the Financial Institution Act and Financial Agreement Act. All service providers offering payment solutions that require a licence under PSD2, involving cryptocurrency that is deemed e-money, must be licensed.

Experimenting with a CBDC

No cryptocurrency in Norway is officially supported by the government or the NCB. However, the NCB, together with a number of other central banks, is actively researching the potential for a digital version of the Norwegian “krone”.¹¹ The bank’s goal is to maintain a secure and efficient payment system that continues to encourage the use of the Norwegian krone by both businesses and individuals. As part of this initiative, as mentioned in the 2023 Financial Market Report,¹² the NCB is experimenting with technical solutions for a CBDC. While the technology that will underpin the CBDC has not yet been decided, the NCB has developed a basic prototype for digital currency tokens. This prototype is open-source, allowing for collaboration with Norwegian banks and other stakeholders in its testing phase.¹³

The final report of phase four of the project was published December 2023.¹⁴ In this phase, the NCB focused on technical solutions, scenarios for the payment system, consequences for liquidity management, and legislative changes necessary to permit the introduction of a CBDC. The report states that the Norwegian payment system is currently working well, so there is no urgency to transition into a CBDC. However, due to reduced cash usage, new technology and digital solutions, and CBDC projects in other countries, this project has become more and more relevant.

In the fourth phase, the NCB conducted (allegedly) the first cross-border transaction of a CBDC (as a test case) from Norway to the central banks of Iceland and Israel. We understand this was completed in approximately two seconds and at a fraction of the cost currently associated with conventional international bank transactions. This demonstrates the potential of the technology.

The next phase, phase five, will continue until the end of 2025, after which the aim is to submit a proposal to the Norwegian Parliament for evaluation. This phase, however, has moved away from a token-based instrument and is therefore possibly more conservative in its approach than the earlier phases, which were more experimental.

Cryptocurrency regulation

In Norway, the regulation surrounding cryptocurrencies and blockchain technology is currently quite limited. Today, Norwegian legislation has a definition of “virtual currency” (see above) that covers cryptocurrency, and the only specific regulations in place are for businesses providing cryptocurrency exchange or custody services. These businesses have been required to register with the FSA since October 2018. As of 12 September 2024, the FSA business registry lists 12 companies that provide one or both of these services.¹⁵ However, companies that issue cryptocurrencies or offer other types of cryptocurrency-related services, beyond exchange and custody, are not specifically regulated at this time. (See further description of the AML Regulation under “Money transmission laws and anti-money laundering requirements”).

Norway, while not a member of the EU, is connected to the EU’s internal market through the EEA Agreement. EU legislation does not automatically become Norwegian law, but instead, EU directives and regulations need to be formally incorporated into the EEA Agreement and then implemented into Norwegian law.

Norwegian laws are designed to be technology-neutral. This means they apply to blockchain technologies and crypto assets, even though these technologies were not in existence when the laws were created. For example:

- The Norwegian Securities Trading Act, which aligns with the EU’s MiFID II, may classify cryptocurrencies as financial instruments. Therefore, they would be subject to the same regulations as other financial instruments.
- Cryptocurrencies used in collective investment strategies might fall under the Norwegian law on alternative investment funds.
- In some cases, a governance token for a Decentralised Autonomous Organisation (DAO) could be considered an equity instrument, making the DAO’s participants akin to a partnership. In our experience, clients are increasingly becoming aware of this risk by limiting monetary distributions from DAOs into more pure governance tokens when deciding tokens’ attributes.
- Additionally, crypto services could be subject to the Marketing Act, the Consumer Regulations and the Personal Data Act (implementing the EU’s GDPR).
- The Norwegian tax authorities have (allegedly) been the first globally to provide guidance for cryptocurrency ownership. Taxable gains/losses must be reported in tax returns, and in many instances the sale of tokens issued by companies is subject to VAT (e.g., for utility tokens, unless the token is considered a financial service/instrument).

As part of the EEA Agreement, Norway will implement (expected 2025) MiCA (Regulation (EU) 2023/1114 on markets in crypto assets) and the Transfer of Funds Regulation (TFR II) (Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto assets). MiCA aims to establish common rules for the issuance, offering, and trading of crypto assets, as well as for preventing market abuse, to promote innovation, protect investors, maintain market integrity, and ensure financial stability.

The FSA was assigned by the MoF to develop proposals on how Norway should implement MiCA and TFR II under the EEA Agreement, and the consultation paper was finished in February 2024.¹⁶ The FSA has proposed to implement MiCA and TFR II largely through referring to the EU regulations, through a new Act on Crypto Assets that was on hearing until June 2024. The MoF has stated that it is working to ensure that a Norwegian regulatory framework implementing MiCA and TFR II can come into force without significant delays compared to the date of application in the EU.¹⁷ Affected parties in the crypto asset market are encouraged to start early preparations for MiCA. The FSA will publish more information about the application procedure as the implementation of MiCA into Norwegian law approaches.¹⁸

In addition, the Norwegian government has proposed changes to the Electronic Communications Act¹⁹ (Nw: *Ekomlov*), introducing new security requirements and a registration obligation for data centres. (See further below under “Mining”).

Sales regulation

Norway has adopted MiFID II and its definition of what constitutes a financial instrument. Any cryptocurrency or token that meets the definition of a financial instrument must adhere to the same regulatory requirements as traditional financial instruments under the Securities Trading Act.

The FSA regulates the financial market and is thus responsible for overseeing financial instruments in Norway. Bitcoin and other cryptocurrencies are not typically classified as financial instruments. However, certain cryptocurrency-based products or services might be regulated as financial instruments if their structure and function resemble those of traditional financial instruments.

As described above, cryptocurrency is only regulated through the statutory definition of virtual currency in the AML Regulation. This means that offering exchange or custodial wallet services of virtual currencies that are not classified as a financial instrument is regulated by the AML Regulation. (See further under “Money transmission laws and anti-money laundering requirements”.)

We have extensive experience in providing legal classifications on digital assets that could potentially be classified as financial instruments. This is particularly the case if the tokens are tied to underlying assets, making them derivatives, or if they possess characteristics similar to shares or loans, which would classify them as securities.

Taxation

The Norwegian tax system subjects cryptocurrencies to two main types of taxation: wealth tax; and capital income tax.

Wealth tax on cryptocurrencies

Individuals holding cryptocurrency tokens must value these assets as part of their global net worth for wealth tax purposes. The wealth tax rate in Norway ranges from 1% to 1.1% of an individual's global net worth.

The tax authorities typically require assets to be valued for wealth tax purposes based on the market price as of 31 December. However, this can be challenging for cryptocurrencies due to their volatile nature, as the market value can change significantly within hours/days.

Capital income tax on cryptocurrencies

Cryptocurrencies are generally treated as capital assets for tax purposes, triggering a 22% tax on the “gain/income” at the time of disposal. For individuals, this applies to those who are not considered to be running a cryptocurrency-related business.

It is a common misconception that taxes on cryptocurrencies are only due when converting cryptocurrencies to ordinary money or when transferring ordinary money to a bank account.

However, several types of transactions can trigger taxation, including:

- Selling cryptocurrency.
- Swapping one cryptocurrency for another.
- Converting cryptocurrency to fiat currency (e.g., USD, EUR or NOK).
- Purchasing goods or services with cryptocurrencies.
- Mining cryptocurrencies.
- Earning staking rewards or income from liquidity pools.
- Buying or selling non-fungible tokens (NFTs).
- Receiving cryptocurrencies via airdrop.

For tax purposes, gain/income from a cryptocurrency transaction is computed as the value of the cryptocurrency sold or earned minus the associated costs (such as acquisition costs and fees). Due to the fungibility of cryptocurrencies, determining the acquisition cost for tax purposes can be complex. Taxpayers may use various methods such as FIFO (First-In-First-Out), LIFO (Last-In-First-Out), or HIFO (Highest-In-First-Out), or the weighted average to calculate this cost.

For companies issuing and selling their own tokens, such as through private sales under Standard Agreements for Future Tokens (SAFTs) or through open market sales under Initial Coin Offerings (ICOs) or similar (e.g., Initial DEX Offerings (IDOs)), the question arises of when the income of such sales shall be realised as income for accounting and tax purposes. In a recent case, an EY client experienced securing of evidence by the Tax Office with subsequent seizure of the company's crypto assets. This was conducted due to an alleged non-reporting of taxable income from private SAFT sales to purchasers, as this was instead reported as debt/pre-sale. The company argued that the income from token sales should be taxable only when the functionality of the tokens is delivered (i.e., the utility of the tokens related to the associated platform where the token serves as a utility instrument), while the Tax Office's opinion is that the income should be realised in the accounts and taxed when the tokens are transferred to the purchaser (i.e., before the utility is fully delivered) and that the listing of the token on a third-party exchange underscored that the full utility was indeed delivered (which was disputed by the company). Although the Tax Office later withdrew the seizure and transferred the crypto assets back to the company, the tax case is still unresolved and has not yet been tested in court.

Engagement in cryptocurrency business

For individuals regarded as engaged in a cryptocurrency business, the income from cryptocurrency transactions can be taxable at rates up to approximately 50%. The criteria for what constitutes a cryptocurrency business for tax purposes are specific and should be carefully reviewed.

Navigating the tax landscape for cryptocurrencies in Norway requires a clear understanding of the regulations and a diligent approach to valuation and reporting.

VAT

The Norwegian Tax Administration has taken a proactive approach to VAT and cryptocurrency. As early as 2013, the Tax Directorate tried its hand at assessing VAT and cryptocurrency and issued a statement concluding that Bitcoin was subject to VAT. However, this decision was reversed after the *Hedqvist* ruling by the European Court of Justice. In a 2017 statement, the MoF clarified that the Norwegian VAT exemption for financial services should be interpreted in line with this ruling. This means that Bitcoin is considered a service that is exempt from VAT.

It is important to note, however, that the *Hedqvist* ruling emphasised that Bitcoin functions solely as a means of payment without any additional purpose. In contrast, most other cryptocurrencies typically serve various other functions. As a result, the VAT treatment of different types of tokens will require individual assessments. It is also worth noting that we are aware of several cryptocurrencies having already been classified as VAT-liable services by the tax authorities in specific cases.

Norwegian authorities have also expressed their views on NFTs and VAT. In a statement from the Tax Directorate, it was indicated that digital artworks may fall under the exemption for the sale of art. However, several conditions must be met for this exemption to apply.

Money transmission laws and anti-money laundering requirements

In Norway, AML measures apply to virtual currencies. These regulations are based on the EU's Fifth AML Directive and recommendations from the Financial Action Task Force (FATF).

Virtual currencies are defined as digital representations of value that are not issued by a central bank or public authority, may not be tied to an official currency, and do not have the legal status of currency or money.²⁰ However, they are accepted as a means of payment and can be electronically transferred, stored, or traded.

A subject to mandatory registration

Providers of exchange and custody services for virtual currencies in Norway must register with the FSA if they:²¹

- are registered as a business in Norway;
- operate from Norway; or
- target the Norwegian market.

The registration obligation covers all exchanges/swaps between virtual currencies, and between virtual currencies and any official (fiat) currency, regardless of the payment method used (credit cards, cash, e-money, etc.). However, service providers offering “non-custodial wallets”, i.e., where private cryptographic keys are not stored, are not subject to the FSA’s registration duty.

The concept of “targeting the Norwegian market” involves a comprehensive assessment that includes several factors, e.g., which language is used, geotagging of social media ads, use of Norwegian celebrities, and transactions involving NOK. Consequently, the prohibition of targeting the Norwegian market prevents foreign operators from targeting Norway and delivering cross-border services. Our experience is that our neighbour countries, Sweden and Denmark, have a less strict approach than Norway that only applies to businesses with physical presence in Sweden and Denmark. The different approaches will change with MiCA and the CASP licence, which should harmonise these rules through the possibility of passporting licences.

The FSA believes that many Norwegians use foreign platforms to trade their cryptocurrency. However, reverse solicitation is not illegal under the current AML regime nor under the upcoming MiCA.

Requirements for registration

Although the AML Regulation only requires registration and not a licence, the FSA requires undertakings to submit their AML framework (policy, guidelines, routines, etc.) to assess whether they comply with Norwegian AML regulations, and also to submit a clear description of their services’ technical solutions and their business model. The FSA may refuse, and has refused, applications that do not meet the requirements of the AML Act and Regulation (even for companies registered with other financial supervisory authorities elsewhere). The FSA will also revoke a registration that no longer meets the requirements.

Under the AML Regulation, the registration obligation covers providers of *exchange services* and *custody services*. According to the FSA, the registration requirement applies to services that:²²

- allow customers to trade or exchange virtual currencies for official currencies (such as NOK) and *vice versa*;
- enable exchanges between different virtual currencies (e.g., Bitcoin and Ethereum);
- connect buyers and sellers for trading and exchanges, possibly through a platform; or
- store private cryptographic keys for others to facilitate the transfer, storage, or trading of virtual currency.

The FSA’s approach arguably widens the scope of the AML Regulation by not just covering the actual parties that perform the exchange or custody service but also other intermediaries, such as interfaces and software providers. The FSA’s approach seems to be that service providers are subject to the registration obligation based on the services they offer, not how the technical solution is structured. This means that grey areas arise for companies that do not themselves exchange but can still be thought to facilitate exchange, e.g., interface companies that only offer a connection to the underlying exchange platform via

an “app”. This creates tension regarding whether pure software companies will need registration and/or a licence from the FSA, both under the current AML regime and under the upcoming MiCA.

This in particular applies to companies that only provide an interface to an open-source Decentralised Exchange (DEX) for trading, where no party is deemed to have control over the exchange. The Danish FSA has issued guidelines suggesting that providing an interface to access a DEX is considered as executing orders for crypto assets on behalf of the client. It is likely that the Norwegian FSA will adopt a similar stance, implying that interface providers to a DEX may have a registration obligation, at least as a CASP under MiCA.

Promotion and testing

In May 2023, the NCB recommended that Norwegian authorities consider their own strategy for regulating cryptocurrencies, as MiCA may not be adequate. Although regulators have since taken a wait-and-see approach, Norway was one of the first countries to experiment with a CBDC in 2016, with the NCB releasing open-source code for an Ethereum-backed digital currency sandbox, made available on GitHub in September 2022. According to a blog post by employees at the NCB,²³ the initial use of open-source code was not a signal that the technology will be based on open-source code, but “*a good starting point for learning as much as possible in collaboration with developers and alliance partners*”, emphasising Norwegian assertion towards embracing the possibilities of digital assets.

The FSA has established a regulatory sandbox with the aim of encouraging innovation in the Norwegian FinTech industry. While crypto assets and services have not prominently participated, the FinTech sandbox remains a key initiative for fostering a conducive environment for new actors and increased competition. Amongst others, the FinTech company Abendum participated in the sandbox with their solution for triple-entry accounting and a new audit standard based on blockchain technology.²⁴

Norway’s participation in the European Blockchain Services Infrastructure (EBSI) further underlines its commitment to embracing blockchain technology.

Ownership and licensing requirements

As previously mentioned (see “Cryptocurrency regulation” above), Norwegian laws are designed to be technology-neutral, meaning that they may apply to blockchain technologies and crypto assets even though these technologies did not exist when the laws were initially created.

There are currently no licence requirements or regulation(s) in Norway hindering investment advisors or fund managers from owning cryptocurrencies for investment purposes.

Mining

There are currently no restrictions or bans on cryptocurrency mining, although there have been political and legislative discussions on whether data farms and other mining facilities should be able to leverage the reduced electrical power tax that other data centres may apply. Thus, mining activities are perfectly legal in Norway, although they may be subject to political scrutiny. However, reduced electricity tax for data centres and cryptocurrency mining was discontinued in connection with the state budget in 2023. Gains from mining activities are liable for taxation and must be reported to the tax authorities. Mined coins count as income at market value at the time of acquisition and, if in possession at the end of the income year, the value is considered capital wealth. Therefore, keeping records of trading *and* mining activity is vital.

In its proposal for changes to the Electronic Communications Act, the Norwegian government has proposed that the Act should regulate data centre activities, requiring the registration of owners, contact person(s) for each data centre, and a description of what services the centre offers.

Border restrictions and declaration

There are currently no border restrictions or declarations required when importing cryptocurrency into Norway. Importing cash in amounts exceeding NOK 25,000 must be declared to Norwegian Customs. As cryptocurrency is considered neither money nor cash, these restrictions do not apply.

Reporting requirements

There are currently no specific reporting requirements for crypto assets in Norway besides the reporting requirements under the AML and tax regulations. Ownership of cryptocurrency must be reported in tax returns and is subject to wealth tax as for any other asset.

Estate planning and testamentary succession

Norway has no legislation explicitly addressing how crypto assets should be treated in the context of estate planning and testamentary succession. Cryptocurrencies and crypto asset accounts are considered personal property, so they will thus fall into the estate of the deceased and will be subject to testamentary succession and distribution of the estate.



Endnotes

- 1 See full report here in Norwegian and English: https://www.ey.com/no_no/news/2024/04/nordmenns-kryptoeierskap-hoyest-i-norden-forventer-1-million-eiere
- 2 Norges-bank.no, Report from the Norwegian Central Bank, Financial Infrastructure 2024, box 4.1 (https://www.norges-bank.no/contentassets/db9813cb1e4e408baa3c74443517923a/fi_2024_no_web_0706.pdf?v=13062024090338).
- 3 Regjeringen.no, the Financial Market Report to the Norwegian Parliament (Meld. St. 23), 2024 (<https://www.regjeringen.no/no/dokumenter/meld.-st.-23-20232024/id3036414>) (Nw).
- 4 Regjeringen.no, the Financial Market Report to the Norwegian Parliament (Meld. St. 23), 2024, section 4.3.3 (<https://www.regjeringen.no/no/dokumenter/meld.-st.-23-20232024/id3036414>) (Nw).
- 5 Okokrim.no, article on the Økokrim website about investment fraud, 2023 (<https://www.okokrim.no/investeringsbedrageri-knyttet-til-kryptovaluta.6589188-562360.html>) (Nw).
- 6 Finanstilsynet.no, presentation by the FSA, Cryptocurrency – Consequences for the Financial System, 2021 (<https://www.finanstilsynet.no/4a9bfd/contentassets/32b5eca113fb402c9fb151d18bf7dc5/kryptovaluta-statoekonomisk-forening.pdf>) (Nw).
- 7 Finanstilsynet.no, information about fraud related to cryptocurrency, 2024 (<https://www.finanstilsynet.no/forbrukerinformasjon/svindel-med-kryptovaluta>) (Nw).
- 8 Finanstilsynet.no, the European financial supervisory authorities remind of the risks associated with virtual currency, 2022 (<https://www.finanstilsynet.no/nyhetsarkiv/nyheter/2022/de-europeiske-finanstilsynsmyndighetene-minner-om-risikoene-ved-virtuell-valuta>) (Nw).
- 9 Norges-bank.no, Report from the Norwegian Central Bank, Financial Infrastructure 2024 (https://www.norges-bank.no/contentassets/db9813cb1e4e408baa3c74443517923a/fi_2024_no_web_0706.pdf?v=13062024090338) (Nw).
- 10 Norges-bank.no, Report from the Norwegian Central Bank, Financial Infrastructure 2024, chapter 4 (https://www.norges-bank.no/contentassets/db9813cb1e4e408baa3c74443517923a/fi_2024_no_web_0706.pdf?v=13062024090338) (Nw).
- 11 Norges-bank.no, Central Bank Digital Currency, 2024 (<https://www.norges-bank.no/tema/finansiell-stabilitet/digitale-sentralbankpenger>).

- 12 Regjeringen.no, the Financial Market Report to the Norwegian Parliament (Meld. St. 18), 2023 (<https://www.regjeringen.no/contentassets/2f9e7828fa724306afb815f10885a53d/no/pdfs/stm202220230018000ddd.pdfs.pdf>) (Nw).
- 13 Regjeringen.no, the Financial Market Report to the Norwegian Parliament (Meld. St. 18), 2023 (<https://www.regjeringen.no/contentassets/2f9e7828fa724306afb815f10885a53d/no/pdfs/stm202220230018000ddd.pdfs.pdf>) (Nw).
- 14 Norges-bank.no, Central Bank Digital Currency – Final Report for Project Phase 4, 2023 (<https://www.norges-bank.no/contentassets/fb85d452791d4d1a9f04aa4d3c18683d/norges-bank-papers-2-phase-4-final-report.pdf?v=18122023133556>) (Nw).
- 15 Finanstilsynet.no, the FSA business register list (<https://www.finanstilsynet.no/virkosmehetsregisteret/?q=>).
- 16 Regjeringen.no, the Consultation paper on the implementation of MiCA in Norway, 2024 (<https://www.regjeringen.no/no/dokumenter/horing-forslag-til-gjennomforing-av-forordning-eu-20231114-om-markeder-for-kryptoeiendeler-mica-og-av-forordning-eu-20231113-tfr-ii-i-norsk-rett/id3028064/?expand=horingsnotater>) (Nw).
- 17 Regjeringen.no, Statement from the Ministry of Finance, 2023 (<https://www.regjeringen.no/no/aktuelt/finanstilsynet-skal-utrede-nye-regler-knyttet-til-kryptoaktivita-mica-og-tfr-ii/id2999334>) (Nw).
- 18 Finanstilsynet.no, an FSA webpage about crypto assets (MiCA), 2024 (<https://www.finanstilsynet.no/tema/kryptoeiendeler-mica>) (Nw).
- 19 Regjeringen.no, a government webpage about the proposal for new law, 2024 (https://www.regjeringen.no/translate.google/no/aktuelt/styrker-sikkerhet-og-forbrukerrettigheter-i-ny-ekomlov/id3033939/?_x_tr_sl=no&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc) (Eng).
- 20 Anti-Money Laundering Regulations, section 1-3 (<https://lovdata.no/dokument/SFE/forskrift/2018-09-14-1324>) (Eng).
- 21 Finanstilsynet.no, the FSA website about virtual currency services, 2023 (<https://www.finanstilsynet.no/konsesjon/virtuelle-valutatjenester>) (Nw).
- 22 Finanstilsynet.no, the FSA website about virtual currency services, 2023 (<https://www.finanstilsynet.no/konsesjon/virtuelle-valutatjenester>) (Nw).
- 23 Norges-bank.no, experimental testing of central bank digital currencies, 2022 (<https://www.norges-bank.no/bankplassen/arkiv/2022/eksperimentell-testing-av-digitale-sentralbankpenger>) (Nw).
- 24 Finanstilsynet.no, Final Report from Abendum following participation in the FSA's regulatory sandbox, 2022 (<https://www.finanstilsynet.no/nyhetsarkiv/nyheter/2022/sluttrapport-fra-abendum-etter-deltakelse-i-finanstilsynets-regulatoriske-sandkasse>).

**Mads Ribe**

Tel: +47 992 27 156 / Email: Mads.ribe@no.ey.com

Mads Ribe is an Associate Partner and Attorney-at-Law and leads EY Norway's practice on AI and Digital Assets. He holds an M.B.A. with a focus on blockchain technology and has worked within the FinTech field for many years. He is commonly recognised as a leading Web3 Lawyer in Norway and is contracted to write the Norwegian commentaries on MiCA for the publisher Karnov.

**Philip Heyden**

Tel: +47 936 79 121 / Email: Philip.heyden@no.ey.com

Philip Heyden is a Senior Associate and an Associate Attorney-at-Law. He is part of EY Law's Norwegian banking and finance division, where he specialises in advisory regarding blockchain technology, crypto, digital assets, decentralised finance (DeFi), and general financial regulation. Philip is part of the team that will write the Norwegian commentaries on MiCA for the publisher Karnov. He holds an honours degree in Law from the University of Bergen.

**Rasmus Jørgensen**

Tel: +47 417 69 628 / Email: Rasmus.jorgensen@no.ey.com

Rasmus Jørgensen is a Senior Associate, Associate Attorney-at-Law, and is part of EY Law's Norwegian banking and finance division, specialising in capital markets, asset management (including digital assets), blockchain, crypto, and general financial regulation and corporate law. Rasmus has in-house experience as Legal Counsel at Carnegie Investment Bank and as Assistant Legal Counsel at PFA Asset Management (the asset manager of PFA Pension, Denmark's largest commercial pension fund). He holds a Master of Laws from the University of Copenhagen and studied International Business and Politics at Copenhagen Business School.

**Gjert Melsom**

Tel: +47 982 06 845 / Email: Gjert.melsom@no.ey.com

Gjert Melsom is an Executive Director who specialises in tax advisory and is the most experienced Norwegian tax lawyer on blockchain technology and digital assets, including tokens, crypto assets, decentralised finance (DeFi) and DAOs. Gjert has extensive experience advising on international tax and regularly lectures at BI Norwegian Business School. He regularly publishes books and articles and is ranked as a Band/Tier 1 tax advisor in international rankings, such as *The Legal 500*, *Chambers*, etc. Gjert holds an honours degree in Law (*Cand.Jur.*) from the University of Oslo.

Ernst & Young Advokatfirma AS

Stortorvet 7, 0155 Oslo, Norway

Tel: +47 24 00 24 00 / URL: www.ey.com/en_no



Global Legal Insights – Blockchain & Cryptocurrency Regulation provides analysis, insight and intelligence across 30 jurisdictions, covering:

- Government attitude and definition
- Cryptocurrency regulation
- Sales regulation
- Taxation
- Money transmission laws and anti-money laundering requirements
- Promotion and testing
- Ownership and licensing requirements
- Mining
- Border restrictions and declaration
- Reporting requirements
- Estate planning and testamentary succession

globallegalinsights.com

